




COMMENTARY


A European Perspective on Israel's Nationality Law

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Introduction

On July 19th, 2018 the Israeli Knesset, which is the House of Representatives of the State of Israel and thus works as the legislative branch of the government, passed a bill known as "Israel as the Nation-State of the Jewish People". This legislation, which has the weight of a constitutional amendment,¹ officially defines Israel as the national homeland of the Jewish people and asserts that "the realization of the right to national self-determination in Israel is unique to the Jewish people," that a "united Jerusalem" is the capital of Israel and that Hebrew is the only country's official language, excluding Arabic.

Another clause says that "the state sees the development of Jewish settlement as a national value and will act to encourage and promote its establishment and consolidation." Finally, the law defines the flag, the menorah, the "Hatikva" anthem, the Hebrew calendar, Independence Day and other Jewish holidays as national symbols.² The law was approved with a vote of 62 to 55, with two abstentions in the 120-seat parliament.³ The bill is now one of more than a dozen Basic Laws that together serve as the country's Constitution and can be amended only by a supermajority in the Knesset. These basic laws legally supersede the Declaration of Independence and, unlike regular laws, have never been overturned by Israel's Supreme Court.⁴

This bill has been highly criticized by human rights activists and Arab Israelis, who argue that it leaves them in a second-class type of citizenship and denies their collective rights as a minority, considering that they make up around 21% of Israel's population. Given that Israel claims to follow the principles of democracy, it is really important to see to what extent this law affects and will affect Arab Israelis, since the country already fails in other aspects to promote and protect its multiculturalism and bi-nationalism.

The relations of EU and Israel are founded on the base of safeguarding the principles of democracy and human rights within the state of Israel, and as one EEAS spokesperson stated: "We value Israel's commitment to the shared values of democracy and human rights, which has characterised our long standing and fruitful relations. We in the EU would not want to see these values being put in question or even threatened. Democracy and equality, including equal rights for minorities, are key values that define our societies."⁵ This is why it is of critical importance to observe what will be the consequences of enacting this bill and what has been the initial response of Europe, in addition to the future possible scenarios.

Background

We need to recall that Israel does not have a Constitution. Instead, it is founded on its Declaration of Independence, which says that the State of Israel "will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to

¹ <https://www.nytimes.com/2018/07/19/world/middleeast/israel-law-jews-arabic.html?module=inline>

² <https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048>

³ <https://www.irishtimes.com/news/world/middle-east/israel-approves-controversial-jewish-nationality-law-1.3570017>

⁴ <https://www.nytimes.com/2018/07/19/world/middleeast/israel-law-jews-arabic.html?module=inline>

⁵ <https://www.haaretz.com/israel-news/eu-s-foreign-policy-chief-we-wouldn-t-want-to-see-democracy-threatened-in-israel-1.6450193>

all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations".⁶ However, the passing of this Basic Law sharply contrasts with these principles, since it ensures Jewish citizens' supremacy over Arabs citizens. In addition, since the foundation of the State of Israel, Arabs have already been living under unequal circumstances with respect to their fellow Jewish citizens in different areas.

Inequalities between Israeli Arabs and Israeli Jews

Arabs make up around 21% of the Israeli population. But there are also other minorities like the Druze and the Bedouins. The following analysis will show how the Arab population has been treated as second-rate and unequal on matters such as national symbols, political presence in the Knesset, local management of Arab villages, education, and more since the establishment of the state.

1. Foundation of the State

When Israel was founded in 1948, it was defined as a Jewish state. The Israeli flag was always a Jewish one, bearing a Star of David and the national anthem invokes the "Jewish soul," thus excluding anyone who is not Jewish from these national symbols.⁷ The land itself went under a process of "Judaization" in all abandoned or evacuated areas, where Arab villages were destroyed, new Jewish settlements established, and Arab places and holy sites renamed with Hebrew names by the National Committee for Naming. Finally, the Jewish character of the state was also emphasized in education, since the State Education Law (1953) established that it had to invoke the values of the Jewish culture with no reference to the Arabic one.⁸

The state also pursued a strategy to obtain a demographic Jewish majority. This was done partly thanks to the 1950 Law of Return. This law established the right of every Jew to immigrate to Israel and become a citizen. Moreover, the 1952 Nationality Law stated that all Jews who immigrated to Israel were entitled to citizenship rights, whereas Arabs were entitled to citizenship only on the basis of residence, birth or naturalization. This was a strategy to make extremely hard the return of Arab refugees to Israel or the naturalization of non-Jews who had previously lived in the territory.⁹ Thus, since the very establishment of Israel as a nation state, Arabs have been subjects of discrimination and exclusion.

2. Governance

Another aspect in which Arabs find themselves in a worse position than their Jewish counterparts is governance. Arab citizens continue to be woefully under-represented in appointed offices: they constitute barely 7% of low and middle level positions in the civil service, and they occupy scarcely 3% of managerial slots.¹⁰

⁶ https://www.knesset.gov.il/docs/eng/megilat_eng.htm

⁷ <https://www.nytimes.com/2018/07/30/opinion/israel-nationality-law-palestinian-citizens.html?module=inline>

⁸ Dowty, A. (2001). *The Jewish State - A Century Later*. University of California Press, Chapter 9- Arabs in Israel: pp. 184- 215.

⁹ Reiter, Y. (2009). *National Minority, Regional Majority Palestinian Arabs Versus Jews in Israel*. Syracuse University Press, New York, chapter 1- The conflict sources: pp. 1-33.

¹⁰ <https://blogs.timesofisrael.com/the-knesset-needs-more-arabs-mks/>

Given that Arabs are restrained in embodying management positions in the government and other large organizations, they lack the experience and skills necessary to govern efficiently. As a result, many unqualified people take on positions of high responsibility in local governance, affecting negatively the performance of Arab villages.

3. Representation in the Knesset

The Knesset is the legislative body of Israel and it represents another instance in which Arabs have been put under an unequal position. Since Israel's foundation, only 51 Arabs have served in it. Initially, they were elected via satellite lists associated with major political parties or within the framework of the Arab-Jewish Communist Party of Israel (Maki). After the cancellation of the military administration over the Arab community in 1966, representatives were incorporated into the parent party lists.

Since the 1970s, independent parties — most notably Hadash, and then the Progressive Movement, the United Arab List (Ra'am), the Arab National Movement (Ta'al), and Balad successfully fielded candidates and gained representation in the Knesset. By 2013, these parties — as diverse in their ideological orientation and their socioeconomic predilections as their Jewish counterparts — accounted for 11 members in the Knesset (9.2%). Before the last general election in 2015, a law initially designed to limit Arab representation raised the electoral threshold to 3.25%, effectively forcing these very different political groupings to forge an electoral alliance under the umbrella of the Joint (Arab) List.¹¹ This Joint List gained 13 seats (10.8%) and, in addition, five other Arab members were elected on the Labor, Meretz, Israel Beyteinu, Likud and Kulanu slates — raising the percentage of Arab representation in the Knesset to 15%.¹² This has been a positive increase, but it stills misrepresents the total Arab population, which accounts roughly for 21% of Israel's population.

4. Education

The inequality between Arab and Jewish students and schools is another critical aspect that Israel needs to face. Evidence of this has been provided among others by Daphna Golan-Agnon¹³, who was hired by the Israeli Ministry of Education to create a plan to address inequality, and hence spent two years investigating how the latter was entrenched in the Israeli system by using data from the Israeli Bureau of Statistics.

One of her first findings was that Arab education received less budget compared to the Jewish one. The second main finding was that there was no representation of Arabs in the Ministry of Education. For instance, Arabs were not partners in the Ministry of Education's decision-making system, in outlining policy, or in planning. Furthermore, every appointment of an Arab teacher required the approval of the General Security Service via the deputy supervisor of Arab Education. Finally, she found out that the Arab education system in Israel institutionalized the fear of a connection with the past. By denying Palestinian history in the textbooks and alienating Arabs from their national culture, the Israeli education system fosters the cultural marginality of Arab Palestinians.

¹¹ <https://blogs.timesofisrael.com/the-knesset-needs-more-arabs-mks/>

¹² *ibid.*

¹³ Golan-Agnon, D. (2006). Separate but Not Equal, Discrimination Against Palestinian Arab Students in Israel. *American Behavioral Scientist* 49: pp. 1048-1075.

Related Issues

Policy by Israel as a Response to these Inequalities

One policy to minimise these inequalities was put forward by Israel in 2015 through the Resolution 922. Resolution 922 or “The Plan” was approved by the Government of Israel on December 30th, 2015, under the name “Economic Development Plan for the Arab Sector”.¹⁴ This 5-year plan has as its main goal the reduction of socioeconomic inequalities between the Arab and Jewish sector in Israel and the socioeconomic development of Arab localities. What was new about this plan was its budget, which amounted to NIS 10-15 billion, but also the inclusion of Arab leaders in the decision-making and supervision of the plan.

Nevertheless, this plan missed a key component: one that focuses on culture and heritage of the Arab people. Because of its recent introduction, there is no data yet to evaluate this Plan. However, it is a positive step taken by Israel to try and reduce the socio-economic inequalities depicted earlier. Notwithstanding the positive step, there is still much to do for the inclusion of Arab leadership in governance, in addition to efforts to recognize the binational character of the state.

Problems with the new Basic Law: Critiques

As summarized by the words of Sayed Kashua, an Arab Israeli writer, “The new Nationality Law prevents the possibility of multiculturalism in Israel and rejects any collective history or memory other than the Zionist one. By revoking Arabic’ status as an official state language, the law delivers yet another blow to the culture that has been vying for a position since Israel was founded. Article 7 of the Nationality Law, whereby the state shall regard Jewish settlement as a national value and work to advance it, has a distinctly colonialist tone, addressing Jewish settlement without any mention of the 20 percent of the population who are Arabs”.¹⁵

Israel and the European Union cooperate in a wide range of areas. 34% of Israeli exports go to Europe; Israel has received over 461 million of euros under the European Horizon 2020 research and innovation program; and half of Israel’s higher education institutes have participated in the EU Erasmus+ program.¹⁶ The EU is also connected to Israel on its fight against anti-semitism.

This cooperation among Israel and the EU, which aims at strengthening political stability and economic development is framed by the EU “Association Agreement”, put in place in the year 2000. Finally, the EU-Israel Action Plan, agreed in 2005, is based on shared common values of democracy, respect for human rights, the rule of law and basic freedoms.¹⁷ Israel, thus, is denying the right to this minority to have a collective memory and to be recognized at a national level. This sharply differs with the European Union’s principles, that defend and protect minorities heritage and status. This thus contrasts with the legal framework aboved-mentioned that regulates Israel and EU’s relations, and hence the passing of this Law could be detrimental for EU-Israel ties.

¹⁴ <http://iataskforce.org/sites/default/files/resource/resource-1462.pdf>

¹⁵ <https://www.nytimes.com/2018/07/30/opinion/israel-nationality-law-palestinian-citizens.html?module=inline>

¹⁶ <https://www.jpost.com/Opinion/The-real-story-of-the-EU-Israel-friendship-519935>

¹⁷ https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/israel_en

EU Initial Responses

The European Union has expressed concern over the Bill even before it was approved in the Knesset. In fact, European Ambassador Emanuele Giaufret communicated with Israeli lawmakers and advised them that if the law was to be passed, Israel's international status could be damaged. He argued that the law could be discriminative against some minority groups such as the Arabs.¹⁸

Following the approval of the law, EU High Representative for Foreign Affairs and Security Policy Federica Mogherini showed concern about its impact on the two-state solution strategy, stating: "We've been very clear when it comes to the two-state solution, we believe it is the only way forward and any step that would further complicate or prevent this solution of becoming a reality should be avoided".¹⁹ "The respect for human rights and fundamental principles are and will remain a central part of the EU-Israel partnership. We will continue to monitor the implications of this law in practice," she continued.²⁰

Thus, EU-Israel relations could be hampered because of this law if it becomes obvious that it denies the Arab minority its own rights. Again, it is important to recall that the EU stance has remained unchanged since the issuance of UN Security Council Resolution 242 of 1967, when Israel annexed Palestinian territories and the EU declared them occupied lands.²¹ As such, any action carried out by Israel can be taken into consideration when approaching peace talks, and the passing of this law could have an impact on this. Despite the initial common European response to the law, different states have assumed different instances towards Israel. In the following paragraphs, we will examine as an example the strikingly different responses of Ireland and Hungary.

Advantages/Disadvantages

The Irish approach

Just this past week, Ireland's senate voted in favor of a bill banning the importation of products from Israeli-occupied Palestinian territories, considered illegal by the European Union. The bill prohibits "trade with and economic support for illegal settlements in territories deemed occupied under international law", and, if it passed, would pave the way for Ireland to become the first EU country to enforce a boycott and criminalize commercial activities in the settlements.²²

The bill still needs to go through several more stages of review and amendment before it is signed into law, but it is backed by all of Ireland's opposition groups, including the Fianna Fail, Sinn Fein, Labour, the Green Party, the independents and the Socialist Democrats.²³ The European Union considers the Israeli settlements beyond the Green Line as illegal and as an obstacle to peace. As a response, the EU had begun already in 2003 in differentiating products made within the Green Line

¹⁸<https://www.haaretz.com/israel-news/.premium-israel-summons-eu-ambassador-over-efforts-against-nation-state-bill-1.6269560>

¹⁹<https://www.al-monitor.com/pulse/originals/2018/07/israel-nationality-law-europe-concerns-palestine.html>

²⁰<https://www.reuters.com/article/us-israel-politics-law-eu/eu-expresses-concern-over-israels-jewish-nation-state-law-idUSKBN1K91K7>

²¹<https://www.al-monitor.com/pulse/originals/2018/07/israel-nationality-law-europe-concerns-palestine.html>

²²<https://www.theguardian.com/world/2018/jul/11/irish-senate-approves-ban-on-products-from-israeli-settlements>

²³<https://www.aljazeera.com/news/2019/01/irish-parliament-votes-favour-bill-ban-settlement-goods-190125080743863.html>

and those that were produced beyond it by placing a numerical code on them. In 2015, it further moved to issue guidelines for labeling the products from Israeli settlements, thus now facilitating the understanding of the product's provenience by consumers.²⁴

Wadid Modallal, a political science professor at the Islamic University in Gaza, noted that the economic, cultural, diplomatic and academic boycott (BDS) that some people have adopted in Europe has been effective. "The boycott, divestment and sanctions movement is active in Europe and other European countries will probably follow in Ireland's footsteps," he said. "Europeans are increasingly sympathizing with the Palestinian cause, with the Great March of Return protests and the unjustified Israeli violence against protesters. International reports have contributed to revealing Israeli crimes, which pressures European parliaments to condemn Israeli abuses."²⁵ Thus, it is important to recognize Ireland's move, since it could be followed by other EU-member states.

The Hungarian approach

At the other extreme, Viktor Orban, President of Hungary, flew to Israel after the law was passed to congratulate Prime Minister Benjamin Netanyahu. Orban said he believed that the "excellent ties between Israel and Hungary" were in large part the result of personal ties between the leaders – and that he thinks "this is because both countries have a patriotic leader." Netanyahu had also visited Hungary earlier last year, in occasion of the Visegrad Forum (which includes Hungary, Czech Republic, Poland and Slovakia), where he thanked Orban for his country's support for Israel.²⁶ Another move that has shown the support by this Visegrad Forum to Israel has been the decision to celebrate the next summit, on February 18th-19th 2019 in Jerusalem. This has been seen problematic by the European Union, who wants to show a common position of not recognizing this city as the capital of Israel.²⁷

This example is just another one that shows the strengthening alliance between Israel and the countries in Central Europe, a move Netanyahu is leading, that is often reflected in an attempt to form a joint coalition in international institutions on issues regarding Palestine or Iran.²⁸ Netanyahu has also taken advantage of the current split among European countries on issues such as nationalism, and thus is looking to strengthen its relations with those countries that allocate themselves closer to Israel's interests. As Michael Oren, a former Israeli ambassador to the U.S. and a deputy minister in Netanyahu's office, said: "Israel's interest is to break up European unity on Israel-related issues".²⁹

²⁴ <https://www.theguardian.com/world/2018/jul/11/irish-senate-approves-ban-on-products-from-israeli-settlements>

²⁵ <https://www.al-monitor.com/pulse/originals/2018/07/israel-nationality-law-europe-concerns-palestine.html>

²⁶ https://www.haaretz.com/israel-news/.premium-netanyahu-and-orban-what-happens-when-two-patriotic-leaders-meet-1.6292996?=&ts=_1548764299319

²⁷ <https://www.euractiv.com/section/future-eu/news/visegrad-four-to-hold-first-summit-abroad-in-jerusalem/>

²⁸ <https://www.haaretz.com/israel-news/.premium-splitting-the-eu-israel-s-tightening-alliance-with-central-europe-1.6247069>

²⁹ <https://www.vocaleurope.eu/nationalism-is-bringing-together-israel-and-eastern-europe/>

Questions and future panoramas

The enactment of this new Israeli policy has been cause for concern in the European Union, which is monitoring closely the situation in the country. It is important to highlight that the ties between the EU and Israel rely on the respect of democracy and human rights by the latter, including minority rights as established in the 2005 EU-Israel Action Plan. If the law appears to be detrimental to the rights of Arab Israelis, the relations between the EU and Israel could be worsened.

At the same time, there is a possible scenario in which European countries will split along two different lines: some could adopt the Irish approach and pursue a strategy of banning Israeli settlement products as a response to its actions, which would further distance the countries. Other countries could follow the model of Hungary, which is increasingly aligning itself with Israel. The latter move should be carefully observed, since the rise of nationalist sentiments in Central and Eastern Europe, as well as in other European states, could be ultimately dangerous for the minorities that live there and Israel could have an influence on the national legislation or sentiment towards minorities in these European countries. Finally, the different actions and moves in regards to Israel by different European countries debilitate the image of Europe as united. The lack of consensus could be problematic in the future if it also includes stances on the Israeli-Palestinian conflict, for which the European Union up until today has had a common view.

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