

HCJ 253/64

Sabri Jiryis v. Haifa District Commissioner

At the Supreme Court, sitting as the High Court of Justice

[October 12, 1964, October 20, 1964, November 11, 1964]

Before justices Landau, Berinson, Witkon

Ottoman Law on Associations, 1909, sections 2, 6, 3 – Law of Procedure Ordinance (Amendment), 1934 [Supplement A 459, p. 177] section 6.

The Petitioner sent notification to the Respondent about establishing an association named the “al-Ard Movement,” as required under sections 2 and 6 of the Ottoman Law on Associations, 1909. The Respondent noted in his response that the association’s bylaws clearly indicate that it was established with the intention of harming the State of Israel, and was therefore prohibited under section 3 of the aforementioned law. The Petitioner appealed to the High Court of Justice to issue an *order nisi* against the respondent.

The Supreme Court, in denying the petition, ruled –

- A. Under section 3 of the Ottoman Law on Associations, 1909, an association is prohibited if its objective, or one of its objectives, is unlawful or if it harms the public order in the state or its integrity.
- B. (1) The lawfulness or unlawfulness of the association’s objectives must be determined, first and foremost, according to the wording in the bylaws. This wording is what is binding upon the association’s members, and not the explanations and interpretations attached to it by the founders.

(2) If the unlawful objective is covert or disguised, and hides behind a smokescreen of flowery language, the government is certainly permitted to bring material that could reveal the true objective. But when the unlawfulness is overt in the text of the bylaws, or even when the bylaws only imply here and there and raise serious doubt in the heart of the reader, then the founders of the association must not be allowed to whitewash this with qualifications and interpretations.
- C. An important rule is that only weighty considerations can justify prohibiting an association. Freedom of association is one of the key principles of democratic government and one of the citizen’s basic rights. However, no free government would lend its hand and accord recognition to a movement that seeks to undermine that very government. The elementary right of every state is to defend its freedom and its very existence from external enemies and from their supporters at home.

Israeli rulings cited:

[1] HCJ 127/54 [Sahyun Hamis v. Tel Aviv District Commissioner](#): Israeli Rulings, Vol. 8, 1954, p. 1483; Rulings of the Israeli Supreme Court, Vol. 17, 1955, p. 318.

[2] HCJ 241/60 – [Mansu\[r\] Tawfiq Kardush v. Registrar of Companies](#); Israeli Rulings, Vol. 15, 1961, p. 1151, 1170.

Notes:

On the freedom of association and the restrictions imposed on it, also compare:

Chalmers and Hood Phillips, *Constitutional Law of Great Britain*, 6th Ed., p. 482; Durga Das Basu, *Commentaries on the Constitution of India*, p. 127.

A petition to grant an *order nisi* against the Respondent, requiring him to appear and explain why the Court should not declare: that the association named the “al-Ard Movement,” which was founded by the petitioner with others, is not unlawful under section 3 of the Ottoman Law on Associations of August 3, 1909; that the letter of the respondent’s deputy No. 6I/682 of July 24, 1964 constitutes receipt of notification on establishing an association under section 6 of the aforementioned law; and that the founders of the association should now publicly announce its purpose, in accordance with paragraph 3 of section 6 of the aforementioned law. **The petition is denied.**

Dr. Y. Yardur – on behalf of the Petitioner; Z. Tarlow, deputy state attorney – on behalf of the Respondents

Ruling

Justice Witkon: This petition concerns the establishment of an association under the Ottoman Law on Associations of 1909. An association named the “al-Ard Movement” was formed, and the Petitioner, as a member of its board of directors, sent notification of its establishment to the Respondent as required under sections 2 and 6 of that law. Attached to this notification were the association’s bylaws, which describe the association’s objectives in section 3 [of the bylaws]. And they are:

- “A. Raising the educational, scientific, health, economic and political level of all of its members.
- B. Establishing full equality and social justice among all segments of the people in Israel.
- C. Finding a just solution for the Palestinian problem – while viewing it as an indivisible unit – in accordance with the desire of the Palestinian Arab people, which responds to its interests and aspirations, which restores its political existence, ensures its full and legal rights, and regards it as endowed with the primary right to determine its own fate in the framework of the supreme aspirations of the Arab nation.

- D. Supporting the movement of liberation, unity and socialism in the Arab world, in all legal ways, while viewing that movement as the determining force in the Arab world, requiring Israel to relate to it in a positive way.
- E. Acting to establish peace in the Middle East in particular, and in the world in general.
- F. Supporting all of the progressive movements throughout the world, opposing imperialism and supporting all of the peoples aspiring to be liberated from it.”

Pursuant to this notification, the petitioner received a response signed by the Respondent’s deputy, which stated:

- “1. I examined the bylaws attached to your aforementioned letter, and especially section 3(C), as well as other material brought to my knowledge.
- 2. After this examination, I hereby inform you:
 - (A) The association named the “al-Ard Movement” – which you purported to establish, together with other people – is an association formed with the intention of harming the existence and integrity of the State of Israel.
 - (B) Therefore, under section 3 of the Ottoman Law on Associations, the establishment of the entity that purports to be the “al-Ard Movement” is prohibited.
- 3. If, despite the aforementioned, it becomes apparent that you are operating as an entity, measures are liable to be taken against you in accordance with the law.”

The Petitioner objected to the content of this letter, but the Respondent replied that he had nothing to add.

In his petition to this court, the Petitioner complains, in fact, about two things. He argues, first, that under the Ottoman Law on Associations, it is not at all the Respondent’s role to prohibit the establishment of an association. Who authorized you, [the Petitioner] asks the Respondent, to rule on the lawfulness of the association of whose formation I notified you. The sole purpose of section 6 of the law, so the Petitioner contends, is to prohibit and prevent the formation of secret associations. Thus, the Respondent has no choice but to accept and confirm the notification sent to him in order to publish an announcement about the association’s formation. The Petitioner’s second argument addresses the heart of the matter. He denies that the association’s objectives entail any harm to the State of Israel or its integrity. He contends that the association is not prohibited or unlawful in the sense of section 3 of the law or in any other sense. The Petitioner therefore appeals to the Court to declare that the association is not prohibited, that the Respondent’s letter be regarded as receipt of notification, and that the association’s founders should now publicly announce its purpose. As authorized under section 6 of the Law of Procedure Ordinance (Amendment), 1934, the Attorney General joined the discussion on the petition to grant an *order nisi*, since he believes the public has an interest in this

petition. We heard arguments and studied documents, and based on these, we reached a conclusion – that there are no grounds for issuing the requested order.

The Petitioner's first argument can be discussed in short. The disagreement is whether the Respondent is indeed authorized by law to check the lawfulness of the association, of whose formation it was notified, and if its opinion is negative, to refuse to accept the notification and oppose public announcement of it. The Petitioner argues that the Respondent must always acknowledge receipt of notification, thus fulfilling section 6 of the law, whose sole purpose is to prevent the establishment of secret associations. To back this argument, the Petitioner's representative brought supportive references from French law, from which the Ottoman legislature drew, while the Attorney General turned our attention toward *Hamis v. Tel Aviv Commissioner*, HCJ 127/54, [1], where the Court justified the Commissioner's refusal to confirm notification about the formation of an association, which was nothing more than a purely commercial business. However, if we accept the Petitioner's argument in this case, we would be leaving his second argument unanswered, and this was not the intention of the Petitioner and the other founders of the association in bringing their case before us. They sought this opportunity to bring the objectives of their association to a test of judicial review. And it is fitting that they know where they stand. It can also be noted that a new legislative proposal has already been placed on the Knesset's agenda, the "Associations Law," and when this law is enacted, it will become superfluous to delve into the meaning of the old Ottoman law. We will therefore turn to the heart of the matter.

Section 3 of the said law and this is its language according to Laniado's translation: "It is prohibited to operate associations that are founded on an unlawful basis, that are opposed to law and morality, or which aim to harm public order or the country's integrity or change the way of composing the existing government or exert influence on political segregation among the various races in the state." It is clear that an association is prohibited if its objective, or one of its objectives, is an unlawful objective, or if it harms the existing public order in the state or its integrity. And indeed, the Respondent's argument, as we already saw in his response to the Petitioner, is that the association was founded with the intention of harming the existence and integrity of the State of Israel. This intention – so the Attorney General argued before us – is evident in the definition of objectives in section 3 (C) and (D) of the association's bylaws, while the other objectives, which in themselves are not unlawful, are secondary to the primary objective. In fact, the Petitioner does not dispute the fact that if the association's aim is to harm the state's existence or integrity, this would be an unlawful objective and the association would be prohibited. But he contests the interpretation the Respondent ascribes to the association's objectives. In support of his argument, the Petitioner submitted an additional affidavit to us, in which he offered various explanations of what is stated in the association's bylaws, while the Attorney General submitted to us two clippings from newspapers published in the Hashemite Kingdom of Jordan and a transcript of a press review broadcast on Radio Cairo and received in Israel. He also suggested that we examine

privileged material pertaining to the al-Ard Movement and its founders, and which according to a certificate from the Defense Minister, should not be disclosed to anyone except the justices, for security reasons. In order to avoid disadvantaging the Petitioner, we decided at the time not to receive this material, as long as we were not convinced, based on the material that was open for all to see, that the law was on the Petitioner's side. In any case, we do not need it now, after it is clear to us that based on the open material, the petition should be denied.

We will begin by analyzing the objectives, as they are worded in the actual bylaws. Indeed, the decision about the lawfulness or unlawfulness of the bylaws must be made, first and foremost, according to the wording in the bylaws. This wording is what is binding upon the members of the association, and not the explanations and interpretations attached to it by the founders. If the unlawful objective is covert or disguised, and hides behind a smokescreen of flowery language, the government is certainly permitted to bring material that could reveal the true objective. But when the unlawfulness is overt in the text of the bylaws, or even when the bylaws only imply here and there and raise serious doubt in the heart of the reader, we do not allow the founders of the association to whitewash this with qualifications and interpretations. Rather, we tell them to correct the text, if it is possible to correct it in good faith. In our case, it can be said – and perhaps actually to the credit of the Petitioner – that neither in his letters nor in his affidavits did he try to mask the true objective of the association (while his attorney did not hesitate to make baseless arguments in this regard). In any event, whether according to the wording in the bylaws or according to the explanations in the Petitioner's affidavit, the objective is clear to see.

This objective completely and absolutely rejects the existence of the State of Israel in general and the existence of the state in its current borders in particular. It raises the Palestinian problem and demands its resolution "as an indivisible unit," "in accordance with the desire of the Palestinian Arab people." It [the Palestinian Arab people], and none other, "is endowed with the primary right to determine its own fate" and this "in the framework of the supreme aspirations of the Arab nation." We will not linger on the question of what should be seen as "an indivisible unit" – the Palestinian problem or Palestine itself, as might be understood from the letter of the petitioner himself. The main point is that the State of Israel was established in part of the territory of Palestine, and this fact is accorded no recognition here. And it is natural that the proponents of the association's objectives would disregard the existence of the state and the rights of the Jewish people living in it, because they regard the geographic space containing the state as territory in which to resolve the problem "in accordance with the desire of the Palestinian Arab people." The text does not speak about co-existence or equal rights for the two peoples. Without any attempt to gloss this over, the Arab people is declared here as "endowed with the primary right to determine its own fate." The Jewish entity does not exist in this view. Who is gullible to believe that this plan could be realized through peaceful means and persuasion, and that it does not ultimately mean underground and hostile activity. It is no wonder, therefore, that the al-Ard Movement has received enthusiastic praise from the

mouthpieces of Arab nationalistic propaganda, which incite day and night for the destruction of Israel, as we learned from the newspaper clippings and Radio Cairo broadcasts the attorney general submitted to us.

The affidavit prepared by the petitioner for the purposes of the trial also cannot change the simple meaning of the words stated in the bylaws. Here the Petitioner describes the situation of the Arabs as a situation of discrimination, repression and denial of rights. A change in this situation, he argues, would also repair the abnormal relations between Israel and the Arab states, and would engender peace among them. The Petitioner goes on to explain, one at time, the key elements of the objective stipulated in section 3 (C) of the bylaws. He repeats the proposed solution to “restore to this [Arab] people its political existence and allow it to decide its fate, as it desires, without external intervention from any entity” – and again it is clear, both from what is said and what is left unspoken, that the other pertinent entity, the Jewish people, will have no influence on this decision. And this is not only a clash of rights and interests between the Jewish people living in Zion and the Palestinian Arab people. After all, as the petitioner states in his affidavit: “The Palestinian Arab people is an inseparable part of the Arab nation. Therefore, when deciding its fate, this people will naturally take into account the aspirations and interests of the Arab nation.”

If I praised the Petitioner on his candor, I am sorry to say that I found a great deal of disingenuousness in the words of his learned attorney. He also did not hesitate to say things that certainly are not in the spirit of his clients. He began by saying that two peoples live in the land of Palestine. The Hebrew people already won self-determination; the Arab people has yet to. Is there anything unlawful in the Arab people aspiring for the same right? Of course, the ostensible equivalence in this argument is for the sake of appearance only, because the – exclusive –self-determination demanded here for the Arab people in the entire area of Palestine does not leave even a part of it for the self-determination of the Jewish people and for the sovereignty of its state. In order to escape this dilemma, Mr. Yardur is compelled to argue that the al-Ard Movement in Israel is pursuing a path of its own here, and has veered away from the path of the Arab national movement in Arab states. There, they do not recognize the State of Israel, though they have already abandoned the idea of a war of annihilation against it. Whereas the al-Ard Movement in Israel recognizes the State of Israel; and it demands self-determination for the Arabs of Palestine, while ensuring equal rights of the Arab minority in the state’s territory. Do his clients aspire to change the state’s borders? They are unwilling to answer this question, Mr. Yardur tells us, adding that the State of Israel lacks borders. That is – so he explains – the Petitioners do not recognize the borders defined in the armistice agreements. And that’s not all. When the attorney was asked whether his clients recognize the sovereign State of Israel, including all of its principles and objectives, including free *aliyah* and the return of the Jewish people to its homeland, he responded in the affirmative. He contended that they also agree that the inclusion of the State of Israel in a single Arab unit would be conditional upon the consent of the Hebrew people. Finally, and here again, he let the cat out of the bag: No, the al-Ard Movement is not

a “fifth column” as the Attorney General alleges, but it is possible that it might turn to “resistance” – and we are only left to ask, against which foreign tyrannical government might this movement rebel and organize underground activity if not the State of Israel and its agencies?

The short answer to all of this astounding argumentation is, of course, simple. The founders of the association did not deem it appropriate to spell out among its objectives all of these things their representative expressed before us: not their – ostensible – reservations about “the supreme aspirations of the Arab nation,” nor their recognition of the sovereign State of Israel, including all of its principles and foundations, nor their agreement that the inclusion of the state’s territory within the bounds of Palestine would be conditional upon the Jews’ willingness to be included in that political unit. They did not explicitly state or include these things because their entire struggle is aimed against them. The rejection of the State of Israel’s sovereignty was not explicitly stated in the association’s bylaws, but it is implicit and necessarily follows from it, and the “declaration of allegiance” to the state, delivered in the name of the al-Ard members for the purpose of the trial, is nothing but lip service. The Respondent was right in believing that this association is prohibited from forming under the directive of section 3 of the Law on Associations.

An important rule is that only weighty considerations can justify prohibiting an association. Freedom of association is one of the key principles of democratic government and one of the citizen’s basic rights. We must never deny this right and disqualify an association only because its objective, or one of its objectives, is to aspire to change the legal status quo in the state. The status quo might need correcting in one aspect or another, and a movement that seeks to organize public opinion in the state to correct the situation is entitled to do so in the framework of an association registered by law. However, no free government would lend its hand and accord recognition to a movement that seeks to undermine that very government. The [European] Convention on Human Rights also restricts (in Article 11(2)) the freedom of association when “necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” This restriction is essential. It has occurred more than once in the history of states with a sound democratic regime that various fascist and totalitarian movements have arisen and used all of those rights of freedom of speech, press and association that the state grants them to wage their destructive activity under their protection. Those who witnessed this under the Weimar Republic will not forget the lesson. I already stated in a different case (also in regard to the same al-Ard Movement, when their members sought to register a company), *Kardush v. Registrar of Companies*, HCJ 241/60, Israeli Rulings, Vol. 15, p. 1151 [2], on p. 1170 next to the letter D: “I do not believe at all that the question of protecting ‘freedom of speech’ or ‘freedom of the press’ arises here. Those liberties are a precious asset, the tradition of a democratic regime in a free state, but precisely for this reason, they must not serve as a ploy or tool in the hands of those who would undermine this regime.” The same also applies in our case. The

encouragement the al-Ard movement received from over the border, alerts us to the extent of danger posed to the state from it. It would be blind foolishness to grant it legitimacy.

Justice Landau: I concur.

As noted by my honorable colleague, Justice Witkon, we are dealing with the freedom of association, which is one of the citizen's basic rights in a democratic state, and therefore the natural inclination is to refrain from impinging upon this freedom, except when there are crucial reasons for doing so, which are also recognized in a state that advocates the rule of law.

A national minority has the right to organize with the aim of lobbying, through legal means, for the rectification of an injustice it suffers, whether this be a real injustice or even an imagined one. Indeed, if the petitioner and his colleagues had aspired toward a political accord between Israel and its neighbors through peaceful means – an accord that would mitigate tension in the region and thus be a blessing for all of its residents and, obviously, including members of the Arab minority in the State of Israel – certainly no one would view this sort of objective as an illegal objective, even if a peace plan includes proposals for changing the existing constitutional regime in the states of the region, and Israel among them. Mr. Yardur spoke about this sort of plan in his oral arguments before us, though I admit that his words also struck me as vague and full of internal contradictions. However, a genuine peace plan is not similar to a plan that seeks to achieve a change in the existing regime by imposing the will of one of the sides, and if necessary, also through violent means. And here we will not pay heed to the learned attorney's words of interpretation, or the explanations the petitioner later provided in his affidavit for the purpose of the discussion in the court. Rather, we will turn directly to the proposed bylaws of the association in order to ascertain the intention of their authors.

My colleague analyzed the wording of section 3 (C) of the bylaws. I would like to add to his words, with an emphasis on the last part of this paragraph, together with what is stated in paragraph (D), which follows it. The last part of paragraph (C) views the Palestinian Arab people as

“endowed with the primary right to determine its own fate in the framework of the supreme aspirations of the Arab nation”

And the association's objective listed in paragraph (3) is:

“supporting the movement of liberation, unity and socialism in the Arab world, in all legal ways, while viewing that movement as the determining force in the Arab world, requiring Israel to relate to it in a positive way”

And again, if the Petitioner and his colleagues had intended to emphasize in these words the national ties with the Arabs beyond the border, there would be nothing

more natural than this. After all, the state's Jewish citizens also work to cultivate their ties with Diaspora Jewry. But that is not the intention that clearly arises from the words quoted above. And here the court is permitted to use its knowledge of what is happening in the world, and especially in this region of the world, as publicized and not requiring proof.

The concepts of "the movement of liberation, unity and socialization in the Arab world" has a clear and defined meaning – and precisely when used in combination – in the political dictionary of our times: Under these slogans, Egypt is claiming the leadership of the Arab world for itself, and in Egyptian propaganda these slogans are closely tied to the incitement to destroy the State of Israel, which stands, according to the falsehoods disseminated from there, as an obstacle in the path of realizing the nationalist aspirations of the Arab peoples. Someone who identifies with this movement, centered in Cairo, and regards it as "the determining force in the Arab world," in any case adopts for himself currents of hostility toward the State of Israel and the aspiration to eliminate it through force. In light of this overt connection, we cannot rely on the declaration by the association's founders that they intend to support the liberation movement in lawful ways.

In my eyes, it is no coincidence that a sympathetic tone toward Egypt could also be heard in Mr. Yardur's arguments. He noted that the president of Egypt recently said once or twice in his speeches that war with Israel was unlikely. But it is clear to any sensible person that until there is more tangible proof of change in the Egyptian policy, it would be naïve to interpret these declarations as anything more than a "tactical" retreat, without giving up the final objective. We hear the incessant voices of animosity in the broadcast from Cairo on July 29, 1964, specifically discussing the al-Ard Movement, a transcript of which the attorney general submitted to us. And this is what was said there about this movement:

"... on that stolen land, to which the Arabs on the outside are preparing to return, the Arabs inside it are now also cooperating with them, in order to purify it.

The Arabs take pride in the spread of the fire of the Nasserist revolution, which is the great slogan and realization of the national revolutionary effect on occupied Palestine ... These Arabs themselves turn today to their Arab League in hope that it will not cease their support for this new and practical movement, among the Arab resistance movements against its enemies ..."

The response of the Jordanian newspaper *Falastin* in an article that was also submitted to us is less enthusiastic: It speaks about the al-Ard group as "one of tens of similar organizations operating in our occupied land." Mr. Yardur suggested that this tone of reservation stems from the competition between Jordan and Egypt, because this newspaper also regards the "al-Ard" group as a pro-Egyptian group. It may very well be.

The elementary right of every state is to defend its freedom and its very existence from external enemies and from their supporters at home. As my colleague said, no government should be asked in the name of protecting the freedom of association to give its seal of approval to the formation of a fifth column within the borders of its state. According to the material before us, there are sufficient grounds to fear that the association the Petitioner seeks to register would indeed embark on this dangerous path, in violation of the duty of allegiance every citizen owes to the state in which he resides.

Mr. Yardur sounded a sort of warning to us that if the association is not allowed to operate in the open, this might lead to the creation of an underground. It would have been better had he refrained from expressing or even intimating this veiled threat in the name of his client. Someone who is willing to consider going underground – that is, conducting unlawful activity – only reinforces the argument that the association, which he wishes to declare as a lawful association, was intended from the outset to serve as easy cover for unlawful activity.

Justice Berinson: I concur and have nothing to add to the thorough remarks of my honorable colleagues.

Based on the above, it was decided to deny the petition to grant an *order nisi*.

Issued on November 11, 1964.