



AD HOC QUERY ON 2020.78 Member States' interpretation of Afghan nationality law regarding passing citizenship from parent to child

Requested by EMN NCP Finland on 16 December 2020

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden (20 in Total)

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1. Background information

Finnish nationality law may observe the *ius soli* principle in cases, where the citizenship of the parent cannot be passed to a child for some reason, or is unknown. A child acquires Finnish citizenship by birth if the child is born in Finland and does not acquire the citizenship of any foreign state at birth, and does not even have a secondary right to acquire the citizenship of any other foreign state.

According to the Nationality Act of Finland (359/2003), Finnish Immigration Service decides on determination of citizenship status. The Finnish Immigration Service determines citizenship status of a child born in Finland to foreign parents to make sure that the child does not remain stateless after birth.

The Finnish Immigration Service has recently had cases where it has been unclear, what are the conditions under which Afghan citizenship is passed to children as per current Afghan law.

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The Finnish Immigration Service Nationalit Unit therefore requests information from other Member States of their knowledge and interpretation regarding passing citizenship from an Afgan citizen parent to a child.

2. Questions

1. Do you consider the child of an Afghan mother an Afghan citizen by birth, although the father is a citizen of another country? If so, does this also apply to a child born out of wedlock?
2. Do you consider the child of an Afghan mother an Afghan citizen by birth, if the father is unknown or his citizenship is unknown or he is stateless? If so, does this also apply to a child born out of wedlock?
3. Do you consider a child an Afghan citizen by birth, if only the father is an Afghan citizen and the child is born out of wedlock?
4. Do you consider a child a dual citizen by birth if one parent is an Afghan citizen and the other parent is a citizen of some other country?

We would very much appreciate your responses by **22 January 2021**.



3. Responses

1

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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		Wider Dissemination ²	
	EMN NCP Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Belgium	Yes	<p>1. The nationality of a child needs to be considered on basis of the nationality of the parent(s) and according to the relevant nationality legislation. If the nationality legislation automatically grants the nationality of the parents to a child born in Belgium, then that child will obtain that nationality by law. A child therefore does not need to be in possession of an identity card or passport. If the corresponding nationality law proves that a child born in Belgium has no nationality and it is deemed impossible to obtain the nationality through registration with the embassy of the parents, then a child will be granted the Belgian nationality.</p> <p>2. Afghan nationality legislation: https://cadmus.eui.eu/bitstream/handle/1814/45933/GLOBALCIT_CR_2017_09.pdf</p> <p>3. See Q 2</p> <p>4. See Q4</p>

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. In the Republic of Croatia, children acquire citizenship from their parents. In order for a child to acquire Croatian citizenship, one or both parents must be Croatian citizens. If the child's parents are foreign citizens, the child's citizenship depends on the citizenship of the parents and it should be in accordance with the law of the state of which the parents are citizens. The parents should reach an agreement if they have different citizenships, regardless of whether the parents are married.</p> <p>2. See Q1</p> <p>3. See Q1</p> <p>4. Dual citizenship in the Republic of Croatia is allowed: if it is allowed by the laws of the countries whose citizenship the child would have.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. According to the national law, when a child is born in Cyprus and it is not/ has not the right to become a Cypriot citizen, no official decision is made on the citizenship of the child. In these cases, the child's nationality is registered unofficially in the Civil Registry, based solely on the information provided by the parents. In all cases, including the Cypriot nationals, the child's nationality is not mentioned on the birth certificate.</p> <p>2. See Q1</p> <p>3. See Q1</p> <p>4. See Q1</p>



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	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. In general, the Czech authorities are not entitled to determine with legally binding effect whether or not the person is a citizen of a certain foreign country. In specific cases, when it becomes necessary to determine the citizenship of a person in question, for instance during legal proceedings, the responsible authority shall act in order to find out the actual state of a matter about which there are no reasonable doubts by appropriate means of proving, and for this purpose shall choose an appropriate extent of proving.</p> <p>This principle shall be applied in the case mentioned in the question too. During the administrative procedure, the state body assessing the question shall assess documents submitted by the child's parents (regardless of whether they are married or not).. Thus, proving the citizenship status of the child should be primarily upon his/her parents who shall submit relevant documents or confirmations recognized by the Afghan authorities.</p> <p>A specific situation occurs if the child or his/her parents are granted international protection in the Czech Republic – then it is not possible to refer to the Afghan authorities in order to get the documents confirming the Afghan citizenship of the child. In this case the respective Czech authority must carry out further inquiries into the matter, e.g. refer to a Czech representation/embassy in Afghanistan to examine Afghan legislation on the acquisition of Afghan citizenship and alternatively verify whether or not the person in question is an Afghan citizen.</p> <p>If a person is issued a residence permit in the Czech Republic and is registered as an Afghan citizen, other state authorities rely on this fact, unless it is challenged for some reason.</p> <p>2. Please refer to our reply to the question 1.</p> <p>3. Please refer to our reply to the question 1.</p> <p>4. As mentioned above, the fact that the person in question is a citizen of a concrete country must be proved by relevant documents. If the authority finds out, based on relevant</p>
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			documents, that the child is an Afghan citizen after one of his/her parents and, at the same time, a citizen of other country after the other parent, then the Czech authorities shall consider the child to have dual citizenship.
	EMN NCP Estonia	Yes	<ol style="list-style-type: none"> 1. We have no practice in this regard. But in principle a child will receive citizenship of his parents. 2. The naturalization process is possible in case, when one of the parents is with undetermined citizenship and has a long-term or permanent residence permit of Estonia. 3. We have no practice in this regard. 4. We have no practice in this regard.
	EMN NCP Finland	Yes	<ol style="list-style-type: none"> 1. Usually not. If for some reason it is necessary to clarify the possibility of multiple citizenship, Finnish Immigration Service will do this. 2. If the father passes on his citizenship to the child born in or out of wedlock, the child is considered a citizen of this country. 3. Yes 4. If the mother does not pass on her citizenship to the child born in or out of wedlock, the child is considered Afghan citizen based on father's citizenship.

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	<p>EMN NCP Germany</p>	<p>Yes</p>	<p>1. Preliminary note: There exist different laws on citizenship and we follow the information collected by the Austrian Staatendokumentation. According to this information, the Law on Citizenship of 2000 is still in force (https://www.ecoi.net/en/countries/afghanistan/law-guide/)</p> <p>1. The provisions on obtaining citizenship in the unofficial English translation of the 2000 law do not differ between mothers and fathers but use the word “parents”. Provided the conditions in Art. 10 are fulfilled; the answer would be “Yes”.</p> <p>Regarding the 2nd part of the question, the answer is also “Yes”.</p> <p>A report on citizenship from 2017 states: “Citizenship is granted to a legitimate baby whose parents married according to Sharia jurisprudence because the Afghan Civil Code relates a child to the husband in cases where the child is born via a “true marriage.” This means that if a child is born outside of a marriage relationship and if the marriage does not occur according to Sharia jurisprudence, the baby can acquire neither Afghan citizenship nor a national identity card unless the parents prove that the marriage was conducted according to Sharia and the child is that of the parents. Thus, according to the law on citizenship of Afghanistan, being a legitimate child is the basis for citizenship by origin.” (Athayi, A., ‘Report on Citizenship Law: Afghanistan’, Global Citizenship Observatory (GLOBALCIT) and Robert Schuman Centre for Advanced Studies in collaboration with Edinburgh University Law School, March 2017, p. 8 f.).</p> <p>This view cannot be agreed with. The cited provision in the Civil Code (Art. 218) deals with family law, especially with Proof of Parentage. Seeking here a connection with citizenship law does not seem to be the right way. Further Art. 22 of the Civil Code states: “With regard to issues of childhood, guardianship, and other obligations of fathers and children, provisions of the law of the State of the father shall apply.” (see Civil Law of the Republic of Afghanistan. Translation produced by Afghanistan Legal Education Project, 2014).</p> <p>Another source, US Department of State (USDoS) states: “A citizen father transmits citizenship to his child. Birth in the country or to a citizen mother alone does not transfer citizenship”. But the report does not give any explanation or mention a source for this statement (see USDoS: 2019 Country Reports on Human Rights Practices: Afghanistan).</p> <p>The most current and comprehensible information comes from a recent answer to an information request by the Austrian Staatendokumentation where an Afghan lawyer is cited as follows: “Article 9.2 of Afghanistan Citizenship Law states: “a person who is born from an Afghan parents, either in or out of</p>
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			<p>Afghanistan, is considered Afghan citizen". There is no limit in this provision to indicate that the parents shall be married according to the Sharia Law.</p> <p>In practice, there are non-Muslim citizens in Afghanistan, who are not married accordance with Sharia law, but still their children obtain Afghan citizenship and all the children which born as result of illegitimate and unlawful relationship (although there is a small number), are all considered Afghan citizens."</p> <p>The source continues: "There is no legal provision to indicate that the illegitimate born child, is stateless. Such child could be without a guardian, but it is not considered as stateless." (see BFA Staatendokumentation (Austrian Federal Office for Immigration and Asylum, COI unit): Anfragebeantwortung der Staatendokumentation zu Afghanistan: Staatsbürgerschaft eines Kindes einer iranischen Mutter und eines afghanischen Vaters, 8 May 2020 https://www.ecoi.net/en/file/local/2034791/AFGH_IRAN_RA_Staatsb%C3%BCrge...).</p> <p>In every case the citizenship laws of the father's country should be taken into account. The answer depends on those laws. It is possible that parents will have the option to choose.</p> <p>2. See Question 1. If the father is unknown or his citizenship is unknown or he is stateless, there is no citizenship that could be passed on.</p> <p>3. Yes.</p> <p>4. See Question 1. The above mentioned Citizenship Law does not accept dual citizenship (Art. 7). However dual citizenship seems to be accepted. Art. 72 of the constitution (https://president.gov.af/en/afghan-constitution-2/) reads as follows: "The individual appointed as Minister shall have the following qualifications: 1. Shall have only the citizenship of Afghanistan; if the ministerial candidate has the citizenship of another country as well, the House of People shall have the right to approve or reject the nomination." This implies the possibility of dual citizenship, otherwise this rule would be meaningless. The citizenship laws of the other parent should be taken into account.</p>
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	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. Yes As a general rule, children receive the citizenship of their parents. Hungary applies the ius soli principle only in the following two exceptional cases:</p> <p>a) children born in Hungary of stateless persons residing in Hungary;</p> <p>b) children born of unknown parents and found in Hungary.”</p> <p>2. Yes Both parents are required to be stateless for the ius soli principle's application.</p> <p>3. Yes</p> <p>4. The possibility of dual citizenship is examined, depending on the paritcular policy of the other country. At the same time, the ius soli principle is not applied.</p>
	<p>EMN NCP Ireland</p>	<p>No</p>	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>
	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. The issue about the interpretation of Afghan law regarding passing citizenship from an Afghan citizen parent to a child has never played a specific relevance in Italy. This is also due to the few migrants coming from Afghanistan and residing in Italy (they represent about 0,25% of all foreigners present in Italy). So, information requested by this Ad Hoc Query is provided in general terms.</p>


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			<p>According to the Italian legislation (L. 5 February 1992 n. 91) <u>a foreign child retains his parents' citizenship</u>. However, the same law provides that a child is considered an Italian citizen by birth if:</p> <ul style="list-style-type: none">- his parents are stateless or unknown;- according to the law of the parents' country of origin, citizenship of parents may not be passed to child. <p>In the latter case, the parents have to submit to the Civil Register Office the consular certification about the impossibility to pass their own citizenship, their identity documents, the application for the acquisition of Italian citizenship for their child.</p> <p>The Civil Registrar shall forward the application to the Ministry of Interior which is competent to decide cases of acquisition of citizenship "jure soli".</p> <p>So, if according to the law of the parents' country of origin, citizenship of parents may not be passed to child, parents have to submit an application – which will be examined and decided by the Minister of Interior – in order to grant the Italian citizenship to the child born in Italy.</p> <p>Moreover, in case of child born in Italy to parents with different citizenships, three situations may occur:</p> <ul style="list-style-type: none">- different citizenship, one of which is Italian: the child is granted Italian citizenship ex officio;- different citizenship, one of which is European: the child is granted EU Member State citizenship ex officio;- different citizenship, both of non-EU countries: in this case parents have to declare in writing which citizenship they wish to be granted to child. <p>Anyway, the new born child should be registered, before, in the Civil Registry Office (which draws up the birth certificate) and then in the Civil Registry (APR) of the municipality of residence in Italy. However, the citizenship of minor has to be proved through appropriate supporting documents issued by competent authorities of the third country (such as consular certificate). Until this moment, the child citizenship on the Civil Registry is indicated as "Undocumented".</p>
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			<p>The abovementioned regulation is applied also if the child is born out of wedlock, as long as he/she has been legally recognized as a son.</p> <p>2. As said in Q.1, the child retains the mother's citizenship, because of only the father is unknown or stateless. Anyway, the mother has to submit documentations requested by the Civil Register Office in order to prove the foreign citizenship. The abovementioned regulation is applied also if the child is born out of wedlock, as long as he/she has been legally recognized as a son.</p> <p>3. Yes, but if the mother has legally recognized the child, also her citizenship as to be considered. See Q.1</p> <p>4. No. As said in Q.1, if parents of a child born in Italy have:</p> <ul style="list-style-type: none"> - different citizenship, one of which is Italian: the child is granted Italian citizenship ex officio; - different citizenship, one of which is European: the child is granted EU Member State citizenship ex officio; - different citizenship, both of non-EU countries: in this case parents have to declare in writing which citizenship they wish to be granted to child and provide to submit all documentation requested by the Civil Register Office.
	<p>EMN NCP Latvia</p>	<p>Yes</p>	<p>1. No. To consider if someone is or is not citizen there must be documental approve. In this case that means it is reason for us to ask for documental approvement whether the person is or is not an Afghan citizen. According to well established Latvian national case law just the fact that the law of another country</p>


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			<p>provides citizenship automatically by itself does not mean that the person has obtained citizenship because there must be a will what has been clearly expressed by a person.</p> <p>2. No. See the answer on 1st question.</p> <p>3. No. See the answer on 1st question.</p> <p>4. No. See the answer on 1st question.</p>
	EMN NCP Lithuania	Yes	<p>1. There were no practice or policy regarding such situation. It could be mentioned, that a child whose both parents or one of them is a citizen of the Republic of Lithuania acquires the nationality of the Republic of Lithuania by birth, regardless of whether s/he was born inside or outside the territory of the Republic of Lithuania. The nationality of a child who is not a citizen of the Republic of Lithuania may be confirmed by a travel document or other document containing information on nationality, or by performing search in registers and information systems, or by a response from a competent authority of a foreign State containing details of such person, or data on a person obtained or established by other means.</p> <p>2. See Q1.</p> <p>3. See Q1.</p> <p>4. See Q1.</p>
	EMN NCP Luxembourg	Yes	<p>1. In principle, Afghan citizenship is acquired by descent, birth, naturalisation and on the basis of international treaties. Ius sanguinis has always been the primary ground for granting Afghan citizenship. On the basis of the principle of descent, a child who is born in or outside</p>




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			<p>the territory of a father and mother holding Afghan citizenship automatically acquires Afghan citizenship (Article 9(2) of the Afghan law on citizenship). In the current situation, the answer is usually no but there is a conflict of nationality laws. The administration can determine the nationality that fits the child's best interest.</p> <p>2. Yes. See answer to question 1. Article 11 states that “a child will be considered a citizen of Afghanistan regardless of whether he or she was born inside or outside the territory of Afghanistan if one of his or her parents is a citizen of Afghanistan and the other is not or his or her citizenship is not established.” If at the time of the child’s birth one of the parents holds the citizenship of Afghanistan and the other holds the citizenship of another country, the child is considered a citizen if s/he is born 1) in the territory of Afghanistan; 2) outside the territory of Afghanistan but one of his or her parents permanently resides in Afghanistan; 3) outside the territory of Afghanistan and the parents also live outside the territory of Afghanistan and by mutual consent they select the citizenship of Afghanistan for the child. This article in accordance with article 28 was adopted to prevent that children of Afghan women who marry a foreigner become statelessness. However, children born outside of wedlock cannot acquire Afghan nationality in accordance with Afghan Civil Code and Sharia jurispruden</p> <p>3. Yes.</p> <p>4. Yes as the father has an Afghan citizenship.</p>
	<p>EMN NCP Netherlands</p>	<p>No</p>	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>



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	<p>EMN NCP Poland</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes, this also applies to a child born out of wedlock. 2. Yes, this also applies to a child born out of wedlock. 3. No, the priority is given to the polish citizen and citizenship of mother. 4. Yes, if parents have the essential documents and express will to their children should have dual citizenship.
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Slovak Republic has no experience with such cases. However, Slovak authorities are not entitled to establish a citizenship of a foreign country for a person. 2. Slovak Republic has no experience with such cases. 3. Slovak Republic has no experience with such cases. 4. Slovak Republic has no experience with such cases.
	<p>EMN NCP Slovenia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. The child born in Slovenian territory cannot receive Slovenian citizenship, since citizenship of one of the parents has been established, according to article 9 of Citizenship of the Republic of Slovenia Act. All arrangements regarding child's citizenship fall within the jurisdiction of his/her parents. 2. See answer to first question. 3. See answer to first question. 4. See answer to first question.

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	<p>EMN NCP Spain</p>	<p>Yes</p>	<p>1. We can give you this general answer to this AHQ: As established by art 17-1-c of the Spanish Civil Code (1982 and 1990 wordings), “those born in Spain of foreign parents if both of them should be without nationality or if the legislation of neither of them should grant a nationality to the child” are considered Spaniards by birth. The Instructions of 28 march 2007, of the then so called Dirección General de los Registros y del Notariado (Official Bulletin 10 April 2007 https://www.boe.es/buscar/doc.php?id=BOE-A-2007-7482) established a list of different nationalities, Afghans are not among them, whose children born in Spain will be considered Spaniards, and another list, Afghans are neither among them, whose children born in Spain will not be considered Spaniards “iure soli”, because they have right “iure sanguinis” to the nationality of one of their parents. Then, if the Spanish nationality as a mere presumption was demanded for a child of Afghan/s parent/s at the Spanish Registry Office, the judge in charge will decide, considering the afghan legislation.</p> <p>2.</p> <p>3.</p> <p>4.</p>
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. When it comes to considering which citizenship a child from Afghanistan is entitled to it is the Afghan law that is a base for this assessment. A child will be Afghan citizen if both parents are Afghan citizens. Children will also be Afghan citizens in a situation where one of the parents is Afghan citizen and, in the cases where the other parent is citizen of another country, the child is born in Afghanistan or if the child is born outside Afghanistan but one of the parents are living in Afghanistan or if the child is born outside Afghanistan and both parents are living abroad and have chosen to give the child Afghan citizenship.</p>

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			<p>2. We consider the child to get Afghan citizenship if one of the parents are Afghan citizen, even if the other parent are stateless or has unknown citizenship.</p> <p>3. Children will be Afghan citizens in a situation where one of the parents is Afghan citizen and, in the cases where the other parent is citizen of another country, the child is born in Afghanistan or if the child is born outside Afghanistan but one of the parents are living in Afghanistan or if the child is born outside Afghanistan and both parents are living abroad and have chosen to give the child Afghan citizenship.</p> <p>4. Dual citizenship is allowed according to Afghan law.</p>
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