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# Israel point of view regarding minorities - A constitutional perspective

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## A. Introduction

This paper deals with **legal** aspects regarding human rights within the state of Israel, in relation to the minorities' rights living in the state of Israel. It should be noted that the paper does not relate to the question of human rights in the territories administered by Israel post to the 1967 war.

The issue of minorities is of a vital importance. In Israel the case is much complicated and unique due to the political tension and security considerations. The non Jewish minorities in Israel are estimated around 20 percent of the total population which is about 7 million.

Israel is a Jewish and not a dual nationality state. Still, Israel is a democracy, and as such is committed to grant equal rights to both Jews and non Jews. Yet, being a Jewish state means keeping a Jewish minority within the state while recognizing the rights of the minority. As we shall see, the Arab minority<sup>2</sup> is not recognized formally as a national minority, but different arrangements by special laws and by Supreme Court Judgments recognize **de facto** the collective rights of the minority, thus, recognizing the Arab minority as a matter of fact national minority<sup>3</sup>.

A clear example of recognizing the Arab minority collective right can be exemplified by the fact that in Israel the Arab language is the second formal language. This should be seen in comparison to western democratic standards (such as France) which do not give a formal status even to the languages of large minorities. Yet, it should not be ignored that the Israeli concept of two official languages is not always implemented in real life.<sup>4</sup>

It should be noted that the issue of the rights accorded to the Arab minority is examined in light of unique and complicated political situation which give rise constantly to strong tension with the Arab minority in Israel. It might be exemplified in the clashes between Israeli Arabs with

Israeli police surrounding Al-Aqsa Mosque in Jerusalem's old city in October 2009. In spite of the fact that the status quo relating to prayers among Jews and Arabs has not changed since 2003, prayers in the Holiday Seasons has always led to riots and tension<sup>5</sup>. These events show strong bonds between the Arab minority in Israel and The Palestinians residing in the West Bank and Gaza Strip. It should be well understood that security considerations both internal and external might, in special circumstances, justify limitations on minority rights, especially in times of crisis. Yet, a democracy, such as Israel, should be committed to "universal values"<sup>6</sup>.

### **B. The status of the Arab minority in Israel: Legal Aspects**

Israel's declaration of independence, dated May 14<sup>th</sup> 1948, stated that the state will "ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex"<sup>7</sup>. The declaration promises to the Arab inhabitants participation in the up building of the state, and also full and equal citizenship, and due representation in all its provisional and permanent institutions.

Such a commitment should be implemented by the state of Israel. Still, it should be viewed in a situation where Israel is under a constant armed conflict and combating years of terror. It is a well accepted fact that Israel "has never known one day of true peace since its establishment. Such a reality must have a negative impact on the status of the Arab minority in Israel, even if it causes wrongs towards many Arab citizens"<sup>8</sup>.

At its early days Israel applied, out of strong security needs, a policy of control and supervision over the Arab minority. As an outcome, Arab minority's rights were harmed, especially because of limitations cast on their freedom of movement, and due to land Confiscation. The Military regime within the state of Israel, regarding the Arab population, was abolished in 1966. Since then, there are no existing restrictions on freedom of movement which binds the Arab minority. Israel still struggles to form a delicate balance to ensure minorities' equal rights, in spite of inherent difficulties.

Any discussion relating to the subject of the Arab minorities' status should be based on the assumption that Israel is a Jewish state. Israel is Jewish by its culture, language, symbols such as flag and national anthem, tradition and holidays. Under such structure it is well understood that the wide Arab minority, composed of people who were born in Israel finds itself in under a strong conflict, especially concerning Moslem Arabs.<sup>9</sup>

Still, Israel is a democracy respecting the rights of its minorities, adhering to international treaties which recognize the rights of ethnic minorities to maintain their culture, religion and language. Thus, prevails in Israel, as mentioned above, the concept of two official languages. The Arab language is recognized as an official language. This mere recognition is of importance in spite of the fact that the concept is not followed in day to day life, as will be discussed below.

Israel invests a lot of efforts, especially since the 90<sup>th</sup> in order to establish that Israel is not only a Jewish state, but also a democratic state. It is emphasized in the Basic Law: Human dignity and liberty, which was enacted by the Israeli parliament (The Knesset) in 1992, that Israel is "Jewish and democratic". The law refers to the declaration of Independence and specifies that human rights should be respected in the spirit of the declaration.<sup>10</sup>

Certain recognition in the collective rights of the Arab minorities was acknowledged by the Israeli Knesset expressly for the first time in the year 2000. Specific laws forced on the administration an obligation to ensure **proper representation** to: "Arabs Druze and Cherques" among the Officials in the government offices. The law also applies the duty of proper representation to ensure membership of the minorities in directories of governmental associations and in the public service in general. These laws were interpreted by the Israeli Supreme Court sitting as a High Court of Justice as laws constituting justification to give the Arab minority a much more preferred position in order to improve their representation in the public service, especially in areas or authorities with disproportionate Arabs' minority representation.

The HCJ took a much liberal approach and expanded the obligation for appropriate representation of Arab minority to other authorities not mentioned in these laws.<sup>11</sup> The court stated that according to its opinion the state has a clear obligation to take deliberate actions in order to look for appropriate representatives among the Arab minority and to create the right conditions for them to enter public service. Thus the court enabled an appropriate representation to a whole deprived group. This judgment has a great deal of importance since it opens the doors to a wide effective defense of the minorities rights not only on the basis of personal rights but rather on the basis of collective rights of a deprived minority, and thus gives the state an opportunity to correct wrongs made in the past towards the Arab minority in Israel.

The laws and the Supreme Court judgment still need a full implementation with all the constitutional importance that might be attributed to them. As regard to the Arab representation in the structure of Governmental institutions, it should be noted that in the end of 2008 41 judges out of 589 judges were Arabs i.e. 7%. In the HCJ there is only one judge<sup>12</sup>.

Another significant judgment given by the HCJ in 2000 is related to the **exploitation of land resources**, known as the kaadan **case**<sup>13</sup>. An Arab citizen asked to buy a piece of land in a Jewish Israeli "community area". His request was denied on the ground that the land which belonged in the past to the state now has been transferred to a Jewish oriented institution (The Jewish Agency) and is not any longer the land belonged to the state. The Arab citizen, kaadan, made an application to HCJ and claimed that he was discriminated because of his origin. He said that his right to equality was offended. The court stated that the state has no permission to discriminate citizens on the basis of ethnic origin and that it should strongly implicate it's obligation to treat all citizens in equality. Transferring the land to a third institution does not excuse the state from this clear obligation.

The judgment is a landmark case laying down a general concept barring any discrimination against Israeli citizen. It aims to correct the discrimination towards the Arab minorities under the land policy executed before. The court observed that a change in land policy towards the Arab minority is needed, and creates the legal atmosphere to implicate such a shift, by saying that the treatment given to the Arab minority - separate and not equal - is illegal.<sup>14</sup>

The HCJ has also applied judicial review over state authorities concerning division of state finance recourses, unequally. The court has ordered in April 2000 that the division of the budget of the ministry of religious will be operated on equal basis, in order to enable equal maintenance of cemeteries to all religious parties in Israel. The court emphasized the obligation of the government not to discriminate different minority groups and ordered the ministry of religious to correct the wrong decision, that same year, with no further delay.<sup>15</sup>

In December 2001 another breakthrough judgment<sup>16</sup> was given when the court ruled that the state should give the Arab minority its fair share in a budget designated to rehabilitate housing projects. The court made a clear statement that the fair share of the Arab minority should be relatively proportionate even though the main source of finance of the project came from Jewish donors. The court determined that the proper criteria for dividing this budget should be based on equality values and on relevant considerations.

This judgment is of high importance since it is considered to be a clear intervention by the court in governmental decisions merely to defend collective rights of the minority and not only personal individual rights infringed by a discriminating policy of the state.

In the field of **education** the HCJ cancelled a governmental decision which classified areas as areas of national priority. The classification gave Jewish areas financial benefits and was aimed basically to prevent Arab areas the benefit of being a preferred area. That judgment reads that the government has to give all benefits emerging from such a classification of areas also to Arab citizens.<sup>17</sup>

Another judgment imposed an obligation over the ministry of education to build a high school near a Bedouin village in order to help the local population to maintain its tradition and prevent the female students from driving a school bus along with male students. In such a decision not only the traditional values were respected by court but also the court made its clear opinion on the necessity to defend the collective right of equality in education.<sup>18</sup>

A most important judgment deals with the minority collective rights concerning the **Arabic language**<sup>19</sup>. The court accepted a petition filed against the municipality of Tel Aviv and another mixed population municipalities and imposed on them the obligation to fix along their internal roads mixed language signs - both in Hebrew and in Arabic. Practically, this judgment recognizes the collective rights of the Arab minority concerning their right to use their own language. The court referred also to the minorities' rights to their own education system, and keeping their own cultural values. These are quite extensive national minority rights even in an international scale. A free use of minorities language, separate educational system, separate cultural and religious institutions are financed by the state which recognize the right of the minority to live separately under no pressure of integration.

### **C. Conclusion and Assessment**

It might be observed that in the field of education which was discussed above, Israel sets an unprecedented example unknown to many other democracies of recognizing minority separate educational system in its own language which is being fully financed by the state. The collective rights of the Arab minority in Israel to respect its own unique culture, history, tradition and language has been recognized expressly in the year 2000 in which the Israeli Knesset has adopted an amendment to the law of State Education.

This mere recognition has a constitutional importance in spite of the fact that it does not give the Arab minority a comprehensive authority to shape the contents of the texts studied in the schools. It is also true that the HCJ decision relating to equal education, which was rendered in the beginning of 2006 was not implemented until November 2008, when the Supreme Court has ordered the ministry of education "to respect the legal duty imposed on the state".<sup>20</sup>

The educational area might exemplify the problems following the implementation of the basic concept which recognize individual and collective rights of the Arab minority in Israel.<sup>21</sup> Significant gaps can be observed between Jewish citizens and Arab citizens especially Moslems, in the field of income, employment and social conditions in areas of residence<sup>22</sup>. Still, it is well established since the 90<sup>th</sup> that Israeli governments are investing special efforts to reduce the discriminations towards the Israeli Arabs. This policy includes programs of affirmative action regarding infrastructure and development of social services in Arab villages.

As mentioned above, a new public policy finds its way to a specific act of parliament to ensure equality. It can be said that such a policy together with a judicial policy shaped by the Supreme Court reflects not only recognition of the Arab citizens as religious ethnic minority but also recognition as a national minority.

It might be observed that even the "**Framework Convention for the protection of National Minorities**", which was drafted by the **European Council** and signed in 1995 does not impose on a state a duty to recognize a national leadership of national minority. Still Israeli governments have recognized the status of High Committees of the Arab population in different areas and the Israeli Supreme Court has accorded them standing before it. The **convention** imposes standards of respecting the language of a minority without imposing a duty to accord to it a status of official language. As mentioned above, in Israel, the Arab language entertains a status of official language which was strengthened by the Supreme Court.

In the **convention** aiming to protect national minorities there is nothing to enable a national minority to get a status of "state within state" which might infringe of the power of the states institutions<sup>23</sup>. The convention calls for safeguarding full and effective equality regarding national minorities in the economical, social and cultural sphere. It imposes on nation the duty to create the necessary conditions to ensure effective participation of national minorities in the cultural social an economical area. As discussed in this paper, in certain areas Israel sets high standards towards minorities which are not required by the convention,

A series of papers relating to **Lisbon Declaration** and **Lisbon Treaty** reflects the European vision of national minorities' rights<sup>24</sup>. The documents state *inter alia* the rights of person to belong to national minorities and "to promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing state". (Lisbon Document 1996, 2003) document of **Maastricht Ministerial Council** 2003, aims to secure minorities' "effective participation in the decision making process especially in cases when the issue considered affects them directly". The Treaty of Lisbon (2007) provides in Article 1a that "The Union is founded on the values of respect for human dignity, democracy, equality, the rule of law and respect for human rights including the rights of person belonging to minorities. These values are common to the Member States in society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and man prevails"

It can be said that the Israeli democracy follows those lines. Yet it is evidently clear that the road towards granting full equality to the Arab minority in Israel is still long and the work has not yet ended. The Arab minority is represented in the Israeli parliament but not in the Israeli government even when the government was led by left wing party. Only one Arab Minister, a Christian, served in a previous Israeli government as the Minister of Culture and Sports. Arab members of parliaments had served during the years as Vice Ministers.

It was Justice Aharon Bark the ex President of the Israeli Supreme Court who had clearly stated Israel's unique security situation: „must not deprive our regime of its democratic character”<sup>25</sup>

There is a great challenge preserving democracy and constitutional rights mostly in a condition of permanent war. In Israel the challenge is greater due to unique social gaps and multiple cultural values. The main effective instrument to do so - is the art of balancing between conflicting rights and values. In the special case of the multicultural society of Israel and being in a constant state of war this system of checks and balances differs in various fields: personal human rights and collective rights have to be balanced in relation to public rights. The right to personal and public security can be opposed to the right of freedom or to the right of equality. The knowledge on how to create a well balanced legal policy lies in the hands of the Israeli Parliament, Israeli Government and the Supreme Court, operating a judicial review of statutes and administrative actions. Any restriction on minority's right can be justified only as an outcome of an immediate and clear danger to the state security or the well being of its citizens. The struggle for democracy which maintains human rights is a never ending one.

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<sup>2</sup> By the term "Arab minority" we refer to all minorities living in Israel: Arabs, Druze, Cherges et. Cet

<sup>3</sup> Still, the non comprehensive recognition made some observers to note that the Arab minority thus not entertain a "full citizenship". See D. Kretzmer *The Legal Status of The Arabs in Israel*, (1990); G. Barziali "*fantasies of Liberalism and Liberal Jurisprudence: State Law, Politics and Israeli Arab – Palestinian Community*" 34 *Isl.L. Review* (2000) 425

<sup>4</sup>For a further discussion see below, for a comprehensive discussion of the legal status of the Arab minority see A. Rubinstein, Barak Medina, *The Constitutional Law of The State of Israel*, (Shocken Publishing House, 2005) pp. 414 -466.

<sup>5</sup> It has been observed that " The Palestinian Authority is not doing enough to ease tension while The Islamic Movement's Northern Faction is apparently working in concert with number of Palestinian figures in an Effort to spark an escalation of hostilities on the Temple Mount, See Avi Isaacharoff "Who is Really to Blame for the tension in the Temple Mount?" Haaretz.Com October 05 2009

<sup>6</sup> .For a comprehensive analysis see A. Rubinstein & A. Jacobson - *Israel and the family of nation* (shocken publishing house Tel Aviv ) p. 73

<sup>7</sup> The Declaration of Independence [http://www.knesset.gov.il/docs/eng/megilat\\_eng.htm](http://www.knesset.gov.il/docs/eng/megilat_eng.htm)

<sup>8</sup> see A. Rubinstein & A. Jacobson - *Israel and the family of nations*, (shocken Publishing house Tel Aviv ) p. 166

<sup>9</sup> See The report of Or Commission of inquiry (2000)

<sup>10</sup> See "The Israeli Constitutional Revolution : The Canadian Impact in The Midst of a Formative Period" (1997) Vol. 8 p 53

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<sup>11</sup> See HCJ 6924/98 *The Israel Civil rights Movement v. The government of Israel*, Israel Law Reports Vol. 55 (5) P 15. The court states that the decisions on land issues influence the Arab population and therefore there should be a proper representation of the Arab minority in the council. The court also said that due to legislation that stated corrective preference of the Arab minority the state should not discriminate minorities because of nationality and religious and that deliberate activities should take place in order to ensure proper representation of Arab population.

<sup>12</sup> See Ali Haider Article – Haaretz, De Marker September 7 2009

<sup>13</sup> HCJ 6698/95 *Kaadan v. The Council of the Land of Israel* Israeli Law Report 51 (4) p. 528(2000)  
See

<sup>14</sup> See also the discussion over a separate and not equal treatment. The acceptable assumption in western democracies is that a separate but equal treatment is generally harming, but sometimes it might be justified when the minority group itself prefer such a treatment in order to keep its tradition an cultural values. The HCJ recognized the right of Bedouin, to live in separate areas interestingly such recognition was not accorded to Jews in the Kaadan case, see above, note 12

<sup>15</sup> See HJC 1113/99 *Adalah – v. minister of religion* Israeli Law Reports 54(2) p. 164(2000)

<sup>16</sup> See HCJ 727/00 *The Council of The Arab local municipalities v. the minister of construction* Israeli Law Reports 56 (2) p. 79 (2001) – the court firmly stated the obligation of the state to treat the Arab minority equally in regard to dividing public finance and repeats its decision in HJC 1113/99 – that indirect or direct discrimination over religion or nationality is illegal .

<sup>17</sup> See HCJ 11163/03 *The High Inspection committee for Arab affairs v. The Prime minister of Israel* , (2006). The court gave the state an additional time to implement the judgment but, until these days the judgment has not been implemented as claimed by Adalah – electronical journal no. 63 , August 2009

<sup>18</sup> See HCJ 2848/05 *Abou Sbila v. minister of education* (2007)

See HCJ 2814/97 *The High Inspection committee for Arab affairs v. ministry of education* Israeli Law Reports 54 (3) p. 233 (2000). The court stated the ministry's duty for a proportionate graduated budget in order to execute educational programs in Arab settlements

<sup>19</sup> See HCJ 41129/99 *Adalah v. Tel Aviv municipality* (2002)

<sup>20</sup> See HCJ 11163/03 *The High Inspection committee for Arab affairs v. The Prime minister of Israel*(2008) See also supra note 16

<sup>21</sup> The exemption given to Arabs from army service, which is based on complicated sets of arguments, reflects in any case recognition in collective rights. Analysis of this exemption is beyond the scope of this paper.

<sup>22</sup> N. Lewin-Epstein and M. Semoyonov *The Arab Minority in Israel's economy – Patterns of Ethnic Inequality* (1993)

<sup>23</sup> See above the book mentioned in supra note no. 5 at page 191

<sup>24</sup> See a comprehensive document, National Minority Standard – A Compilation of OCSE and Council of Europe Documents

<sup>25</sup> See A Barak "Human rights in times of terror – a judicial point of view" *Legal Studies*, (2008)Vol. 28, pp 493-505