

YOCHEVED DEUTCH

LANGUAGE LAW IN ISRAEL

(Received 24 February 2005; accepted in revised form 15 May 2005)

ABSTRACT. The examination of Israeli language law demonstrates the intricate relationship between legal policy, ideology and practice. Ideology and practice reflect the character of Israel as a nation-state where Hebrew has been perceived as a national symbol. At the same time, there are several groups in Israel which speak other languages including a considerable minority of Arabic speaking citizens for whom Arabic bears a national significance. The national significance of both Hebrew and Arabic has created an ideological discord which has had an unavoidable influence on the legal policy-making authorities. However, in spite of this ideological conflict, legislation and court decisions have recognized and granted group-differentiated language rights to the Arabic speaking minority. Speakers of other languages have also been granted some language rights. Israel thus illustrates the complexity of granting language rights in a nation-state and also how conflicting rights are balanced to find a compromising solution.

KEY WORDS: group differentiated rights, ideology, legal policy, nation-state, practice

INTRODUCTION

The language policy of a country includes policy issues related to the use of the official language (where there is one) and also issues related to languages of the minorities. While policy issues regarding the use of the majority language are considered internal affairs and left to the sole decision of the country's internal legal system, it has become widely accepted that minority language rights need to be internationally protected.

Minority language rights form part of a much broader debate on the rights of ethnic and cultural minorities. However, "while freedom of speech is upheld as a basic human right, the right to use one's own language in exercising that right has often been overlooked" (Tabory, 1980: 167). The question of what language rights encompass is an intricate issue which has received insufficient attention in International Law. Broadly, language rights may be divided

into two basic categories. The first category is described by Dunbar (2001: 91) as “linguistic tolerance.” This category of language rights is meant to protect speakers of minority languages from discrimination and unfairness stemming from language bias. Such a policy of equality, which has been described as a “difference blind” policy, is reflected in numerous international instruments inspired by the Universal Declaration of Human Rights (1948), such as the European Convention of Human Rights (the ECHR, 1953) and the International Covenant of Civil and Political Rights (the ICCPR, 1966). Article two of the Universal Declaration of Human Rights provides that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status” (emphasis added).

However, freedom from language-biased discrimination falls short of ensuring that minority language speakers have “positive rights” in that it fails to grant them equal opportunities to those given to majority language speakers. Securing “positive rights” rather than mere tolerance depends on a “difference aware” policy of equality based on respect and recognition. This policy recognizes the need to impose obligations on governments to provide positive measures of support in order to secure language rights of cultural and ethnic minorities.

Since the 1990s, International Law has witnessed a steady recognition of positive rights. Several instruments reflect the policy of language awareness, such as the United Nations General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the UNGA Minorities Declaration, 1992), the Council of Europe’s Framework Convention for the Protection of National Minorities (the Framework Convention, 1998), and in particular the Council of Europe’s European Charter for Regional or Minority Languages (the Minority Language Charter, 1990).

Thus, a number of positive language rights and obligations have achieved international recognition. These positive rights include the right to use a minority language in official contexts, the right to education in a minority language and the obligation of the state to display street names and topographical indications intended for the public in both minority and majority languages.

However, in spite of the above apparent shift of policy, International Law actually fails to guarantee positive language rights. The provisions in the international declarations are phrased both

vaguely and in a qualified manner, such as requiring the states to “endeavor” to fulfill the demand “as far as possible...” or providing that the financial resources of the state may be taken into consideration. This approach reflects the drafters’ awareness that providing positive language rights, unlike mere tolerance, requires considerable resources, which undeveloped countries may lack. As such, the rights are essentially unenforceable either because they are not legally binding or because they create no right of individual petition or complaint to an international body. Consequently, minority language rights, particularly positive rights, are largely left to the protection given by domestic laws.

The following discussion will examine the protection of language rights in Israel. The case of Israel illustrates the important contribution of domestic legal policy to the recognition of minorities’ positive language rights. The Israeli case is especially interesting because it demonstrates the particular complexity of granting minority language rights in a state which is characterized as a nation-state.

A country’s legal authorities can plausibly be defined as language policy makers or language managers (Spolsky, 2004: 5–15) by virtue of making “explicit statements, usually but not necessarily, written in a formal document, about language use” (Spolsky & Shohamy, 1999: 33).

Yet, the definition of the legal system as merely a “policy making” or “language managing” authority does not reflect its reciprocal relationship with ideology and practice. Ideology refers to the “community’s set of beliefs about language and language choice” (Spolsky & Shohamy, 1999: 263), or “language policy with the manager left out” (Spolsky, 2004: 14). Practice refers to the “observable language choices made within a speech community” (Spolsky & Shohamy, 1999: 263) or “what people actually do” (Spolsky, 2004: 14). Laws generally reflect a country’s ideologies and practices but at the same time may also influence them.

The following examination of language policy in the Israeli legal system will demonstrate the dynamic and intricate relationship between legal policy, ideology and practice. While generally, language policy in the Israeli legal system is influenced by ideology and practice, there are occasionally laws and court decisions which are not fully implemented because they are incongruent with established public ideologies. However, laws and court decisions which conflict with public ideology may in the long run shape public attitude and behavior.

The Legislative Background of the Status of Hebrew, Arabic and English in Israel

Israeli legal policy is reflected in the laws passed by the Knesset (the Israeli Parliament), the government regulations based on these laws and case law made by the court. Case law both reflects the interpretation of the laws by the courts and also deals with current issues which have not been regulated by law. Since the Israeli legal system is partly a common law system, Supreme Court decisions have an enforceable status tantamount to legislation.

Two important documents shaped language rights in Israel, the Declaration of Independence and Article 82 of the Palestine Order in Council over the Land of Israel (hereinafter the Palestine Order) which was adopted from the Mandatory Law into the Israeli Law.

The Israeli Declaration of Independence in 1948 established the character of Israel as a nation-state. Reading the Declaration of Independence, one cannot fail to discern the importance accorded to the revival of the state as the Jewish homeland. The Declaration has no less than 20 references to the national character of Israel, such as: 'Jews', the 'Jewish people', 'the Jewish state', 'the Israelite people', 'every Jew' etc. There is also one direct reference to the Hebrew language mentioning its revival as part of the return to the homeland. This salient nation-state orientation of the Declaration of Independence was compatible with the United Nations' Partition Resolution 1947 which envisioned two nation-states side by side, a Jewish state and an Arabic state.

The Declaration also explicitly grants equal rights to all citizens of Israel without distinction of race, creed or sex. In addition, it guarantees "freedom of religion, conscience, *language*, education and culture" (emphasis added). The Declaration has been regarded as the guiding spirit for granting equal human rights to all Israeli citizens.

The recognition of the above universal human rights in the Declaration of Independence is marked by a 'difference blind' policy of equality as is the case with other countries' constitutions, such as the American Constitution. "On this view, ethnic identity, like religion [or in our case language] is something which people should be free to express in their private life, but which is not the concern of the state" (Kymlicka, 1995: 3). Moreover, the policy of granting individual rights, as Kymlicka observes, "precludes any legal or governmental recognition of ethnic groups, or any use of ethnic criteria in the distribution of rights, resources and duties" (Kymlicka, 1995: 4).

In fact, ethnic rights are collective rights. The difference between collective rights and individual rights has been a prominent issue in the pursuit of human freedom. While individual rights protect the individual, collective rights protect groups of people. Significantly, whereas the Declaration of Independence only recognizes individual rights, Article 82 of the Palestine Order, in its original and amended versions, seems to stipulate a language policy which recognizes the rights of ethnic groups. Article 82 in the original Mandatory legislation established the obligation of the Mandate authorities to use English, Arabic and Hebrew in their official publications, and the right of all persons to use one of these languages in government offices and in the courts. Priority was given to the English language. The provision reads as follows:

Official Languages. All ordinances, official notices and official forms of the government and all official notices of local authorities and municipalities in areas to be prescribed by Order of the High Commissioner shall be published in English, Arabic and Hebrew. The three languages may be used subject to any regulations to be made by the High Commissioner, in government offices and the law courts. In case of any discrepancy between the English text of any ordinance, official notice or official form and the Arabic or Hebrew text thereof, the English text shall prevail.

Article 82 was adopted into Israeli Law in the first piece of legislation enacted by the new government, entitled the Law and Administration Ordinance (1948). Section 11 of this Ordinance adopted the Mandatory Law which was binding prior to the establishment of the State, including Article 82. However, this same section also stated that the adopted Mandatory Law will be valid so long as it does not conflict with other Israeli laws, and will be subject to “modifications that may result from the establishment of the State and its authorities.” Furthermore, section 15(b) of the Law and Administration Ordinance provided that “any provision of the law requiring the use of the English language is repealed.” Specifically, section 15(b) abolished the supremacy accorded to English in Article 82 of the Palestine Order. Absent any explicit abolition of the Arabic language, Arabic remained an official language in spite of the fact that the UN Partition Resolution, 1947, “apparently did not require the preservation of ‘official language’ status for Arabic in the Jewish state (nor for Hebrew in the Arab state), but rather the preservation of the minority’s right to use it” (Saban & Amara, 2004).

Thus, upon the establishment of the State of Israel there were seemingly clear legal provisions concerning the status of the three

main languages: Hebrew, Arabic and English. The Declaration of Independence established the supremacy of Hebrew; Arabic was recognized as an official language in the adopted Article 82, and the use of English was repealed in section 15(b) of the Law and Administration Ordinance. In addition, the massive immigration from Russia and Ethiopia at the end of the 20th century entailed modifications and additions to cater to the particular needs of these communities.

Ideology and practice have had a considerable importance in determining the actual status of these languages. They influenced the interpretation of the existing laws, the enactment of future laws and case law.

The following discussion will analyze the developments in the legal status of the above mentioned languages. The analysis will highlight the difference between the status of Arabic which is the language of a native minority tinged with nationalistic aspirations and English, Russian and Ethiopian which are spoken by immigrants with a remarkable integrating orientation.

The Status of the Hebrew Language

As described earlier, the official status of Hebrew was ideologically founded in the Declaration of Independence and legally recognized in Article 82 of the Palestine Order, as it was adopted into Israeli Law. However, each one of these documents lacks in authority. The Declaration is not a constitution or (the Israeli equivalent) a Basic Law and hence has only been regarded as providing basic guiding principles. In Article 82, the official status of Hebrew is shared with Arabic and both are required to be used only in the restricted domain of official governmental and municipal documents. Yet, there is a broad consensus about the dominant status of Hebrew which is reflected in all aspects of communication.

Just as in the United States there have been efforts to make English the official language, a number of private law proposals have attempted to anchor the status of Hebrew as the *sole* official language of Israel; two examples were Draft Law: The State Language (1952) and 30 years later, Draft Law: The Hebrew Language (1982). These attempts were unsuccessful, but their failure did not diminish the ideological hegemony of Hebrew. Despite the absence of a clear positive provision establishing the status of Hebrew as a sole official language, ideology and practice have enhanced its superior status. Most of the legal community, including scholars and

judges, recognizes the Hebrew language as the State language in view of the fact that the laws and regulations of the State of Israel are enacted and established in Hebrew and all government authorities use the Hebrew language.

Rubinstein (1996) argues that the primacy of the Hebrew language with respect to the interpretation of legislation derives primarily from the statutory principle enunciated in section 24 of the Interpretation Law (1981), which provides that "the binding text of any law is the text in the language in which it was enacted." Since all laws are enacted in the Knesset only in Hebrew, Hebrew is the only binding text. Furthermore, section 24 also stipulates that even in the case of a law enacted in English before the establishment of the State, of which a new version in Hebrew was introduced under section 16 of the Law and Administration Ordinance (1948), the new version in Hebrew shall be the binding text.

Additional positive expressions promoting the special status of the Hebrew language can be found in various statutes which reflect the supremacy of the Hebrew language, such as the Hebrew Language Institute Law (1953) and its regulations which establish the statutory status of the Hebrew Language Academy, or the Nationality Law (1952) which requires in section 5 "some knowledge of the Hebrew language" as a condition for naturalization.

Ideological support for the supremacy of Hebrew has been expressed by the Israeli Supreme Court which reiterated the idea manifested in the Declaration of Independence that Hebrew is an essential component of the experience of the Israeli citizen in his State. Moreover, the court observed that beyond the national-ideological significance of the Hebrew language, practice has also contributed to its importance by virtue of its being the spoken language of the majority of the citizens of the State.

However, in spite of the Supreme Court's ideological support of Hebrew as a national asset, the Court was required to formulate specific language policy decisions when the collective interest in the promotion of Hebrew conflicted with individual citizen's private interests and rights.

An example of such a policy decision is the case *Hevra Kadisha v. Kestenbaum* (C.A.294/91, P.D. 46(2)464). The legal issue in this case was the validity of a contractual provision of a Jewish burial society which required that engraving on the tombstones should be exclusively in Hebrew. Mrs. Kestenbaum's family requested that her name and the dates of her birth and death should be written on the stone in English since they immigrated to Israel from the

United States and she was known to her family and her acquaintances by her English name. They also argued that many of those who would visit the grave would be English-speaking people who will not recognize the dates of the Jewish calendar. The Court affirmed the legitimacy of the burial society's desire for the dominance of the Hebrew language in the texts on the tombstone, noting that its intentions were impeccable from the public national perspective. In other words, the burial society, as a body providing burial services to Jews, was authorized to take into consideration the importance of the Hebrew language. The Supreme Court noted that the requirement to use Hebrew engraving usually does not offend the dignity of the deceased or that of his family. However, if there should be exceptionally sensitive people who are liable to take offence, that should be considered. Thus, when providing burial services, the burial society must also consider human dignity and freedom of expression of the decedent (during her life) and of her relatives after her death. This means acceding to their wishes that the engraving be in the language of their choice. Furthermore, the Court stated that along with the consideration of the balance between the importance of the Hebrew language and human dignity, attention should be also paid to the value of tolerance. The Court held that the insistence upon the exclusive use of Hebrew on the tombstone of a Jew who does not so choose may substantially and deeply offend that person's dignity. Therefore, a non profit organization, such as a burial society, is not permitted in performing its duties to seriously offend human dignity in order to promote the value of the Hebrew language. In this case of conflict between the importance of the Hebrew language and human dignity, the value of human dignity prevailed.

However, generally, the supremacy of Hebrew is not contested. Hebrew is the leading language in legal policy as well as in ideology and practice. Laws, regulations and other official publications are enacted and written exclusively in Hebrew. Versions in other languages are only translations. In practice, Hebrew is the spoken language everywhere in the country, in the media and in all other public domains. Policy and practice thus reflect the unprecedented ideological importance of the Hebrew language in the identity of the Jewish people, as succinctly summarized by Justice Elon (former Justice of the Supreme Court):

The revival of Hebrew as an every day language in day-to-day life was- compared with similar attempts to revive other national languages of other nations – ‘an

unprecedented phenomenon, unknown in human history'. The use of Hebrew even prior to the establishment of the State was a national phenomenon second to none.

Today, it is not possible to describe the State of Israel's society and culture without Hebrew. . . . Hebrew became one of the most significant spiritual and practical values common to the entire nation; a value that has unified the entire nation' (Elon, 1998: 1346, 1347).

The Status of the Arabic Language

As noted above, Arabic was one of the three official languages in Article 82 of the Palestine Order. Since section 15(b) of the Law and Administration Ordinance did not repeal the requirement to use Arabic, Arabic retained the status of an official language in Israel. However, the status statement in Article 82 needs to be closely examined for clarifying the meaning of the term 'official' in this particular context. Although in Article 82 of the Palestine Order, English, Arabic and Hebrew seem to be equally 'official', since all government publications were required to be published in all three languages, the Mandatory Article also explicitly states a preference for the English language: "In case of a discrepancy between the English text. . . . and the Arabic or the Hebrew text thereof, the English text shall prevail." This statement negates the seeming equality and establishes a hierarchy with English primary and Hebrew and Arabic secondary. In legal terms, it meant that the interpretation of laws in courts could only be based on the English version.

When the Mandatory Law was adopted into the Israeli legal system, section 15(b) of the Law and Administration Ordinance (1948) abolished all requirements to use English. Thus, the status of English in Article 82 was abolished. However, the underlying hierarchical policy with regard to the term 'official languages' has not been changed. Hebrew, recognized as an important symbol of the national revival, replaced English as the dominant official language. All government documents in the newly born State were written in Hebrew instead of English. The status of Arabic remained secondary as it was under the Mandatory regime. Thus, as observed by Saban and Amara (2004: 20) "...the Israeli Law, like the Mandatory Law, does not formulate a comprehensive bilingual arrangement. It does not grant Arabic the full and comprehensive status of an official language." Saban and Amara's use of the term 'official' corresponds to the language policy adopted in

the Canadian Charter where Article 18 “states lucidly that the laws, rulings of the Parliament and official records will be printed and published in both English and French and that the two versions are equally authoritative” (Saban & Amara, 2004: 20).

However, it should be noted that unlike the Canadian example, the status of the Arab minority in Israel is particularly complicated because as Navot (1999: 43) observes, “Israel was founded with a classical character of a nation-state.” The Arab minority in Israel is characteristically a ‘national minority’ where ‘nation’ means by Kymlicka’s (1995: 11) definition “a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture.” Furthermore, as Kymlicka observes, “a country which contains more than one nation is, therefore, not a nation-state but a multination state.” The complexity in recognizing a national minority in a nation-state was also noted by Landau (1993: 119) where he maintains that the most important aspect of the Arabic struggle for self identity is related to the fact that Arabs are a minority within a nation-state which defines itself as Jewish and Zionist. Kretzmer (1990: 164) also mentions the additional complicating element in the case of Arabic in Israel deriving from the fact that the Arabs are part of a nation which has rejected Israel’s legitimacy as a nation-state of the Jewish people.

Thus, since Israel was declared as the Jewish nation-state, the recognition of a national minority within its boundaries, it was felt, would conflict with its very existence. Accordingly, the unequal language policy bequeathed upon Israel by Mandatory Law was compatible with the special character of the state as a nation-state. As in Mandatory Law, the term *publish* in the adopted article 82 does not denote a bilingual policy but rather, a requirement for translation into Arabic. It requires the translation into Arabic of all ordinances and governmental documents as well as formal publications by local authorities and municipalities. However, an analysis of the fulfillment of these requirements demonstrates gradual erosion in the already limited official status of Arabic enhanced by ideological and practical factors.

According to information given on 17.12.04, by the head of the Department of Arabic Translations in The Ministry of Justice, until 1982 the entire *Official Gazette* of the Israeli government was translated into Arabic. Until 1982, there was adherence to the translation requirement of all ordinances and other governmental and official notices and forms. However, since 1982, as a result of

budgetary cuts, the translations have been limited to only three official documents: statutes, regulations and official pronouncements. Of the three, only statutes are fully translated and within a reasonably short period after their enactment. Regulations and official announcements are only partially translated and in addition they are published with a delay of about 2 years.

This account arguably reflects a situation which results from the postulation of Hebrew as the only binding language since laws, drafts of laws and debates in the Knesset are all in Hebrew. Thus, in practice, since the Arabic translation has had no binding authority in legal interpretation, the translations have lost their value and seem to have been abandoned and forgotten even by Arab jurists and lawyers. In addition, it is important to notice that legal education, for Jews and Arabs, in Israeli universities and colleges is given in Hebrew and therefore Israeli Arab lawyers and jurists are all highly familiar with the Hebrew legislation. The declining status of Arabic is also reflected in the fact that law libraries do not hold the available Arabic translations, and those which do, admit that they only have partial collections. Hence, without an explicit policy repealing the requirement for Arabic translations, practice enhanced by ideological underpinning has been gradually impinging on the status of the Arabic translations of laws and other official governmental publications.

Formal and official notices of local authorities and municipalities have regularly not been published in Arabic. Thus, as Navot (1999: 58) observes, "the violation is especially prominent with regard to the publications of the local authorities." This violation was rarely contested in courts, probably because many individual Arab citizens have no difficulty understanding the notices in Hebrew. Furthermore, when such a violation was brought before the courts, until the last decade, the courts were reluctant to invalidate the publication on the basis of the violation of the official status of the Arabic language. Rather, the court's policy was to examine the issue on an individual basis by determining whether the failure to publish in Arabic actually violated the rights of the claimant in any significant way. Such was the case in 1954, where a citizen contested the validity of a formal notice of the Jerusalem Municipality because it was not published in Arabic. The court dismissed this claim maintaining that since the claimant was a Hebrew speaking citizen, he was not deprived by the absence of Arabic.

Admittedly, the equivocal policy with regard to the status of Arabic reflects the particular status of the Arab minority in Israel.

As a national minority, there was an underlying anxiety that the recognition of Arabic as equal in status to Hebrew would undermine the character of Israel as a nation-state since “the nation is often associated with language as a marker of its identity” (Suleiman, 2003: 27). The importance of Hebrew as a national symbol was clearly expressed in the Declaration of Independence and in the ensuing legislation of the State of Israel. Concurrently, Arabic has also been traditionally regarded as the symbol of Arab nationality. Suleiman’s (2003) analysis of the Arabs as a nation reflects the “strong association which exists between language and people in the conceptualization of group identity in Arab culture” (Suleiman, 2003: 64). Thus, policy decisions with regard to the legal status of Arabic, consciously or unconsciously, have reflected this remarkable ethno-symbolic significance of language in both Jewish and Arab cultures.

At the same time, Israel was established as a democratic country. The Declaration of Independence grants the most basic human rights, including language rights, regardless of group membership. These basic rights denote, as in many other Bills of Rights, a ‘difference blind’ policy which is also defined as a policy of tolerance towards individuals’ cultural rights. But, as Kymlicka (2001: 72) observes, “the list of common individual rights... is not sufficient to ensure ethnocultural justice.” Consequently, “it is increasingly accepted in many countries that some forms of cultural difference can only be accommodated through special legal or constitutional measures above and beyond the common rights of citizenship” (Kymlicka, 1995: 26). Specifically, this recognition necessitates a policy which requires the government to take ‘positive’ measures for ensuring group differentiated rights.

In the case of the language rights of the Arab minority in Israel, this minority’s rights are treated as a particular form of “Polyethnic rights” (Kymlicka, 1995: 30), ‘particular’ in the sense that this cultural difference is not meant to be only temporarily protected (as might be the case with the ethno-linguistic rights of other ethnic groups in Israel) but is rather of a permanent nature. The permanent nature of the Arab minority’s language rights reflects the fact that Arabic signifies a national identity which the Arab minority seeks to preserve. However, the national importance accorded to Arabic by the Arab population has been considered incompatible with the national and linguistic aspirations of Israel as the Jewish homeland. This ideological discord has had an unavoidable influence on the legal policy with regard to Arabic. Thus, although legal

policy has recognized the Arab minority's group differentiated language rights, the legislature and the courts were reluctant to acknowledge the national significance of Arabic. Group differentiated language rights have been granted as an extension of individual language rights because granting group differentiated language rights by avoiding the national aspect has not been considered incompatible with Israel's national aspirations.

The following discussion will review the legislative and judiciary policy on the issue of language rights of the Arab minority in Israel.

The Status of Arabic in Legislation

An examination of Israeli legislation with regard to language rights of the Arab minority demonstrates a highly conscientious policy of granting positive group differentiated rights in accordance with the positive rights enumerated in the international conventions previously mentioned (p. 2). Significantly, the recognition of these positive rights, in many cases, preceded their postulation in the international documents.

Furthermore, the following examination reveals that positive language rights in Israeli legislation extend far beyond the limited official domains mentioned in Article 82. In addition, it is quite evident that although some of these rights could have been recognized through the interpretation of Article 82, legal policy preferred to grant them through particular legislation rather than through the extended interpretation of the official status of Arabic. Both these observations reflect the policy of granting language rights on the basis of the extension of individual rights rather than by recognizing Arabic as a national right.

The following laws are a representative sample from the body of 35 laws and regulations which grant language rights to the Arabic speaking minority:

The Obligation of the Authorities to Publish Notices to the Public in Arabic Alongside Hebrew

Many statutes not only grant the right to use Arabic but also impose on the authorities the obligation to do so. The following examples illustrate this duty which appears in many laws:

- (a) Under section 9E of the Banking (Service to Customers) Law (1981) (Amendment 2004), the bank controller in Israel is required to notify all bank customers about the maturity dates

of their loans. This notification must also be published in an Arabic-language newspaper.

- (b) Section 23 of the Control of Prices of Products and Services Law (1996), requires that a general permit or order by this law must be published in at least three daily newspapers, one of which must be in the Arabic language.
- (c) Article 1(A)(2) of the Planning and Building Law (1965), defines the term 'publication in a newspaper'. It states that wherever the law requires notification about building plans in newspapers, the notification must also appear in the Arabic language in areas where at least 10% of the population speaks Arabic.

The Right to Arabic Language Media

Various pieces of legislation ensure the right of Arabic speaking citizens of Israel to enjoy media in the Arabic language. For example:

- (a) The Second Broadcasting Authority for Radio and T.V. Law (1990), in section 5(2)(5), requires that broadcasting should also be in the Arabic language to cater to the needs of the Arabic speaking citizens.
- (b) In an amendment from 2001, Section 6(34) of the Communication Law (Bezeq and Broadcasting) (1982), regulates the operation of cable T.V. in Israel. This law empowers the council of communication to authorize a cable T.V. in the Arabic language. Moreover, exceptionally, section 6(34)(3) provides that the Arabic cable T.V. will be allowed to use material from satellite broadcastings in order to better accommodate the Arabic speaking population.

The Duty to Use Arabic in Official Contexts

Several laws dictate the use of the Arabic language in official contexts. The following examples will illustrate this particular right.

- (a) Under section 9(a) of the Notary Regulation (1977), a notary confirmation must be made in Hebrew or in Arabic. It is also possible to make it in English, but only in addition to Hebrew or Arabic.
- (b) Section 3(2) of the Consumer Protection Regulations (2002) requires cellular phone companies to disclose information on radiation hazards in a leaflet. This section provides that the information should also appear in Arabic.

The Right to Education in Arabic

There is no specific legislation requiring instruction in the Arabic language in schools where the majority of the students speak this language, but this has in fact been policy since the establishment of the state (Amara and Mar'I, 2002). Nevertheless, since Arabic is spoken by a large minority of the population, special reference is made in the leading law on compulsory education to both the Arabic language and culture. Section 2(11) of the National Education Law (1953), indicates among the goals of the educational system in Israel, to teach the language, culture, history and heritage of the Arabic population in Israel and to recognize the equal rights of all Israeli citizens. In addition, section 4 of this law guarantees that curricula in non Jewish-schools should be adjusted to suit the needs of their particular student population. Furthermore, in a more recent piece of legislation, the Regulations on National Education (the Advisory Committee for Arab Education) (1996), section 5 states the power of the committee to advise the minister on issues concerning the education of Arab citizens. Section 5(1) further states that the committee can recommend the development of an educational and pedagogical policy for the different age groups in the educational system which would ensure equal rights to the Arab citizens in Israel by considering their particular heritage, culture and language.

Rules Regarding Election Rights in the Arabic Language

Representatives of the Arabic population in Israel have always been part of the Israeli parliament. Arab representatives in the Israeli parliament can choose to speak in the Arabic language, but are expected to warn the Speaker that an interpreter will be needed. In addition, section 76 of the Knesset Election Law (Consolidated Text) (1964) provides that all parties have the right to put Arabic letters on their ballot slips. Another similar provision appears in the Local Authorities Law (1975), where section 7(c) requires that ballot slips should be only in Hebrew or Arabic, and a ballot slip in another language would be invalid.

The above laws, as previously mentioned, are only a small sample of positive group differentiated language rights granted to the Arab minority in a wide range of areas. These laws demonstrate the policy of accommodating the language needs of the Arab minority while strictly avoiding the national aspect.

The Status of Arabic in Case Law

The policy of granting positive group differentiated language rights to the Arab minority by avoiding the national implications can also be discerned in several important court decisions given in the 1990s. The following discussion will analyze three Supreme Court decisions on this issue. These decisions demonstrate that generally, in spite of the lip service paid to the 'official' status of the Arabic language, these decisions were not based on the official status of this language. Rather, the rationale underlying these decisions is anchored in the recognition of constitutional group differentiated rights which emanate from individual human rights. On this basis, case law, through interpretation and legal policy, has further extended the language rights of the Arab minority.

In *Re'em Engineers and Contractors Ltd. V. Upper Nazareth Municipality* (C.A. 105/92, P.D. 47(5) 189), the Re'em Engineering Company filed an application to the Upper Nazareth municipality to place an advertisement on the billboards in the municipality's jurisdiction. The advertisement was to be worded solely in Arabic, and it concerned the construction of houses in the Arabic Yafia region. The Municipality refused to grant the requested license since the advertisement did not satisfy the conditions of section 2(a) of the Upper Nazareth By-Law Advertisements and Signs (1964) which required that advertisements be worded in Hebrew or in Hebrew and Arabic together, with Hebrew occupying at least two-thirds of the advertisement. The District Court rejected the application and the company appealed to the Supreme Court.

The Supreme Court considered the case of municipal control of billboards an unofficial act. This policy precluded the need to consider the implication of the official status of either Arabic or Hebrew. Consequently, the Arab minority's group differentiated language right was encompassed in the principle of individual freedom of expression. Freedom of expression, the Court stated, directly emanates from the character of Israel as a democratic country.

However, as with any freedom or right, freedom of expression at times conflicts with other interests or values and a balancing policy is often required. The Court noted that language is not only a means of personal expression; it is also a cultural asset for national expression. Two principles were thus balanced by the court: freedom of expression and its derivative right to use a minority language and the public interest in the promotion of Hebrew. The Court decided that in unofficial contexts, such as in the case of

Re'em, freedom of expression prevails and consequently invalidated the municipal by-law.

The Court also cited the ruling of the Canadian Supreme Court in *Ford v. Quebec*. The Canadian Court discussed a statute enacted in the Quebec province, which provided that French should be used on posters, signposts and commercial advertisements. The Canadian Court held that language is intimately related to the form and content of expression and hence there cannot be true freedom of expression with existing prohibition on the choice of language. Accordingly, freedom of expression must also include the freedom to express oneself in the language of one's choice.

Significantly, the Supreme Court noted that its policy of recognizing the prevalence of freedom of language in non-governmental contexts reflects the attitude that Hebrew has attained a strong enough status that would not be shaken by granting ample freedom of language to speakers of Arabic. However, the Court observed that should there be erosion in the status of Hebrew, there would be reason to alter the policy with regard to the balance between the importance of Hebrew and freedom of expression.

Thus, although by invalidating the by-law the Court extended the language rights of the Arabic speaking population, the decision in *Re'em* does not seem to denote a change in policy. Actually, the Court in *Re'em* followed the language policy of avoiding the official status of Arabic as the legal basis for its decision. The decision is rather based on the policy of recognizing group differentiated language rights as the extension of individual human rights.

A later decision, *Meri v. Sabac* (M.C.A. 12/99, P.D. 53(2) 128), represents the same policy. The appeal in the *Meri* case dealt with the question of the validity of a blank ballot slip where the voter was requested to write the letter representing the party of his choice exclusively in Arabic. Section 51 of the Local Authorities (election) Law (1965) provides that a printed ballot slip must contain the party's letter in Hebrew or in both Hebrew and Arabic. This section was not directly relevant to the *Meri* case since it only deals with printed ballot slips. Section 61(c) of the Election Law, which deals with the filling out of a blank ballot slip in the voter's handwriting, does not provide which language the voter must use. Therefore the Court had to make a policy decision on this language issue where the legislature is silent.

The decision of the Court in this case as well, followed the policy of recognizing group differentiated rights which emanate from individual human rights. Since there may be individuals who

cannot write in Hebrew, the Court recognized the legitimacy of an Arab voter writing the letter on the ballot slip solely in Arabic. This decision was based on the importance of securing the citizen's right to vote in a fair, pure and efficient manner and on the principle of equality mentioned in the Election Law. The Court further substantiated its decision on the fact that Arabic is the language of a fifth of the population which accordingly deserves group differentiated rights. However, the official status of Arabic was not part of the decision's rationale. Conversely, when the Court mentioned the status of Arabic as an official language, it stated that this status is not unanimously accepted.

Another important decision is *Adallah Legal Center for the Rights of the Israeli Arab Minority v. the Tel Aviv-Jaffa Council* (H.C.4112/99, P.D. 56(5) 393). The central question examined in this case was whether there is an obligation to use Arabic alongside Hebrew on municipal street signs, in municipalities within whose jurisdiction there is a minority of Arab residents. The petitioner was the Association of Arab Civil Rights in Israel. In this case, unlike in previous cases, as noted by Justice Heshin, the minority Justice, it had not been argued that individual Arab citizens' rights were violated. Specifically, the petitioners did not claim that individual Arabic speaking citizens lost their way or may lose their way because they do not understand the signs in Hebrew. Hence, the petition does not deal with the infringement of individual language rights but rather with group differentiated rights. Collective rights, the minority Justice claimed, have never been granted by the Supreme Court. They should rather be left to the legislature. Furthermore, as observed by Tabory (1981: 288), when the issue was raised in the Knesset, it was rejected on the ground that adding another language to the signs would inevitably lead to smaller letters which would diminish the effectiveness of the signs. In addition, the Minister of Labor significantly noted that he was not aware of any difficulties on the part of Arab drivers in finding their way on the roads. Thus, the legislature seems to have been reluctant to recognize the need to put Arabic on street signs.

The two Justices of the majority opinion, however, accepted the petition and decided that signs in mixed cities should also be written in Arabic. Yet, the two majority Justices differed in their reasoning. Justice Barak does not seem to fully diverge from the previously mentioned policy. Like the minority Justice, he did not accept the claim that Article 82 imposes on the municipalities the duty to put Arabic inscriptions on street signs since the requirement to use

Arabic is limited to the domain of official notices. Rather, in his arguments for granting this inherently collective right, he extensively uses the terminology associated with individual rights (Saban, 2003: 121). He argues that there is need to seriously consider such values as 'a person's right to language, equality and tolerance.' This equivocal attitude reflects the awareness that extending the status of Arabic may entail erosion in the status of Hebrew as the national symbol of the Jewish state. In justifying his decision, Justice Barak asserts that his approach is based on the recognition that granting this collective right would not violate the superior status of Hebrew nor the national integrity of the state as a Jewish state. Nevertheless, Saban (2003: 133) sees in Justice Barak's decision a slight change of policy since, for the first time, the Court differentiated the Arab minority as a national minority which deserves legal protection.

A more significant change in policy may be discerned in the opinion of the second majority Justice. Justice Dorner based her decision on an extended interpretation of Article 82. She argues that the limited number of domains in Article 82 should not be regarded as a closed list. The lack of Arabic on street signs, she maintained, is incompatible with the status of Arabic as an official language. Hence, the requirement to use Arabic should be extended to street signs as well. This unprecedented argument reflects a policy which diverges from the previously narrow interpretation of Article 82. It arguably goes beyond the decision given by Justice Barak by both explicitly recognizing the collective language rights of Arabs and by substantiating the status of Arabic as an official language.

It is difficult and even unwise to predict what will be the impact of *Adallah* on the status of Arabic, or whether the policy adopted by Justice Dorner will be followed in future decisions. However, in practice, municipalities in mixed cities are gradually adding Arabic on street signs, albeit at a quite slow pace. In addition, signs in highways have also become trilingual because they serve a mixed population. Thus, in this case, legal policy has had a considerable effect on practice. The fact that there are delays in implementing the Court's requirement, as argued in a new petition presented by *Adalah*, arguably reflects the dominant ideological conviction in the importance of preserving the supremacy of Hebrew.

The Status of Other Minority Languages in Israel

Alongside the Arab minority, which is a national minority, there are other distinct ethnic groups in Israel. "Obviously, a single

country may be both multinational (as a result of the colonizing, conquest or confederation of national communities) and polyethnic (as a result of individual and familial immigration)” (Kymlicka, 1995: 17). Israel represents a particular type of polyethnic society where individual and familial immigration have established a national imprint because Israel was founded to be the Jewish nation-state. Since its establishment, Israel has absorbed Jewish immigration from different countries and cultures. Nevertheless, most of the immigrants share a common basic cultural tradition by virtue of being Jewish. Consequently, these ethnic minorities should more accurately be described as ethnic groups rather than ethnic minorities. This particular characteristic enhances the participation and integration of these ethnic groups into the Israeli culture including the acquisition of the Hebrew language. In addition, since the ethnic groups in Israel are more inclined to assimilate into the Israeli society, their language rights are of a temporary rather than a permanent nature.

The following discussion will focus on the three major ethnic languages in Israel: English, Russian and Amharic.

The Status of English

English was the dominant official language during the Mandatory period. Upon its establishment, Israel adopted the Mandatory legislation. However, Section 15(b) of the first Israeli legislation, the Law and Administration Ordinance, provided that “Any provision in the law requiring the use of the English language is repealed.” Thus, Article 82 was amended with regard to the English language. Yet, despite section 15(b) of the Law and Administration Ordinance, the Israeli Ministry of Justice published an English translation of Israeli laws and regulations until 1982. In addition, the Israeli citizen is still allowed to use English in his applications to the courts or to government offices. Authorities, for their part, are obliged to respond when a citizen uses English. Rubinstein regards this policy to be consistent with existing practice, by which applications to government offices written in the English language are responded to, even though the legislative provisions are published in Hebrew. Similarly, oral pleadings in English are occasionally heard in the courts when the attorney is a foreigner (Rubinstein, 1996: 101). Practice in this case has not only shaped a reality which is not anchored in any piece of legislation but has also acquired legal recognition. Thus, the development of English in Israel, as in many other countries in the world “is not the simple end result of

language management. Rather, it reflects local and individual language acquisition decisions, responding to changes in the complex ecology of the world's language system" (Spolsky, 2004: 91). English is used in many contexts and taught in most of the schools. It appears on street signs and in almost all public places. Since tourists and visitors do not recognize the Hebrew letters, English has become an important means for accessing people from all over the world. Thus, market needs dictate the extensive use of English in spite of the official legal policy reflected in section 12(b) of the Law and Administration Ordinance.

In addition, as previously mentioned, English is the native language of the group of citizens who immigrated to Israel from English speaking countries. Like other Jewish ethnic groups, they ideologically recognize the importance of acquiring Hebrew. However, because of the particular important status of English, this ethnic group tends to remain bilingual.

Nevertheless, there are certain statutes which specifically require the use of English. These requirements are generally not meant only to protect the English speaking ethnic group's rights but also the rights of visitors and tourists since English has become the world language.

The statutes requiring the use of English may be divided into two categories:

- (a) Statutes which regulate matters specifically related to non-Hebrew speaking residents, such as the Entrance to Israel Law (1952) (Amendment 1961) where section 13(8) requires that the rights of illegal residents in Israel should be published in English as well as in Hebrew.
- (b) Statutes protecting the health, security or legal rights of Israeli citizens or visitors, such as the Law of Hazardous Substances (1993) which requires that the warning 'poison' should also appear in English besides Arabic and Hebrew. These laws and others which require the use of English attest that "English as a global language is now a factor that needs to be taken into account in its language policy by any nation state" (Spolsky, 2004: 91).

The Status of Russian and Amharic

The status of Russian and Amharic is different from the status of English because these languages do not share the universal status of the English language. Ideologically, the Russian and Ethiopian ethnic

groups integrate into the Israeli society and willingly acquire Hebrew. In this respect, these immigrants are not different from other ethnic groups that flocked into Israel since its establishment. However, for several reasons, the policy today towards immigrants' languages has considerably changed. In the early years after Israel's establishment the massive waves of immigration were mainly composed of holocaust survivors from Europe and Jews from hostile Arab countries. These immigrants came from numerous countries and therefore spoke numerous languages. Accommodating their diverse needs was practically impossible but also ideologically undesirable in a country at the early stages of developing its identity. Furthermore, the importance of establishing Hebrew as the native language of the new country overshadowed the necessity to facilitate the process of the immigrants' integration. Today, however, the country has established its identity and Hebrew has successfully gained its dominance as the native language. Consequently, the Israeli society can be more responsive to the needs and difficulties of the new waves of immigration mainly from Russia and Ethiopia. In addition, today the fact that both immigrating populations have a rich culture and tradition which they are trying to maintain alongside the new Israeli culture does not pose any threat to the country's identity.

There are two factors which enhance the necessity to legally protect, albeit temporarily, the rights of these languages speakers: the big number of speakers and the fact that among the first generation of immigrants there is a significant number of people at the age when language acquisition is slow or practically impossible. The following are several examples where the Israeli legislature intervenes in order to secure the language rights of the above ethnic groups. These laws are less extensive than the laws protecting Arabic because the need has relatively recently emerged, following the massive immigration from Russia and Ethiopia. The rights of the Russian speaking ethnic group are more extensively protected since the Russian group is considerably bigger. In addition, the Russian ethnic group maintains close cultural and familial connections with friends and relatives in their former community while the Ethiopian group has basically disconnected itself from its native country. On the other hand, since both are Jewish ethnic groups, their integration into the Israeli society, particularly that of the younger generation, will eventually result in the abolition of these requirements some time in the future. This characteristic clearly distinguishes them from Arabic which has a national significance for its speakers.

The following examples illustrate the legislative protection of Russian and Amharic.

In the Second Broadcasting Authority for Radio and T.V. Law (1990), the franchise holders are required to allocate 40% of the broadcasting time to local productions (section 59). The supplement to the law provides that local productions must also be in the Russian language. In addition, a franchise holder must broadcast at least 5% of the programs in Russian or with Russian sub-titles.

In other laws, there are requirements to publish important notifications to the public in Russian as well. For instance in an amendment from 1994 to the Banking (Service to Customers) Law (1981), banks are required to notify the public about the possibility of early release of loans also in a Russian newspaper. Consumer Protection Regulations too, require using Russian in brochures of cellular phones which provide information about radiation hazards.

The legislative requirements to use Amharic are scarce, for instance, centers providing assistance to people who were subject to a criminal attack are required to prepare information leaflets in the Amharic language as well. In addition, notifications about educational scholarships have to be published in newspapers in Amharic in addition to other languages.

Thus, English, Russian and Amharic are ethnic languages but their speakers are not minorities in the regular sense of the term. Rather, the speakers of these languages generally fully identify themselves with the Israeli social and cultural heritage. Their language rights are temporary rights for facilitating their initiation and integration in their new homeland.

CONCLUSION

The importance of language rights in the State of Israel is reflected in both legislation and case law. Language policy in Israel has acknowledged that language is not only a tool by which people communicate with each other but also more significantly the vehicle of human thought (Williams, 1945). The underlying guiding principle for recognizing individual language rights was expressed in Israel's Declaration of Independence, where it was stated that the newly established Jewish and democratic State would grant 'freedom of religion, conscience, language, education and culture' to all its citizens.

However, a person's language is not only part of his personality, it also reflects his social identity. Consequently, particular protec-

tion has been given to language where it is a minority language. Legislation and case law in Israel demonstrate the sensitivity of the legislature and the courts to language rights of individuals and minority groups.

Nevertheless, as is the case with other human rights, the difficulty in granting individual or group differentiated language rights arises when these rights conflict with other important values. The need to find the balance between conflicting rights or values is based on the recognition that no right can be absolute.

The policy of granting minority language rights in Israel demonstrates how ideology and practice have influenced the legislature's and the courts' policy in striking the balance between conflicting language rights and values. The balancing between conflicting rights has been based on the application of principles which reflect society's values, preferences and priorities.

ACKNOWLEDGEMENT

I would like to thank Dr. Shuky Segev from Netanya Academic College for his insightful comments.

REFERENCES

- Amara, Muhammad Hasan Mar'I Abd Al-Rahman (2002). *Language education policy: The Arab minority in Israel*. Dordrecht, The Netherlands: Kluwer Academic Publishers.
- Dunbarers, Robert (2001) . Minority language rights in International Law. *International and Comparative Law Quarterly*, 50, 90–120.
- Elon, Menahem (1998). *Hebrew law – its history, origins, principles*. Jerusalem: Hebrew University Press [in Hebrew].
- Kymlicka, Will (1995). *Multicultural citizenship: A liberal theory of minority right*. Oxford: Clarendon Press.
- Kymlicka, Will (2001). *Politics in the vernacular: Nationalism, multiculturalism and citizenship*. Oxford: Oxford University Press.
- Landau, Jacob M. (1993). *The Arab minority in Israel 1967–1991: political perspectives*. Tel-Aviv: Am Oved Press [in Hebrew].
- Kretzmer, David (1990). *The legal status of the Arabs in Israel*. San Francisco: Westview Press.
- Navot, Susy (1999). Language rights in Israel. *International Congress of Comparative Law – Israeli Reports*, 43–66.
- Rubinstein, Amnon (1996). *Constitutional law of the state of Israel*. Tel-Aviv: Schocken Press [in Hebrew].
- Saban, Ilan (2003), A (double meaning) voice single in the darkness? *Iyunei-Mishpat*, 27, 20–73 [in Hebrew].

- Saban, Ilan, Amara, Muhammad. (2004). The status of Arabic in Israel: Reflections on the power of law to produce social change. *Israel Law Review*, 36, 5–39.
- Spolsky, Bernard (2004). *Language policy*. Cambridge: Cambridge University Press.
- Spolsky, Bernard, Shohamy, Elana, (1999). *The languages of Israel: Policy, ideology and practice*. Clevedon: Multilingual Matters.
- Suleiman, Yasir (2003). *The Arabic language and national identity*. Washington: Georgetown University Press.
- Tabory, Mala (1980) Language rights as human rights. *Israel Yearbook on Human Right*, 10 167–223.
- Tabory, Mala (1981) Language rights in Israel. *Israel Yearbook on Human Rights*, 11 272–306.
- Williams, Glenville (1945), Language and the law. *The Law Quarterly Review*, 10. 71–86.

Netanya Academic College and Bar-Ilan University
9a Shmidman Street
51427 Bnei-Brak, Israel
E-mail: yochd@netvision.net.il