NATIONALITY IN ISRAEL

ABSTRACT

This article opens with the legal framework in which Israeli nationality functions: the different ways of acquisition, renunciation and revocation of nationality under Israeli law generally, and the special provisions regarding enemy aliens. It then reviews the ethno-national aspects of Israeli nationality policy, and concludes with a look to the future on these matters.

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The legal framework

Nationality acquisition and naturalization

The *Nationality Law* regulates the acquisition of Israeli nationality. This law states that Israeli nationality is acquired by return, residence in Israel, birth, birth and residence,[1] adoption, naturalization and granting (*Nationality Law* 1952, articles 2-4). The cornerstone of nationality acquisition, Return, is unique to Israeli immigration and citizenship laws. The *Law of Return* does not grant nationality, but rather upholds the right of every Jew and his or her family members to come to Israel as an *Oleh*, which is a special term that refers to a Jew who returns to his homeland (as opposed to an immigrant to Israel) (*Law of Return* 1950, article 1). The link between the right of return and the right to acquire nationality is established in the *Nationality Law*, which grants nationality by return to every *Oleh* in accordance with the *Law of Return* (*Nationality Law*, article 2). The implication is that Jews who immigrate to Israel under the *Law of Return* acquire nationality automatically, as though they had acquired it at birth. The sweeping right to come to Israel as an *Oleh*, under the *Law of Return*, has three limitations: if the applicant is a) engaged in an activity directed against the Jewish people; b) likely to endanger public health or the security of the State; or c) a person with a criminal past, likely to endanger public welfare. Only when one of these limitations is met is the Minister of Interior entitled to withhold the right to immigrate by virtue of the *Law of Return*. In practice this right has very rarely been denied.

A person who does not enjoy the right of return but seeks to naturalize in Israel has to meet six requirements: a) presence in Israel; b) presence in Israel for three of the five years preceding the day of submission of the application; c) entitlement to reside in Israel permanently; d) settlement, or intention to settle, in Israel; e) some knowledge of the Hebrew language; and f) renouncement of prior nationality or proving that the applicant's foreign nationality will cease to be valid once he or she becomes an Israeli national.

Naturalization in Israel (as in any state) is a privilege and not a right, and is subject to the discretion of the authorities – in the Israeli case, that of the Minister of Interior.[2] When all of the aforementioned requirements are met, the Minister of Interior, if he or she thinks it fit to do so, may grant citizenship to the applicant. Prior to obtaining nationality the applicant must declare loyalty to the State of Israel (*Nationality Law*, article 5c). The Minister of Interior has the authority to exempt spouses of Israeli citizens (or of naturalization applicants) from the requirements tied to naturalization (article 7) and to exempt other applicants from some of these requirements (article 6d). Persons who served in the Israeli Defence Forces (IDF) or who lost a son or daughter in such service are exempt from these requirements (article 6a).

Renunciation and revocation of nationality

An Israeli national may declare that he or she desires to renounce his/her Israeli nationality; such renunciation is subject to the consent of the Minister of the Interior (article 10a, c). Israeli nationality may be revoked without this consent in three cases: a) unlawful exit from Israel to one of the states mentioned in the *Prevention of Infiltration Law*, or acquisition of the nationality of such a state;[3] b) committing an act of disloyalty towards the state of Israel; and c) nationality acquisition on the basis of false details. In the first case, a person is deemed to have renounced his/her Israeli nationality and it will be terminated on the day of his/her exit. The other two are at the discretion of the Minister of Interior. Both are problematic, procedurally speaking, as they grant the power to revoke nationality to an administrative authority, and do so without judicial procedures, although it is possible to petition the High Court of Justice to review a decision made by the Minister of Interior. The third instance is also problematic, as it is difficult to define "disloyalty." On the question of nationality revocation, a bill providing for the transfer of authority to the courts was presented to

the Knesset, the Israeli Parliament.[4] Revocation of Israeli nationality is not contingent upon possessing another nationality, so the person whose citizenship is revoked may, in fact, become stateless.[5]

The *Citizenship and Entry into Israel Law (Temporary Provision),* 2003

Originally, this law prohibited Palestinians from the Occupied Territories from gaining any status whatsoever in Israel, with a few exceptions.[6] The backdrop to the law was a series of terror acts against Israeli citizens, some of which were committed by Palestinian residents who had gained legal status in Israel by marrying Israeli citizens. The law limits the authority of the Minister of Interior under the *Nationality Law* to grant citizenship (*The Nationality Law*, article 5b), in order to facilitate the naturalization of spouses of Israeli citizens (article 7) and to grant a visa to reside in Israel in accordance with the *Entry into Israel Law*. The law was upheld by the Supreme Court of Israel, which rejected (by a majority of 6-5) petitions to declare the law unconstitutional. While rejecting the petition, a majority of judges on the Court were of the opinion that the law violates the constitutional right to family life.[7]

An amended version of the law, enacted in 2007, added citizens or residents of Iran, Lebanon, Syria and Iraq to the category of persons whose entry is prohibited. This was done to broaden the category of enemy aliens, so as to make it more defensible in court. A petition against the amended law is pending (HCJ 466/07).

As its title indicates, this is a temporary provision and the Knesset must renew it every six months.

Ethno-national aspects

The individual right granted by the *Law of Return* to every Jew and his or her family members to come to Israel as an *Oleh* gives the Israeli immigration policy a decidedly ethnic-national character. Such preference by law in matters of immigration and citizenship is compatible with international law, which grants each state the authority to decide its immigration and naturalization laws provided they do not discriminate *against* a particular nationality.[8] The legitimacy of the temporary provision mentioned above is less clear, and it attracted criticism from UN treaty bodies.[9] The amended temporary provision, however, widened its original application to enemy aliens and it is not at all clear that such prohibition is not within the sovereign authority of states.

The application of the *Law of Return* is broader than that of immigration law. The Law states that a Jew who was born in Israel, whether prior or following its enactment, shall be deemed to be a person who has come to the country as an *Oleh* under this law (article 4). Until 1980, Jews who were born in Israel acquired nationality by return, although they did not immigrate or return to the country from another place. Since the amendment of the law in 1980, Jews born in Israel (to a national parent) acquire nationality by birth and not by return. Nevertheless, the above article that applies the *Law of Return* to Israeli-born Jews remains unchanged. The legal situation prior to 1980 established, as a matter of fact, two routes of nationality acquisition and distinguished between Israeli-born persons, according to their national affiliation: Jews acquired citizenship by return, i.e. by *jus sanguinis*, while Arabs acquired citizenship by birth, i.e. by *jus soli*. The manner in which nationality was acquired had no practical consequences. The difference was symbolic, but significant (Carmi 2006).

Perhaps this distinction was created in order to apply the same path to nationality acquisition to all Jews in Israel, whether or not they were born there or immigrated to the country. But this result could have been achieved by the opposite and more intuitive statement that those who immigrated would acquire nationality as though they had been born in Israel. It seems that on a deeper level, underlying the legal-practical answer, lies a more fundamental principle. This principle was expressed by Prime Minister David Ben-Gurion, when presenting the *Law of Return* to the Knesset. Ben-Gurion declared that the right of return is "inherent" to every Jew as a Jew, while the state only gives it a statutory status. The *Law of Return* has nothing to do with immigration laws. This is the "persistence law of the Israeli history" (*Divery H'Knesset* 6, 2037, 1950). Jews exercised this right after the establishment of the state, were born in it or their ancestors had exercised it ages ago. Their right to reside in Israel is an historic right, because at the centre of Jewish history lies the divine promise that the Land of Israel belongs to the Jewish people. Article 4 of the *Law of Return* expresses the historic right of every Jew to reside in the *Land of Israel*. Hence the preferred status of Jews in Israel: Jews are the owners of the country, and their right to reside there is not linked to the question of whether they returned to the country or were born there.[10]

> The *Law of Return* does not grant nationality, but rather upholds the right of every Jew and his or her family members to come to Israel as an *Oleh*, which is a special term that refers to a Jew who returns to his homeland (as opposed to an immigrant to Israel).

This issue indicates the ethno-national aspect of the Israeli immigration and nationality policy. The *Law of Return* indeed deals directly only with the *immigration* of Jews, but the fact remains that the main route to nationality acquisition in Israel is still Return. And although the *Nationality Law* enables naturalization, the policy implemented by the Ministry of Interior over the years makes it almost impossible for a non-Jew or a non-family member of a Jew to naturalize in Israel. The term "entitled under the *Law of Return*" was introduced into other laws as a euphemism for "Jew."[11] The *Law of Return* is one of the only laws using the explicit term "Jew," and

being regarded as expressing, and maintaining, the character of Israel as a Jewish state, it makes the terms "Jew" and "entitled to return" almost synonymous. Thus, the *Law of Return* is used to distinguish Jews and non-Jews in a wider context, not only when it deals with immigration applicants (p. 162-163).[12]

A view to the future

Although the *Law of Return* is subject to criticism on various grounds, it is hard to believe that it will be changed. Many people even think it should be granted constitutional status, and in all events view it as expressing the unique character of Israel as a Jewish state. The fear of "touching" the *Law of Return* also stems from the fear that political pressures for changes come from different, and opposite, directions. Thus, while liberal-left criticism of its non-liberal and non-universal character is sometimes heard, others seek to restrict its application to Jews alone, and to exclude their non-Jewish family members, especially their non-Jewish grand children. They aim to create a situation in which the scope of people covered by the *Law of Return* includes only Jews in accordance with the *halacha* (Jewish law), and to prevent immigration of non-Jews to Israel. It is possible that article 4 of the Law was not revoked after the 1980 amendment of the *Nationality Law* because of fear of changing such a fundamental and sensitive law as the *Law of Return.*

Another proposal brought forth is change to the *Nationality Law* so that it will no longer automatically grant nationality by return. Partiality towards Jews will persist in entry to Israel, but not in nationality acquisition (p. 172-183).[13] The *Nationality Law* would demand that all immigrants who wish to acquire Israeli nationality meet the same requirements. Such an amendment would bring Israeli nationality closer to the general concept of equal and common nationality.

References

Carmi, N. 2007. "The Nationality and Entry to Israel Case before the Supreme Court of Israel." *Israel Studies Forum* 22, 1, p. 26-53.

Carmi, N. 2006. "Shall be Deemed to be a Person Who Has Come to this Country as an *Oleh* under this Law: The Stamka Dilemma, the Purpose of the Law of Return and the Connection Between Return and Citizenship." *Mishpat Umimshal* 10, 1, p. 160. (In Hebrew)

Committee on Elimination of Racial Discrimination. 2007. CERD/C/ISR/CO/13, June 14.

Divery H'Knesset 6, 2037, 1950.

Gavison, R. 1999. *Can Israel be Both Jewish and Democratic.* The Van Leer Jerusalem Institute and Hakibbutz Hameuchad Publishing House, p. 160.

Israel. 2008. *HCJ 466/07.* Decision from May 5.

Israel. 2006. *Nationality Bill.* P/17/1708.

Israel. 1995. *National Security Law.* Article 378a.

Israel. 1952. *Nationality Law.* Articles 2-4.

Israel. 1950. *The Law of Return.* Article 1.

Israel. HCJ 7052/03, *Adala v. The Minister of Interior and others.*

Office of the High Commissioner for Human Rights. 1965. *International Convention on the Elimination of All Forms of Racial Discrimination.* Article 1.3.

Notes

1 A category aimed at Arabs who resided in the country or were born in it before the state of Israel was established. The original law made it difficult for part of this population, which escaped or was deported during the 1948 war, to acquire citizenship.

2 As to limitation of this authority, see section *c.*

3 The states counted in this law are: Lebanon, Syria, Egypt, Jordan, Saudi Arabia, Iraq, the Yemen, Iran, and any part of the land of Israel which is not part of the State of Israel. The new bill (2008), which replaces the *Prevention of Infiltration Law* of 1954, has passed first reading in the Knesset on May 2008. The amended list of states in this bill includes: Iran, Afghanistan, Lebanon, Libya, Sudan, Syria, Iraq, Pakistan, Yemen and the Gaza Strip.

4 P/17/1708, *Nationality Bill* (amendment – the authority to revoke nationality due to act of disloyalty), 2006.

5 Israel is not a contracting state of the Convention on the Reduction of Statelessness (1961), although it is a signatory to it.

6 The original law recognized three exceptions to this sweeping prohibition: granting a temporary permit of up to six months, for work or medical purposes; granting a permit in order to prevent the separation of a child, aged up to 12, from his or her parent who resides in Israel legally; and granting a permit in order to promote state security or other state interests. In August 2005, further exceptions were added. The age of a child who may be issued a visa to prevent separation from his/her parents was raised to 14, and the Minister was authorized to grant permits to the wife of an Israeli citizen if she is 25 years or older and to the husband of an Israeli if he is over 35 years of age.

7 HCJ 7052/03, *Adala v. The Minister of Interior and Others.* For an analysis of this case see N. Carmi. 2007. "The Nationality and Entry to Israel Case before the Supreme Court of Israel." *Israel Studies Forum* 22, 1, p. 26-53. The above section is mainly taken from there.

8 International Convention on the Elimination of All Forms of Racial Discrimination (1965), article 1.3.

9 Thus, the Committee on Elimination of Racial Discrimination noted, as its concluding observation regarding Israel's report to the committee (2007), that the temporary provision is not compatible with the convention and urged Israel to revoke the law and reconsider its policy. CERD/C/ISR/CO/13, June 14, 2007.

10 Supra note 21, p. 160-161.

11 For example, *The National Security Law*, 1995, article 378a.

12 But the law's consequences also make distinctions between Jews. Thus, in the Stamka case the Supreme Court rejected the petition of Jewish Israeli citizens to grant return rights to their alien spouses (most significant of which is the automatic right to citizenship under the *Nationality Law*). The *Law of Return* applies explicitly to all Jews, even if they were born in Israel, and the rights of Jews under the Law also applies to their family members. For a critique on the ruling in the Stamka case, see Ibid., p. 151-172.

13 Compare R. Gavison. 1999. *Can Israel be Both Jewish and Democratic.* The Van Leer Jerusalem Institute and Hakibbutz Hameuchad Publishing House, p. 160.