

Q&A: Israeli Supreme Court allows government to strip citizenship for 'breach of loyalty'

Case citation: Administrative Appeal 8277/17, Alaa Zayoud v. Interior Minister (Supreme Court) (decision delivered 21 July 2022)

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Background

On 21 July 2022, an expanded seven-justice panel of the Israeli Supreme Court delivered a ruling upholding the constitutionality of a 2008 amendment to the 1952 Citizenship Law (Article 11(2)(b)). This article authorizes a court of administrative affairs, at the request of the Interior Minister, to revoke the Israeli citizenship of persons who have “committed an act that constitutes a breach of loyalty to the State of Israel”. The ruling concerns, in particular, a request made by the Interior Minister to revoke the citizenship of two Palestinian citizens of Israel, Alaa Zayoud and Muhammad Mafaraja, who are serving extended prison sentences.

In 2017, the Haifa District Court approved the Interior Minister’s request to revoke Mr. Zayoud’s citizenship, leaving him stateless. In October 2017, Adalah – The Legal Center for Arab Minority Rights in Israel and the Association for Civil Rights in Israel (ACRI) filed an appeal to the Israeli Supreme Court on behalf of Zayoud, arguing that Article 11(2)(b) is unconstitutional.

In 2018, the Lod District Court rejected the Interior Minister’s request to revoke Mr. Mafaraja’s citizenship. The Interior Minister appealed the decision to the Supreme Court.

What did the Court rule in its judgment?

The Israeli Supreme Court upheld the constitutionality of Article 11(b)(2) of Israel’s Citizenship Law, which allows the Interior Minister to submit a request to the judiciary to revoke the citizenship of a person who has committed an act that constitutes “breach of loyalty to the State of Israel.” However, the court significantly limited the Interior Minister’s discretion under Article 11(b)(2), based on guidelines provided by the Ministry, and held that said article is reserved for exceptional cases.

With regards to the specific cases under its review, the court ruled that the process of citizenship revocation had been legally defective and therefore rejected the Interior Minister’s requests to revoke the citizenship of Alaa Zayoud and Muhammad Mafaraja.

What offenses constitute a “breach of loyalty” to the State of Israel?

The term “breach of loyalty” is defined in an overly broad manner, relying on the 2016 Counter Terrorism Law, to include any “act of terror,” assistance or solicitation thereof, or “taking an active part” in a “terrorist organization” (see definitions in Article 2(a) and Article 10 of the Counter-Terrorism Law). Other bases for the revocation of citizenship include treason or residence in certain territories (including Lebanon, Syria, and the Gaza Strip, among others).

Recently, Israel has been expanding the use of the 2016 Counter-Terror Law to indict political leaders, political activists, and others for a variety of offenses, including speech crimes. Can the state use the law to strip them of their citizenship?

In theory, the Interior Minister could decide to revoke the citizenship of any person convicted of an “act of terror” in accordance with the Counter-Terrorism Law, which employs terms that are ambiguous and overly broad. However, the Supreme Court found in its ruling that the use of the power to revoke citizenship should be reserved for very serious and exceptional cases. The court abstained from reviewing the guidelines for revoking citizenship in this case.

Is the revocation of citizenship contingent on a conviction in a criminal court?

No, a criminal conviction is not a prior condition of citizenship revocation; the Interior Minister may decide to submit a request for the revocation of citizenship outside of a criminal context. However, it is important to note that the Supreme Court, based on guidelines issued by the Interior Minister during the appeal, made clear that Article 11(b)(2) is reserved for the most severe cases to justify its invocation. Thus, not every conviction of an “act of terror” under the 2016 Counter-Terrorism Law will result in a request for the revocation of citizenship or a court’s acceptance of the request.

What legal status is granted to a person who has been stripped of citizenship?

According to Article 11(b)(2) of the Citizenship Law, a person whose citizenship has been revoked shall be granted a permit to stay in Israel. The Supreme Court interpreted the term “permit to stay” to mean that the Interior Minister must grant such a person a permanent residence permit, and not a temporary residence permit that the Interior Minister sought to grant to Zayoud and Mafaraja.

However, a permanent residence permit in Israel is not tailored to persons whose citizenship has been revoked and consequently have been rendered stateless (e.g. as will be detailed below, the Minister has wide discretion to revoke the permit). In a dissenting opinion, Justice Vogelman argued that a designated status granting more stability should be formulated in order to determine that Article 11(b)(2) is constitutional.

Does this Court decision affect Palestinian residents of East Jerusalem?

Not directly. However, Israeli law allows the revocation of “permanent residency” status in certain circumstances. For example, Article 11a, enacted in 2018, of the Entry into Israel Law

(1952) grants the Interior Minister broad discretion to decide whether to revoke a permanent residency permit, including on the same ground of “breach of loyalty to the State of Israel”. Permanent residency is the status granted by Israel to Palestinian residents of East Jerusalem.

The Supreme Court did not consider the constitutionality of the revocation of *residency* based on a “breach of loyalty” in its ruling; it considered the revocation of citizenship. However, the court might apply the same interpretation it made in upholding the constitutionality of Article 11(b)(2) of the Citizenship Law. If so, the question would arise as to what kind of permit the Interior Minister could grant to permanent residents in East Jerusalem if they are stripped of their permanent residency status.

How many people have been affected by the 2008 law since its enactment? Is the Interior Minister applying the law selectively, in a discriminatory manner?

The two cases under the Supreme Court’s review involving Zayoud and Mafarja were the first cases in which the Interior Minister decided to invoke Article 11(b)(2) since its enactment in 2008. In total, since the 2008 amendment, the Interior Minister considered the revocation of citizenship in 31 cases, none of which involved a Jewish Israeli citizen; all concerned Palestinian citizens of Israel. Adalah and ACRI argued in the petition that the Interior Minister was applying the law in a selective and discriminatory manner to target Palestinian citizens of Israel. The Court rejected this argument, finding that since only three requests for revocation of citizenship were ultimately submitted by the Interior Minister to Israeli courts for approval, there was insufficient information to identify a pattern of discrimination. The Supreme Court rejected arguments concerning selective enforcement, despite the fact that the organizations provided it with information about a number of serious incidents in which Jewish Israeli citizens attacked Palestinians following the enactment of this law that did not result in any requests for revocation of citizenship.

What does international law say about revoking citizenship?

International law considers the right to citizenship to be a fundamental human right and prohibits the arbitrary deprivation or revocation of citizenship in cases where such deprivation would render the person stateless (*See, e.g., Article 8 of the Convention on the Reduction of Statelessness*).

How did the Supreme Court address the position of international law?

Despite acknowledging the fact that the deprivation of citizenship from persons who will be rendered stateless contradicts international law, the Supreme Court ultimately ruled that the Israeli legislature (the Knesset) may deviate from these provisions. The Supreme Court went further still to rule that a violation of international law does not necessarily amount to a violation of Israeli constitutional law, which the court considers to be the country’s supreme body of law. Regarding Article 11(2)(b) of the 1952 Citizenship Law, the Supreme Court found that the law was

constitutional as long as the person stripped of citizenship is granted a permit for permanent residence.

This joins a growing trend, seen in several recent rulings, whereby the Supreme Court disregards Israel's obligations under international law in order to serve Israel's political interests.