

The “Hlehel” Case: The open door in Tel Aviv is closed in Beirut!

By Marzuq Halabi¹

The case of author Ala Hlehel presented an opportunity for us, lawyers and Arabs in Israel, to test a range of issues related to the status of the Arab minority in Israel and its rights under Israeli and international law, and in particular the Israeli Basic Law: Human Dignity and Liberty. It was one of the rare occasions on which the Supreme Court was asked to decide on the request of an Arab citizen to travel to a country with which Israel does not have diplomatic relations, or is defined by law as an “enemy state”.²

On the legal level, we can conclude that the Supreme Court’s decision was enlightened and in line with Israeli liberalism, which is centered on individual rights and freedoms, including freedom of movement, expression and self-realization. However, such cases force us to look at matters at other levels, with regard to the status of the Arab minority in Israel, existentially and culturally, not only within the Israeli sphere, but also in the regional Arab sphere as well. The Israeli Supreme Court approved Hlehel’s trip to Beirut, but Beirut denied his entry. What can we infer from such a development?

There is no doubt that the Supreme Court’s acceptance of Hlehel’s request to travel to Beirut to receive a literary prize is a victory of the logic of ethics over the logic of tyranny in the law. In other words, human rights defeated – if only temporarily – the state’s monopoly of power through the rule of law. Interior Minister Eli Yishai’s justifications, supported by a similar position adopted by the Prime Minister, were based on the “emergency” regulations” prohibiting travel to an enemy state,³ but these regulations do not conform with the constitutional right to freedom of movement. We presume that the Supreme Court justices will rely on the provisions of the Basic Law: Human Dignity and Liberty to criticize the absolute ban on travel. According to the logic of this basic law, and on the basis of case law established by the Supreme Court, it is not improbable that the court would consider the rejection of Hlehel’s request by the executive authority to be an unreasonable and authoritarian stance that fails to take account of the details of the specific situation at hand. We say this noting that in other cases the court’s decision could have been negative and that the justices would not have found serious justifications for their decision. In a sense, the situation is fluid and can develop in different directions depending on the situation or general atmosphere. We must point out, for example, that this court decision differs in spirit from the recent amendment of the Basic Law: The Knesset, which provides that a person who visited an “enemy state” without the permission of the Interior Minister is barred from running for Knesset elections.⁴

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² Ala Hlehel’s case was preceded by MK Said Naffa and a group of Druze religious clerics who asked the Supreme Court to compel the Interior Minister to allow them to travel to Syria to perform religious rites. The court initially approved their request, but limited the duration of their stay there. HCJ 2691/06, *Saif v. The Prime Minister* (decision issued 18 July 2006).

³ Section 5 of the Emergency Regulations (Foreign Travel) – 1948.

⁴ The 2008 amendment denies the right to be a candidate for election to the Knesset to any citizen who has visited an “enemy” state without permission from the minister of the interior, during the seven years that preceded the date of submitting the list of candidates. See the *Basic Law: The Knesset (Amendment 38) (Candidate who Visited a Hostile State Illegally)* – 2008.

Hlehel chose the site for the confrontation between Israeli policy, as expressed in legislation and administrative decisions, and his right as an individual and member of an indigenous minority to be the Israeli Supreme Court, which decided in his favor. This development differs to what has happened thus far when Arab citizens have visited Syria, without requesting permission to do so, and thereby exposing themselves to criminal sanction, and when Arab MKs also did so, relying on their parliamentary immunity. While the Israeli Supreme Court sided with the Arab petitioner in Ala Hlehel's case, it failed in many other cases to intervene to safeguard the fundamental rights and freedoms of the Arabs in this land. The case of the unrecognized villages remains open, and the court has not brought justice to their residents. It has also failed to provide redress to the internally displaced Palestinians, at least in the case of the villages of Iqrit and Kufr Bir'am, which has been brought before it more than once. It also completely failed, until now, to provide redress for Arab citizens of Israel in all aspects of land planning and zoning, as evidenced by the continuing demolition of Arab homes.

The Supreme Court in Israel dealt with Hlehel's case according to straightforward constitutional concepts that transcend the "emergency" and the "exception", which the executive authority relies on to violate freedoms and rights, primarily under the pretext of "security considerations".⁵ It was therefore able to deliver a decision in Hlehel's case that is consistent with international and regional human rights conventions,⁶ and with the Basic Law: Human Dignity and Liberty. In allowing Hlehel to travel to Lebanon, considered to be an "enemy state", it did not know the Lebanese authorities' position. However, it is here before us in all its "sublimity". Hlehel ultimately remained in London, where he awaited Lebanese permission to enter Beirut. However, Beirut did not grant permission, alleging a lack of time and that Lebanese law prevents the entry of persons with Israeli citizenship or passports with Israeli entry visas into Lebanese territory. This is a clear message from the Arab world in relation to the concept of the connection between ourselves as an Arab minority in the Jewish state and the wider Arab world, and especially those parts that are forbidden to us.

This principle of connection has support from the two sides: here, among ourselves, and there, in the wider Arab world. Nevertheless, the decision by the Lebanese authorities in this particular case raises a question that cannot be written off with regard to this important principle. Would Hlehel's arrival in Beirut have implied "normalization" with the "Israeli enemy," or is it the practical realization of the principle of connection? The Arabs in Israel, when they long for and look forward to existential cultural and human connections with Arab countries that are prohibited from them, do so as Arab human beings seeking to exercise their right to connect with the group to which they belong. The Israeli Supreme Court recognized and upheld this right, in Hlehel's case at least. However, it seems that Lebanon, which invited Hlehel, via its Ministry of Culture, does not recognize this right, either for Hlehel or for us, as it did not issue him a visa.

The right to freedom of movement among Arabs in Israel should not be taken for granted. We must recall that, until 1966, travel to work or to visit one's daughter in a neighboring village

⁵ "Security" in Israel is the basic consideration for all values, rights and other social freedoms and is generally the reason to postpone or suspend them.

⁶ See e.g., The [International Covenant on Civil and Political Rights](#) (Article 27), the [United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#), and the [Framework Convention for the Protection of National Minorities](#) (Council of Europe).

in Israel required the permission of the military governor. The right to connect, even within the confines of a meeting with family members in a neutral place, has not been granted by Israel, which has and continues to go to extraordinary lengths to prevent it. It also continues to prohibit the import of a long list of Arabic books, on the basis that they originate from “enemy states”.⁷

Since the Israeli Supreme Court allowed for this connection in this particular case, against the will of the executive authority, we expected that the Arab world, represented by Lebanon, would embrace Hlehel and grant him that cultural space, which he aspires to, arising from the right to connect. In the past, we have witnessed cases where Arab MKs or Arab delegations were embraced; these cases were characterized by harassment from Israel. This raises two objections: the lack of recognition by Israel of our citizenship as an indigenous minority, and the lack of full recognition by Arab states and societies of our Arab nature and thus, the failure to respect our right to connect across frontiers, in accordance with international conventions. This concept has turned out to be problematic and confusing, it seems, not only because of Israel's reservations, but also because of the lack of awareness among Arab States, in this particular case, Lebanon, of this right. The matter may be the result of a foregone conclusion that results from its concept of the rights of its citizens and minorities, or due to a legal system that is still governed by “emergencies” or “security requirements”. It is therefore not surprising, from this angle at least, that its performance in Hlehel's case was similar to, if not more oppressive than, Israel's performance. While Israel opened the door for Hlehel to connect with his culture, Beirut refused to open up its gates to him, leaving him with a severed connection.

⁷ Adalah filed a petition on behalf of the owner of the “Kull Shay” publishing house, Mr. Saleh Abbasi, when the state refused to renew his license, which he held for 30 years, to import Arabic books arguing that the business amounted to “trading with the enemy”. See HCJ 894/09, *Kol Bo Books v. The Minister of Finance* (decision delivered 1 October 2009).