



Article 15 of the Civil Service Law (Appointments) 1959 – Have we reached the inheritance?

THROUGH THE LOOKING GLASS

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Introduction

In this paper I will analyze whether the Arab population is adequately represented in the Israeli civil service in accordance with the principle of equality, as outlined in the Israeli Declaration of Independence and Article 15 of the Civil Service Law (Appointments) 1959, which states that Arab employees must be fairly and equally represented in the civil services.

I will discuss the meaning of the term ‘appropriate representation’ and the extent to which any Arab citizen of Israel can represent the Arab community (presuming that she or he is qualified for the specific job). I will also ask who this is meant to be appropriate for – the Arab community or the state?

Statistical evidence gathered since the introduction of Article 15 provides some information about the extent to which the law is applied, if at all. I will refer to recent statistics about the number of Arab workers and compare them to the overall number of workers. I will argue that despite some progress in the past few years, the Civil Service today is 9% Arab and the overall national workforce is 8% Arab – less than half what it should be, given that the Arab population stands at approximately 20%.

I will also express some criticism of the way in which the law is applied, some inadequacies within the law itself, and how this law can improve the current situation. This paper will fully examine the inequalities associated with the lack of Arab representation and the role that Article 15 plays in this phenomenon.

A – Theoretical Background

According to the Declaration of Independence:

“THE STATE OF ISRAEL [...] will promote the development of the country for the benefit of all its inhabitants; will be based on the precepts of liberty, justice and peace as envisaged by the prophets of Israel; will uphold the full social and political equality of all its citizens, without distinction of race, creed or sex; will guarantee full freedom of conscience, worship, education and culture; will safeguard the sanctity and inviolability of the shrines and Holy Places of all religions; and will dedicate itself to the principles of the Charter of the United Nations.”¹

1 <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>

The Israeli Declaration of Independence guarantees social and political equality to all citizens of Israel. Nevertheless, Israeli Arabs do not enjoy social nor political equality. The Arab population in Israel was oppressed for many years by the government, most prominently during the period of military rule (1948–1966). As a result, social, economic, and political inequalities between the Arab and Jewish populations have developed and grown over the years.

Injustice towards Arabs in Israel stems from basic key expectations by the Jewish majority regarding the meaning of Israel as a Jewish and democratic state.

Prohibition of discrimination as derived from the principle of equality is needed to prevent the widening gap between the two populations. But in order to reduce this gap, Arabs also need to be compensated for the lag that was forced upon them. This would to make up for the unequal starting point that the Jewish population received upon the state's founding.² The process of narrowing this gap is known as affirmative action.

In March 1993, the Israeli Knesset took an important step in designing and implementing an affirmative action doctrine. The Knesset passed an amendment declaring that state-owned companies must provide adequate representation to both sexes on the boards of government within the companies. Only in the year 2000 did the Israeli legislature expand the applicability of this duty, on the subject of fair representation of women in government civil service appointments, for the Arab population as well. In December of that year, a revised Article 15 of the Civil Service Law (Appointments), hereafter referred to simply as Article 15A, was passed which stipulated the obligation of giving fair representation to women and people with disabilities among civil servants and expanding the existing provisions for Arab citizens as well.

Article 15A states that “among civil service employees, including all ranks and professions, each transmitter and unit will be given appropriate expression, under the circumstances, the representation of both sexes, people with disabilities, and members of the Arab population, including Druze and Adyghe people, and considering their proportion in the population.”³

Although the Arab population is almost a fifth of the total population, it is represented in the civil service only at the rate of about nine percent of all state employees and at an even lower rate in the senior civil service.⁴

B – What is appropriate representation? Who is an appropriate representative?

Appropriate representation “depends on several aspects; the nature of the body, including the practical importance of the body for a particular group”⁵ as stated by Yezhak Zamir, a High Court judge, in the case of

2 (2005) 37 – 11 (1) 9, **משפט וממשל**, 9 (1), (2005)
3 Based on my translation. Article 15 of the Civil Service Law (Appointments) 1959, (Book of legislation 279).
4 הצעות חוק 2901, י"ד בתמוז ה'תש"ס, 17.7.2000
5 Based on my translation, High court 98/6924 the association for civil rights in Israel vs. the government of Israel

The Association for Civil Rights in Israel vs. the Government of Israel⁶
In 2001.

There are at least two types of appropriate representation. The more prominent type is related to government attempts to remedy injustices and increase social consolidation by combatting stereotypes and other barriers. These barriers affect members of the excluded groups and contribute to their ongoing discrimination. This is where affirmative action is temporarily used for the benefit of the minority group without the mediation of its community.⁷ A paradigmatic example of such representation is in employment, but this policy also commonly appears in other related fields, such as the acquisition of limited places in desirable professions. This is known as classical/statistical representation or fair representation within careers.⁸

The second type of appropriate representation concerns collective rights. This usually bears a more permanent character, and more importantly, it has a distinctly communal character: its beneficiaries enjoy it according to the decision of their group, or at least with due regard to the group's position towards them. It is referred to as the "appropriate representation of a group nature".⁹

Which of the two types is preferable? The answer depends on the situation and context. It is important to note that the choice depends on a series of questions related to the situation at hand, such as, 'which group is being referred to? What are its main features? What are the circumstances for wider society? Does allowing this group to become a part of the decision-making group "endanger" the position of wider society? Is this a nomination for professional or administrative jobs? Is it preferable and desirable that the two types of appropriate representation be applied in order to complement each other?'¹⁰

Collective rights are granted to individuals and associations because of the group's special affiliation and to give the weak group a special protection to offset its weakness in relation to the wider community. Kymlicka presents three major subcategories of collective rights: "matching rights," "self-management rights," and "special allocation representation rights."¹¹

C – The current situation in Israel

In light of political, social, and (especially) legislative changes (e.g. raising the Election threshold for the Knesset) during recent years in Israel, the Israeli Arab population has been trapped in unequal representation. This prevents Arab citizens from developing their own will as a social group and inhibits any real political participation, including the ability to stand up for their rights as an integral part of Israeli society. Therefore, a 'forced' representation of local Arabs has legal legitimacy.

Article 15A imposes on the government the duty to promote fair representation of Arab employees in the civil service, at all ranks and

6 High court 98/6924 the association for civil rights in Israel vs. the government of Israel
7 אילן סבן וסקוט סטריינר "על שני סוגים של "ייצוג הולם": מסגרת תיאורטית, הדוגמה הקנדית והשוואה ראשונית
8 Ibid
9 Ibid
10 Ibid
11 Kymlicka, supra note 7; V. Kymlicka Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship (New York, Oxford University Press, 2001) 17–27

professions, in every office and unit. In addition, the law requires the Civil Service Commissioner and all affiliated ministries, each in his own field, to take the measures necessary for the allowance and encouragement of fair representation.¹²

The law also authorizes the government to clearly designate qualified job candidates from the Arab population. The duty of all government ministries is to submit an annual report regarding the implementation of the provisions of this law, along with data on the representation of Arab citizens.¹³

But is the law effective? Do Arabs currently have representation according to the size of their population? In my opinion, it is not enough to pass a law, but rather it is essential to check what targets it reaches and what its consequences and side-effects are. It is important to check whether a law produces results and therefore determine whether the law was effective or simply a formality.

D – Criticism of the current situation

We can criticize Article 15 in three ways.¹⁴ First of all, we can argue that the number of Arab representatives considered “suitable” for the principle of fair representation is subjective.

The court held that the number of representatives of the Arab population should be equal to its relative proportion in the population of Israeli society. The article entitled “Final Report – a combination of Arab and Druze in the Civil Service in 2002,” which was prepared by the Civil Service Commission, shows that as of the end of 2002, 3,440 Arab workers out of a total of 56,362 employees were employed in the civil service, representing approximately 6.1% of all civil service employees.

In 1992, the representation of Arab citizens was 2.15% and in 2001 it was 6.1%.¹⁵ Assuming that this growth rate remains constant, it would take almost 30 additional years for the proportion of Arab workers in the civil service to equal the proportion of Arab citizens (22%).¹⁶

The following table presents data on the Arab citizens employed in the civil service in Israel between the years 2007–2015 according to the Civil Service Commission:¹⁷

| 2015 | 2014 | 2013 | 2012 | 2011 | 2010 | 2009 | 2008 | 2007 | |
|--------|--------|--------|--------|--------|--------|--------|--------|--------|------------------------------------|
| 71,795 | 71,469 | 70,586 | 68,250 | 65,749 | 65,366 | 63,852 | 61,938 | 60,549 | סה"כ עובדי שירות המדינה |
| 6,440 | 6,266 | 5,937 | 5,433 | 4,852 | 4,543 | 4,092 | 3,737 | 3,429 | מספר העובדים הערבים בשירות המדינה |
| 9.0% | 8.8% | 8.4% | 8.0% | 7.4% | 7.0% | 6.4% | 6.0% | 5.7% | שיעור העובדים הערבים בשירות המדינה |

The first line shows the total number of employees in the civil service; the second line shows the number of Arab employees in the civil

¹² Ibid

¹³ Article 15 of the Civil Service Law (Appointments) 1959, ס"ח 279, התשי"ט-1959, תוק שירות המדינה (מינויים), (Book of legislation 279).

¹⁴ זמיר יצחק "שוויון זכויות כלפי ערבים בישראל" **משפט וממשל**, 9 (1), 37 – 11 (2005).

¹⁵ לפי נתוני הלשכה המרכזית לסטטיסטיקה. סטטיסטיקל 26, בסוף 2001, מנתה האוכלוסייה הערבית בישראל 1.2 מיליון איש. וכיום מהווה 19% מאוכלוסיית ישראל.

¹⁶ לפי נתוני הלשכה המרכזית לסטטיסטיקה. סטטיסטיקל 26, בסוף 2001, מנתה האוכלוסייה הערבית בישראל 1.2 מיליון איש. וכיום מהווה 19% מאוכלוסיית ישראל.

¹⁷ <https://www.knesset.gov.il/mmm/data/pdf/m03578.pdf>

service; and the third line shows the percentage of Arab employees in the civil service. During the years 2007–2015, the number of Arab employees in the civil service increased by 88%. During the same period, the number of all employees increased by 19%.¹⁸

We can also criticize this situation by analyzing the identity of the Arab minority representatives and how they were chosen (who is considered to be representative?). The court does not define who an Arab representative is, and does not examine whether his or her attributes are related to the interests of the Arab population. However, according to Yezhak Zamir, in order to ensure adequate representation of a minority group, it is not enough that the representative belongs to the minority group; the representative must advance the interests of the group to which he or she belongs, and he or she must be chosen by the group itself. Because a representative who will not work for the interest of his or her community will not only violate the principle of fair representation, but may even be harmful to the interests of the minority group ... These representatives, therefore, could be used as a “fig leaf” by the council’s negative decisions affecting the minority population.¹⁹

Lastly, we can criticize the situation by analyzing the actual impact of the Arab representatives on decision-making (how effective their representation is). We can base our criticisms on the assumption that “we cannot ensure adequate protection for the interests of the Arab minority, even when the number of Arab representatives in Israel reflects the relative rate of the Arab minority in the general population, and even if those delegates identify with the interests of the minority group which they belong to.”²⁰ This is because, even after adequate representation, they will remain a minority! This critical argument establishes that fair representation of interests will only succeed if minority groups begin adopting a thoughtful mechanism that increases the weight of their decisions.

E – Conclusions

The purpose of fair representation is to ensure the democratic participation of minority groups within a society, on a group basis, to take part in the management of the state and assist in determining its contents and principles concerning social justice. This principle of representation reflects the values of participation and the sharing of core values within democratic thought.²¹

The problem of inadequate representation of Arab citizens in the civil service and in state-owned companies is a disturbing problem since it lowers the likelihood that they will progress in various areas of life. This relates to their position as citizens and members of a minority within the country.

As a result, the Israeli government must undertake the task of creating jobs specifically for Arab men and women at the highest levels of state and public service, and must study these issues with the aim of promoting solutions.

18 Ibid.

19 Yezhak Zamir זמיר יצחק “שוויון זכויות כלפי ערבים בישראל” **משפט וממשל**, 9 (1), 37 – 11 (2005).

20 Yezhak Zamir זמיר יצחק “שוויון זכויות כלפי ערבים בישראל” **משפט וממשל**, 9 (1), 37 – 11 (2005).

21 John Stuart Mill, *Utilitarianism, Liberty, Representative Government* (London: Dent, 1910).

The Civil Service Law (Appointments) has failed to resolve this problem. Although it is meant to apply to all methods of hiring and promotion at work, while imposing monitoring of implementation, it has not produced sufficient results.

One would expect that it would lead to a significantly increase the absorption of Arab citizens in the civil service. However, in the end, we see that despite all efforts within the Planning & Control Department in the Civil Service Commission to change the situation, the representation of Arab citizens is still far from adequate.

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