

Unification of Palestinian Families in the Jewish State

By Chaim Gans¹

The Supreme Court is expected shortly to give its decision on the legality of an amendment to the Citizenship Law that denies Palestinian citizens of Israel the right to live in Israel with their Palestinian spouses from the Occupied Territories. Attempts have been made to justify the amendment on security grounds; however, its real reason is the one pointed out by Professor Ruth Gavison, an important supporter of the amendment. According to Prof. Gavison, "It is justified on the grounds that it is part of the effort to preserve Israel as a state in which the Jewish people exercises its right to self-determination, against the backdrop of present conditions in the region."² The current Knesset adopted the amendment after the Knesset presidium in the previous Knesset refused to allow the plenum to debate MK Michael Kleiner's proposed bill to subsidize the emigration of Arab citizens of Israel to Arab countries. Kleiner explained that his bill was needed "to encourage persons who do not identify with the Jewish character of the state to leave..."³

What is the difference between Kleiner's proposed bill and denying Palestinian citizens of Israel the right to live in Israel with their non-citizen Palestinians spouses? And what is the difference between these two pieces of legislation, if any difference indeed exists, and the Law of Return, which enables Jews immigrating to Israel to become citizens immediately and almost without restriction, a possibility almost completely denied to non-Jews, even if they have lived in Israel for a lengthy period of time? The three pieces of legislation, it is important to note, are intended to strengthen the demographic balance in favor of Jews. If Kleiner's bill was disqualified because it was considered racist, why were the other laws not also deemed unacceptable? And if the others are acceptable, why was Kleiner's bill disqualified from being debated?

"Whoever seeks a stable solution of two states for two peoples," Gavison writes, "cannot demand recognition of the right of Palestinians to family unification within Israel's borders. In principle, Palestinian families are supposed to live together in their state, while Jewish families live together in their state."⁴ However, taking this position a step further, it could be argued that supporting a stable solution of two states for two peoples also means denying the Palestinians a right to bear children within the borders of Israel. In the spirit of Gavison's line of thought, one might argue that both Palestinians and Jews should give birth to children specifically in their own states.

If these are legitimate means of demographic regulation, then clearly the Kleiner bill, too, is legitimate. The truth is that Kleiner's bill appears more legitimate than denying Palestinians the right to the unification of families. Subsidizing the emigration of Arab citizens of Israel is indeed intended to encourage them to leave. But, ultimately, the question of whether or not they leave depends on them. The proposed subsidization does not impose any kind of restriction on the freedom of Arab citizens of Israel, nor does it deny them any freedom of action within any important sphere of their lives. It imposes no restrictions on their possible careers, nor does it restrict their mobility. It does not restrict their ability to acquire education or restrict their political

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² Ruth Gavison, "Unification of Families in Two States," *Yediot Aharonot*, 5 August 2003 (Supplement, p. 11).

³ The citation was taken from the Knesset archives. The proposed bill was not published in the official annals because it was disqualified.

⁴ Op. cit.

freedoms. It does not restrict their ability to realize love or to establish and maintain a family. On the other hand, the denial of the Israeli Palestinians' right to family unification does precisely that. It abridges their choices for spousal relations and family life. It forces them to either avoid marital ties with Palestinian men or women who are not Israeli citizens, or to pay a heavy price for such marriages: living apart from their spouses or emigrating from their homes or residences in Israel.

I reject Gavison's view that the basic right to family life does not entail the right of people to exercise that right in the places where they grew up and in which their lives are entwined. I think that they have that right, and that it has legal standing too.⁵ But, above all, it is a moral right, bearing the same standing as the right people have to give birth to children and to raise them in the places to which their lives are bound, to acquire education in those places, to earn a living in those places and to continue living their lives in those places. These rights are basic human rights. They must be imposed as constraints on the regulatory demographic measures adopted by states, in order to promote the right to self-determination of ethno-cultural groups.

Subsidizing the emigration of Palestinians who are citizens of Israel, while less draconian than the denial of the right to family unification, is nonetheless illegitimate. Such subsidization broadcasts a blatant message from the State to part of its citizenry to the effect that their ethno-cultural identity renders them undesirable in their places of birth or in the places in which they live their lives. Concededly, the nature of this means is more declaratory than practical, as there is no direct curtailment of their ability to realize the central components of their lives within their current places of residence. In other words, it can be ignored. However, the message is a particularly offensive one. At the beginning of the 1970's, the British Conservative MP Enoch Powell made a similar proposal in relation to British citizens who were originally immigrants from the West Indies. The proposal was condemned throughout Britain. It should be stressed that Powell's proposal was of less gravity than Kleiner's, because it addressed migrant minorities as opposed to the members of homeland groups, who are the target of Kleiner's proposal.

Nationality-based priorities in immigration are different. Firstly, they do not prevent those who are already the citizens of a state from realizing major components of their life plans in their state. Secondly, these priorities can be granted equally to all ethno-cultural groups, so that for each and every such group there is a state controlling its homeland or part thereof, within which it enjoys these priorities. Under those circumstances, it would be unjustified to consider such priorities as offensive with regard to citizens of a given state whose ethno-cultural group enjoys precisely the same priorities in another state. There is no doubt that the principal injustice inflicted by Israel's Law of Return does not stem from the fact that it grants advantages in immigration on the basis of nationality. Rather, it stems from the fact that it grants the advantages to one ethno-cultural group within a state which includes also members of another ethno-cultural group, whose homeland it controls, but who are denied enjoyment of the same advantages, whether in Israel, or in any other state controlling their homeland. If the appropriate solution to the current stage of the Jewish-Palestinian conflict is really the constitution of two states, one mainly Jewish and the other mainly Palestinian, then it is only natural that there be immigration privileges in favor of Jews to Israel, and immigration privileges in favor of the Palestinians in the other state. As opposed to the case of the denial of the right to family unification (and obviously childbirth, etc.), effectuation of the Palestinians' right to ethno-culturally based preference in immigration to their homeland, which is not only within the borders of Israel, does not involve a potential violation of the individual rights of Israeli Palestinians, including the right to realize love or the right to establish a family. Immigration preferences in favor of Jews in Israel, with Palestinians enjoying the same preferences in

⁵ The European Convention on Human Rights (Rome, Nov. 1950).

another state to be established between the Jordan River and the Mediterranean Sea, therefore seems to be a legitimate means of demographic regulation intended to preserve Jewish majority in Israel.⁶

The fact that the Knesset has enacted a law denying Arabs the right to family unification on the one hand, and rejected Kleiner's bill on the other, could be explained in several ways. One explanation is pragmatic. Since Kleiner's bill leaves the choice of whether to leave Israel or not in the hands of Arabs, conceivably, it has no practical import because there are presumably not many Arabs who would exploit the offered subsidy. The amendment of the Citizenship Law, on the other hand, is assured of having practical consequences. As a result of the law, where an Arab man or woman marries a non-Israeli Palestinian, not only is their marriage likely to be terminated without the addition of any Palestinians and their progeny, but it is also likely to cause an overall reduction in the number of Arab citizens of Israel. As such, practical considerations might well induce the racist to disqualify Kleiner's bill, while simultaneously giving his support to the amendment of the Citizenship Law.

Plausibly, this is the real explanation for the fact that the Knesset affirmed the denial of the right for family unification, and yet rejected Kleiner's bill. It operated according to the dictum, "If you want to shoot, shoot. Don't talk!" (Or, for our purposes: "If you want to be racist do it for practical results and not just to anger others"). The rejection of Kleiner's bill on the one hand, and the acceptance of the Citizenship Law amendment on the other, can also be explained on the basis of irrelevant considerations. Kleiner is a manifestly declared racist, or at least he is generally perceived as such, making it exceedingly easy to impugn his proposal as racist and reject it, albeit for *ad hominem* reasons. Those who proposed to deny Arab citizens of Israel the right to family unification, as well as their supporters, are neither racists by their own admission, nor are they perceived as such. *Ad hominem* reasons therefore prevent the denial of the right to family unification from being regarded as a racist act. Nonetheless, this is what it is. One has to hope that the Supreme Court will do to the family unification law what the Knesset presidium did to Kleiner's bill.

⁶ Even though it is doubtful whether the particular preferences introduced by the Law of Return as it is are justified. See my detailed discussion in Chap. 5, Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003).