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EXPERT COMMENTARY

French Nationality

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Acquisition and Loss of French Nationality

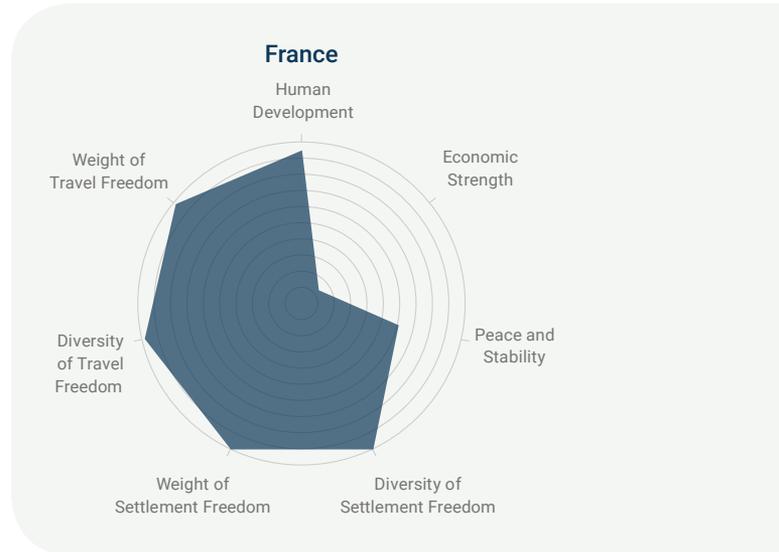
French law on the matter of the acquisition of French nationality distinguishes between acquisition by birth (called 'attribution') and acquisition after birth.

As regards acquisition by birth, French nationality is a mix of *ius soli* and *ius sanguinis*. A child is French at birth when at least one of their parents is French (*ius sanguinis*). French nationality is also granted at birth to a child who was born in France, provided either that one of their parents was born in France or in Algeria before its independence on 3 July 1962 (double *ius soli*) or that the child has no other nationality. Also, a person who was born in France to non-French parents acquires French nationality automatically and without any formality when they reach the legal age of majority (currently 18 years old), provided that they are residing in France when they reach that age and have been residing in France continuously for at least five years since the age of 11 (simple *ius soli*). Such a person can, however, claim French nationality earlier, through their parents from age 13 onwards (in this case, the relevant age for assessing the residence condition is eight years old) or by themselves from the age of 16 onwards.

After birth, a person can become French either automatically, by declaration, or by naturalization. There are several cases in which a person can acquire French nationality automatically after birth. This is notably the case for an underage child when one of their parents acquires French nationality, provided that the child resides continuously with the parent in question, this condition being adapted in the case of divorce.

There are also cases in which some persons have a *right* to nationality. They can acquire French nationality by a simple declaration. Unlike in cases of naturalization, the French authorities cannot refuse an application for nationality by declaration. The government may only refuse the acquisition of French nationality if it gives reasons, and only on a very limited number of grounds, as set out in French law. This system of acquisition by declaration applies, for example, to abandoned children who have been placed in the care of a French national or of the French Child Welfare Office for a certain period; to persons who have behaved, and been treated, like French nationals by the public and the administration for at least ten years; and to

elder immigrants who have resided in France for at least 25 years and have a direct French descendant. The acquisition of nationality by marriage, after a certain period, is technically one of these forms of acquisition by declaration. However, there is a degree of suspicion surrounding possible marriages of convenience. Therefore, this form of acquisition is subject to numerous conditions, some of them vague enough to allow the administration a certain level of discretion – exercised, notably, at an interview, the purpose of which is to make sure the spouses have lived together continuously since the date of their wedding and have, since that date, had a material and 'emotional' relationship.



Finally, a person can be given French nationality by naturalization. In this case, the administration may refuse to grant nationality, even if all the conditions are fulfilled. In order to apply for naturalization, the applicant must be of legal age, reside legally in France, be professionally and culturally integrated into the French community, and have good morals. This includes not having been convicted of one of the crimes that would prevent them from acquiring French nationality.

A French national who has another nationality can either ask to renounce their nationality or lose it as a consequence of a decision by the French public authorities. In the latter case, there is a distinction under French law between loss, *sensu strictu*, and deprivation of nationality.



Deprivation of nationality is a form of punishment and is usually the consequence of having been convicted of certain serious crimes, notably terrorism, misbehavior (in the case of public officials), or avoidance of national service obligations. However, if the French national has acted for the benefit of a foreign state against the interests of France, and in a manner incompatible with French nationality, this person can be deprived of their nationality without having been convicted. In any case, a person can only be deprived of their nationality within 10 years of first acquiring French nationality, and no later than 10 years following the events that legally justify them being deprived of nationality. It is worth noting that only a person who has acquired

French nationality after birth can be deprived of nationality, which means that French legislation contains an intrinsic difference of treatment between French nationals 'by birth' and French nationals 'by acquisition'. The French Constitutional Council stated in 1996 and, more recently, in 2015 that despite the fact that French nationals 'by birth' and 'by acquisition' are in the same situation – which, in principle, prohibits any difference of treatment – the French legislation on deprivation of nationality is not contrary to the constitutional principle of equality, considering the importance of fighting against terrorism and the limited period (10 years) during which such deprivation may occur. This reasoning seems rather unconvincing and, in any case, does not concern crimes other than terrorism, for which the issue of constitutionality remains open. Deprivation of nationality is, however, quite rare, especially on grounds other than terrorism, which makes it unlikely that the Constitutional Council will ever be called on to decide whether or not the other grounds for deprivation of nationality are compatible with the French constitution.

In recent years, successive governments have tried to 'weaponize' the deprivation of nationality as an instrument for fighting against insecurity and, especially, against terrorism – usually as a reaction to recent dramatic events. Already in 1996, terrorism was added as a grounds for deprivation, following the 1995 Paris attacks. In 2010, after gunshots were fired at police officers in Grenoble during a period of civil unrest, President Nicolas Sarkozy proposed extending the deprivation of nationality to any person who willfully endangered the life of a police officer, but this proposal failed. In 2015, after the more recent attacks in Paris, President François Hollande tried to amend the French constitution so that Parliament could pass a bill allowing the French authorities to deprive French-born nationals of their nationality – even though it was far from certain that a constitutional amendment was necessary, since such a bill would probably not have violated the constitution. After a very tense debate, within Parliament and among the general public, the president dropped the project.

In some cases, a French national who has another nationality can lose their French nationality. Unlike deprivation, this 'loss' is, strictly speaking, not exactly a form of punishment. Rather, it is supposed to be a statement of the 'fact' that a French national has ceased to behave like a French national. For example, if a French national has neither resided in France nor made use of their nationality for fifty years, a judgment can declare that this person has lost their nationality. However, in some cases, loss of nationality may seem like a form of punishment. In particular, a French national can lose their nationality by governmental decree if this person has displayed a manifest lack of loyalty towards France or if such a person has not renounced serving a foreign state or an international organization of which France is not a member, despite being ordered to do so by the French government. In such cases, the distinction between the grounds for deprivation and those for loss appear quite blurred. Loss of nationality can even be more 'interesting' than deprivation of nationality for public authorities, since the loss of nationality, unlike the deprivation thereof, can apply to French nationals by birth. Some scholars consider that this form of 'unnamed deprivation of nationality' applied after the Second World War and up to the end of the 1960s to Nazi collaborators, Italian fascists, and Soviet communists who had multiple nationalities, even though they were French by birth.

French Nationality and French Overseas Territories

In 2017, the French passport allowed visa-free travel to 173 countries and territories. This is a large number, but it is still lower than the number allowed by the German passport (visa-free travel to 176 countries and territories according to this QNI edition, which positions the German

nationality first in its Travel Freedom ranking). That the French nationality has taken first position on the QNI General Ranking is due to French overseas territories. Many of these territories, the remnants of the French colonial empire, are not part of the European territory, which means that EU law does not fully apply to them. Therefore, EU citizens are not as free to enter and live in these territories as French nationals, giving French nationals an advantage in terms of free movement and the right of settlement.



According to Article 138 of the 1990 Convention implementing the Schengen Agreement, as regards the French Republic, the provisions of this convention apply only to the European territory of the French Republic. Overseas territories are, therefore, allowed to carry out identity checks at their borders, and Schengen visas are not valid for these territories – which, crucially, hinders the movement of persons between French overseas territories and their neighbors and, therefore, regional cooperation.

Furthermore, under EU law, French overseas territories are divided into two categories: the outermost regions (French Guiana; Martinique; Guadeloupe; Mayotte, since 1 January 2014; Réunion; and St. Martin), and the overseas countries and territories (New Caledonia and Dependencies; French Polynesia; St. Pierre and Miquelon; French Southern and Antarctic Territories; Wallis and Futuna Islands; and St. Barthélemy, since 1 January 2012). EU law applies to the outermost regions, but the European Council, upon a proposal from the European Commission and after consulting with the European Parliament, can adopt specific measures aimed, in particular, at laying down the conditions under which EU treaties apply to those regions. By contrast, overseas countries and territories are 'associated' with the EU but do not form part of it. This association is the subject of arrangements defined in Part Four of the Treaty on the Functioning of the EU, with the result that, failing express reference, the general provisions of the treaty do not apply to these countries and territories. The purpose of this association is to promote the economic and social development of the overseas countries and territories and to establish close economic relations between them and the EU as a whole. As a result of the association, the right to free movement





of EU citizens does not fully apply to these territories. EU citizens permanently residing outside the French overseas countries and territories cannot rely on EU law should they wish to move overseas – whereas French nationals can rely on French law to do just that. In particular, freedom of movement for workers does not apply in overseas countries and territories, because the measures required by the treaties in order to make this freedom applicable to these territories have never been adopted.

The situation of New Caledonia deserves special attention. Because of the growing pro-independence movement, which led to a period of secessionist unrest in the 1980s, New Caledonia has been given a high degree of autonomy. It has a congress, which can pass laws, and a local government. Some authors consider that this special status for New Caledonia makes France a quasi-federal state, yet only in this part of its territory. As regards questions of nationality and QNI, two elements are noteworthy.

First, under the Nouméa Accord, signed in 1998 following the period of secessionist unrest in the 1980s and approved in a referendum, there is a special New Caledonian citizenship. Every French national who has resided in New Caledonia since 8 November 1998, or who is the child of at least one New Caledonian citizen, is a New Caledonian citizen. It should be noted that this 'regional' citizenship is a sub-status within French nationality – unlike, notably, British overseas territories citizenship, which is different from British citizenship, notwithstanding the fact that all British overseas territories citizens (apart from those solely connected with the Sovereign Base Areas of Cyprus) were granted British citizenship on 21 May 2002. New Caledonian citizens are (and remain) French nationals – and are also, therefore, EU citizens. New Caledonian citizens enjoy special rights. Notably, only New Caledonian citizens can participate in provincial and congress elections. More importantly, perhaps, they also have privileged access to local jobs. This special status, therefore, creates a form of privilege for at least *some* French nationals.



Second, again under the Nouméa Accord, New Caledonia is to hold a second referendum on independence between 2014 and 2018. The official date of the referendum has been set for November 2018, the year the Nouméa Accord expires. New Caledonia could then become an independent state in years to come. *If* this is the case, and *if* New Caledonia keeps strong ties with France, including visa-free travel and free settlement, then perhaps French nationality could consolidate its position in future editions of the QNI.

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