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Trapped within the law. Will the Kurdish Jews return to their homeland?

Iraqi Kurdistan, the autonomous region of Iraq, is a shelter for ethnic and religious minorities. Both obtaining autonomy in 1991 and overthrowing the regime of Saddam Hussein in 2003 contributed to the expansion of the prerogatives of the Kurdish government and the security¹. The Kurds took up their chance and sought to become independent from the federal government in Baghdad, in the realm of financial, political, legal, social and educational issues.

Over the past fifteen years, Kurdish authorities and citizens have worked hard to develop infrastructure and raise the quality of education, by providing not only to the basic level of education, but also creating many universities. Foreign diplomatic missions took place in Erbil², the capital of the region, numerous banks and production companies have been moved from other parts of the Middle East to Kurdistan as the internal security of this area ensures the efficient functioning of these institutions³. Since the war, which began in 2003 in Iraq, and as a result of the activities of the so-called Islamic State, Iraqi Kurdistan has been inhabited by people who, for reasons of origin or religion, did not feel safe in the central and southern parts of the country. Along with the increase in the number of people representing ethnic and religious minorities, more and more religious institutions, cultural centres and associations have been established. Their task is to protect the cultural heritage and religion of these communities.

One, and by all means scarce, minority are the Iraqi Jews who lived in central and southern Iraq and the Kurdish Jews, from the north of the country. Their history in Iraq dates back thousands of years and they are considered one of the oldest Jewish diaspo-

¹ The coalition of US, UK and France. established in April 1991 the no-fly-zone to protect Kurds on the North Iraq. Iraqi aircraft were forbidden from flying over Iraqi Kurdistan.

² From September 2014 for almost two years, the Embassy of the Republic of Poland in Baghdad was closed for security reasons. Polish citizens could seek help from the consulate in Erbil in Iraqi Kurdistan.

³ D.A. Ghazaleh, *Iraqi Kurdistan works to attract foreign investors*, <https://www.al-monitor.com/pulse/ru/business/2014/01/iraq-kurdistan-region-foreign-investment.html> [access on: 16.01.2018].

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ras in the Middle East. The beginning of the migration of Jews to the region of the present-day Iraq is considered to date back to the eighth century BC, after the Assyrians conquered the capital of Israel and captured nearly thirty thousand Jewish prisoners. The sixth century BC was the time of the Babylonian captivity, which came in the wake of the defeat of the Israelite army who had fought with the armies of King Nebuchadnezzar II. The Babylonian Talmud, which even now is obligatory for the followers of Judaism and which was created before the fifth century, is a proof of a strong presence of this religion in the above-mentioned area⁴.

There have been many publications about the Iraqi and Kurdish Jews. A large part of them include memories and individual stories of people forced to exodus in the 1950s. Among the many distinguished citizens of Israel, but also other countries in the world, there are Iraqi Jews who continue to care about the past and the Arab culture⁵. An example of their attachment to the land and to the Arab culture was the person of Samir Naqqash, a writer who moved to Israel as a child. He created literature in Arabic only, and he referred to himself as an Iraqi in exile⁶.

The problems of the Jewish community in the Middle East, which gradually caused its emigration, grew worse with the strengthening of the lobbies for the creation of an Israeli state in Palestine. Western countries, local and world-wide organizations supporting the Zionist movement in the 1920s, involuntarily brought about the deterioration of the situation of the Jewish diasporas in the Arab territories.

In Iraq, the supporters of the foundation of Israel were initially tolerated, but the attitudes changed in the subsequent years in Palestine⁷. With time, the Iraqi authorities accused individuals of supporting Zionism, for which they were threatened with repressions⁸. Often times, this led to the individual's detention, imprisonment or deprivation of the Jewish property. The next difficult period for the Iraqi and Kurdish Jews was the seizure of power by the Nazis in Germany and the outbreak of World War II.

Indeed, the Nazi ideology also found its supporters among Arabs. Arab Nazi formations were created not only in Palestine, but also in Iraq, such as the Al-Muthanna Club or the Golden Square. The Nazi propaganda spread by German diplomats in Baghdad was followed by some Iraqi officials, such as Iraq's Prime Minister Rashid Ali al-Kilani⁹.

⁴ J.L. Rubenstein, *The Culture of the Babylonian Talmud*, JHU Press 2005, p. 1.

⁵ Among people identifying Iraq as a homeland are: Ali Emir – writer, adviser to the Prime Minister of Israel, Sasson Somekh – professor of Arabic literature at the University of Tel Aviv, Sami Michael – writer, chairman of the Association of Civil Rights in Israel and Shmuel Moher – professor of Arabic literature at the university in Jerusalem.

⁶ See: *Samir Naqqash*, <http://www.banipal.co.uk/contributors/70/Samir%20Naqqash/> [access on: 16.01.2018].

⁷ The announcement of the Balfour Declaration in 1917 caused a significant influx of Jewish people to Palestine. Therefore appeared tensions and bloody conflicts between Palestinians and Jews.

⁸ See: J. Nakar, *About Iraqi Jews*, <http://iraqijewisharchives.org/iraqi-jews/> [access on: 17.01.2018].

⁹ Rashid Ali al-Kilani (1892-1965) – Minister of Justice and later the three-time Prime Minister of Iraq. He was an opponent of the politics and presence of Great Britain in Iraq. He established close relations with the Germans during World War II.

One of the most tragic events in the history of the Iraqi Jews was the pogrom which took place after the collapse of the al-Kilani government in June 1941. It is known as Farhud and at least two hundred people were killed during it and many Jewish houses and shops were devastated or burned¹⁰.

In the 1940s, the accusations of supporting communists or the Zionist ideology became a frequent reason for dismissals and arrests among the Jews. In June 1948, a new law came into force. It stated that Zionism and its dissemination would be punished by up to seven years of imprisonment. Among the victims of the anti-Jewish policy, there were known and respected people, such as Shafiq Ades, who was publicly hanged in Basra¹¹. The events of the following years made the Jews aware that no one in Iraq would provide them with security. Despite the ban on emigration to Israel, which had been in force since 1948, more and more people used illegal immigration corridors through Iran or Turkey and thus put their lives at risk¹².

The situation changed dramatically in 1950, when the Iraqi government adopted law No. 1/1950 Supplement to Ordinance Cancelling Iraqi Nationality allowing Jews to leave Iraq safely and travel to Israel¹³. However, the conditions which were set were extremely difficult to meet. Everyone who intended to legally leave for Israel had to renounce their Iraqi citizenship and sign a document stating that he would never return to Iraq. Jews from all over the country had the right to legally leave Iraq over the course of one year only. During that time, Israel organized two military operations, that is *Ezra* and *Nehemiah*. Over one hundred thousand people of Jewish origin were evacuated to their new homeland, i.e. Israel¹⁴. Others fled to Israel through Iran¹⁵. In the subsequent years, new laws stripped Jews of their property, which was passed into the possession of the Iraqi administration (laws No. 5/1951 and No. 12/1952)¹⁶. In 1952, when the ban on leaving the country was re-introduced, it turned out that several thousand Jews had still remained in Iraq. In the following years they were persecuted and discriminated, both

¹⁰ C. Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights – A Case Study of the Human Rights Violations of Iraqi Jews*, "Fordham International Law Journal" 2002, No. 26(3), p. 672.

¹¹ Shafiq Ades (1900-1948) – an influential and wealthy businessman who was accused of selling arms to Israel. His trial lasted three days, he was deprived of a lawyer and no witnesses were found confirming his participation in illegal sale.

¹² Lack of precise data on the number of Iraqi Jews who left Iraq in the 40s/50s of the twentieth century. According to estimates, it is stated that from 1941 to 1950, over 15,000 Jews fled through Iran. Despite the ban on emigration to Israel from 1948, it is assumed that about a thousand people fled across borders with other states every month.

¹³ See: I.M. Radi, *قوانين اسقاط الجنسية العراقية عن اليهود (Law on renunciation of citizenship of Iraqi Jews)*, http://www.uobabylon.edu.iq/uobColeges/service_showrest.aspx?fid=7&pubid=5761 [access on: 12.01.2018].

¹⁴ The military operation began in May 1951 and ended in early 1952. The Israeli authorities say that over 120,000 Jews were evacuated from Iraq. N.E. Pasachoff, R. J. Littman, *A Concise History of the Jewish People*, Rowman & Littlefield 2005, p. 303.

¹⁵ The law of 1950 gave one year to Iraqi Jews to sign up for a list of volunteers to emigrate to Israel. However, due to Israeli procedures only 1/3 had time to leave a specified period. Those who decided not to return have been deprived of property in Iraq. This record also applied to those who remained, however, they were given the chance to regain ownership or re-open their businesses or stores.

¹⁶ See: I. M. Radi, *op cit*.

politically and socially. They had special ID cards, their bank accounts were frozen, and their stores or companies closed by the state administration. Laws and regulations, which were adopted in the following years referred directly to their citizenship or property¹⁷.

The 1950s and 1960s were a real breakthrough in the history of the Iraqi and Kurdish Jews. Within a few years, almost all of them left the community of Iraq. Many of them left against their will, due to the very dramatic situation in which they found themselves. After the establishment of Israel and the carrying out of the Arabization policy in Iraq, the Jews became political and social enemies¹⁸. Deeming them responsible for the lost Arab-Israeli wars, and the fact that they were a group holding considerable fortune and power, caused strong resentment towards them among the Iraqis.

The events which took place in Iraq had a major impact on the country's economic and social situation. Prior to the exodus, the number of Jews living in Iraq exceeded 130,000 people, they were largely engaged in trade, import, foreign exchange and banking¹⁹. They included well-known writers and scientists, founders of publishing houses, as well as politicians who held the highest positions in the Iraqi state²⁰.

New law in Iraqi Kurdistan

In order to meet social needs, the Kurdish authorities in northern Iraq took an extremely important and crucial decision in 2015. The result is a new, progressive law regarding ethnic and religious minorities No. 5/2015, ensuring equal rights for all in Iraqi Kurdistan.

The most important part can be found in Article 1, paragraph 2, which indicates the minorities provided with legal protection: Turkmen, Christians, Yazidis, Mandaeans, Kaka'i, Shabak people, Fayli Kurds, Zoroastrians and others who are citizens of Iraqi Kurdistan²¹. Not all of the minorities were mentioned by name, for example Jews or Baha'is. However, by adding "and others", the legislator opened up opportunities for many small, often underrepresented groups. Thus, it provided all communities with the opportunity to appoint official representatives who represent their interests on behalf of the Kurdish authorities. In the following article, the Kurdish authorities ensure equality for all minorities in the realm of political, cultural, social and economic opportunities. At the same time all forms of discrimination are to be punished in accordance with the law and the authorities of Iraqi Kurdistan guarantee prevention of hate speech, which calls for violence, terrorism, exclusion and marginalization for reasons of nationality,

¹⁷ See: *ibidem*.

¹⁸ The idea of panarabism in the Arab countries found a wide group of supporters, it was also visible in the actions of the Arab authorities towards ethnic minorities involving forced Arabization and Islamization.

¹⁹ See: I. Levin, *Locked Doors: The Seizure of Jewish Property in Arab Countries*, Greenwood Publishing Group 2001, p. 51.

²⁰ See: B.K. Dougherty, E.A. Ghareeb, *Historical Dictionary of Iraq*, Scarecrow Press 2013, pp. 345-346.

²¹ *A Reading for the Law of Protecting Components in Kurdistan*, <http://www.iraqicivilsociety.org/wp-content/uploads/2015/08/A-Reading-for-the-Law-of-Protecting-Components-in-Kurdistan-english.pdf> [access on: 8.01.2018].

origin, religion or language²². In addition to that, an initiative to support local community groups was created, in the establishment of centres, representatives' offices and the protection of minority languages and the guarantee of opening special departments to teach them at universities. It is also important that every representative of a minority has the right to practice their religion, has freedom of speech, media and gatherings. What is more, the government provides protection for the cultures and religions of all minorities, allows free choice of names, symbols and enables them to call streets and important places by the names of heroes/heroines and persons important for their respective communities, albeit in accordance with the existing law²³. Another important guarantee is that which ensures the participation of minorities in the executive and legislative structures and the appointment of organizations, representations which can interact with various communities inside and outside Iraqi Kurdistan in accordance with applicable law. If international agreements concerning a particular minority are established by the Government of Iraqi Kurdistan, then those representatives are guaranteed their participation in the negotiations²⁴.

This document offers very large opportunities for the communities living in the north of Iraq and is an extension of the laws previously established in the autonomous region of Kurdistan. There have been various documents which guaranteed representation in the parliament for the largest ethnic and religious groups²⁵. The new law, however, does not specify the participation of smaller ethnic and religious groups in the legislative and executive processes.

The revival of the Jewish community in Iraqi Kurdistan

The approval of the new law gave a signal to various groups in Iraqi Kurdistan. One of them, not mentioned in the 2015 document, are the above-mentioned Kurdish Jews. At the Ministry of Religion in Kurdistan, a representative office of the Jewish community was established under the leadership of Sherzan Omer Mamsani²⁶. Nowadays the Jewish community counts as few as three hundred families (of Jewish origin, but not always of Jewish religion)²⁷. In most cases, people who declare themselves as Jews can solely prove

²² *Ibidem*, p. 11.

²³ *Ibidem*, p. 13.

²⁴ *Ibidem*, pp. 13-14.

²⁵ Earlier, in the 100-member Kurdish parliament, only three groups had guaranteed seats. In 1992, there were only five places for Christians and Iraqi Turkmens and one for Armenians. In 2005, eleven of the 111 positions were granted to minorities. It was the same in 2009 and 2013, where mostly Christians and Iraqi Turkmens have their representatives in parliament.

²⁶ Sherzad Omer Mamsani (born 1976) in 1997 published a book on relations and cooperation between Kurds and Israel. The disclosure of Jewish origin and views caused that Muslim fundamentalists regarded him as an enemy. Three attacks on his life have been carried out. Despite the loss of his right hand as a result of one of the attacks, he is still actively engaged in the revival of Jewish culture and religion in Iraqi Kurdistan.

²⁷ See: J. Neurink, *A Land With No Jews Names Jewish Affairs Rep*, <https://www.haaretz.com/a-land-with-no-jews-names-jewish-affairs-rep-1.5411809> [access on: 4.01.2018].

that their grandmothers or great-grandmothers were of Jewish origin. It is difficult to determine their actual number due to the fear of disclosure and reaction of the Muslim society and the still active terrorist organizations which persecute and threaten non-Muslims. Currently, there are no open synagogues or schools teaching Judaism or the Hebrew language in Kurdistan. These days the most important task of the newly established institutions is to fight for the preservation and revival of the Kurdish Jews' identity, as well as to recognize them as an important element in the history of both Kurdistan and Iraq. Among the intentions behind the resurrection of the Jewish culture is also the rebuilding and renovation of important monuments such as synagogues, cemeteries and other places of worship and memory. However, due to the economic crisis in Iraqi Kurdistan²⁸, these plans will most likely be postponed.

An important role of the representative of the Jewish community is to maintain relations and ties with the large community of the Kurdish Jews and Jewish organizations in Israel. Various initiatives and support from foreign organizations have been helping to restore the memory of their expelled ancestors. Therefore, there are many events whose aim to educate on the Jewish history, culture and religion. An example of such an action was the celebration organized on November 30, 2015 which was a reference to the exodus of Jews from Iraq²⁹.

The contemporary activities of the Jewish community aiming at the revival of the Jewish heritage in Iraqi Kurdistan are welcomed with understanding and support. One of the most important events organized by Masamani was the commemoration of the victims of the Holocaust during World War II. This initiative met with great interest, which was reflected in the participation of many distinguished Kurdish politicians, representatives of Christian churches and important figures from Muslim communities³⁰.

Paradoxically, the appearance of such a dangerous organization as the Islamic State in Iraq made people begin to think over their beliefs related to religion. The earlier radical or more conservative approach to the principles of Islam has changed in favour of even greater dialogue and coexistence with other minorities. The scale of the tragedy which has taken place in the territories of Iraq and Syria, controlled by the Islamic State, has made Kurds realize where extremism leads to.

According to Mansani, more and more people of various faiths and ethnic roots acknowledge their origin and beliefs after the emergence of Islamic fundamentalism. He estimates that nearly 60% of Muslims have stopped going to mosques³¹ and openly ex-

²⁸ From the beginning of 2014, Iraqi Kurdistan has been having serious financial problems, resulting also from not receiving 17% of Iraq's budget guaranteed in the 2005 constitution.

²⁹ See: J. Lenarz, *In Iraqi Kurdistan, a Jewish Past Comes to Life*, <http://www.thetower.org/article/in-iraqi-kurdistan-a-jewish-past-comes-to-life-sherzad-mamsani/> [access on: 13.01.2018].

³⁰ See: J. Neurink, *Holocaust remembered in Kurdistan for the first time*, www.rudaw.net/english/kurdistan/070520161 [access on: 4.01.2018].

³¹ Sherzad Omer Mamsani, the author of the statement, does not specify which Muslims abandon regular practice of Islam. Presumably, it refers to Iraqi Kurdistan and the capital of Erbil.

press anxiety and discontent about the dominance of Islam in almost every aspect of social and political life. The awareness among the members of parliament, mainly Muslim with oftentimes conservative views, has also changed. In the course of their work on the act aimed at protecting and ensuring equal rights for minorities, politicians voted in favour of its adoption almost unanimously³².

According to the representative of the Jewish community in Iraqi Kurdistan, the Jews who emigrated now have the right to demand the return of lost property, land and farms on the basis of the minority rights in Kurdistan. They also have the right to compensation.

The legal situation of the minorities in Iraq

The legal situation in Iraq is different. All laws adopted by the authorities in Baghdad are superior to the rights established locally. The attitude towards ethnic and religious minorities has changed after the overthrow of Saddam Hussein's regime and the appointment of the new Iraqi authorities. On October 15, 2005, a new constitution was proclaimed, which refers to the rights and equality of believers of religions other than Islam and non-Arabs in several places.

The assumptions behind the new constitution were based on the fundamental laws of Western countries, and they ensure the recognition of ethnic and religious minorities and to enable persons to recover their lost citizenship.

Article 18

paragraph 2: An Iraqi is any person born to an Iraqi father or mother. This will be regulated by the law.

paragraph 3: [...] Any person who had his nationality withdrawn shall have the right to reclaim it, and this will be stipulated by the law³³.

According to the above excerpts from the constitution, it can be presumed that people, also of Jewish origin, whose families have lived in Iraq for centuries, will now be able to apply for the recovery of their lost citizenship. However, in the following year, the Iraqi government specified the conditions for such proceedings. In the act adopted on March 3, 2006, the question of the Jews was specified and it follows that citizens who belonged to the wave of emigration in the 1950s and were then forced to renounce their citizenship in order to be able to leave Iraq are deprived of such a possibility³⁴. Article 14 deals with the loss and recovery of citizenship. The law presupposes that the loss of a parent's citizenship results in the loss of the citizenship of their underage child, but it can be recovered under certain conditions. Paragraph 2 does not provide for such a pos-

³² See: D. Lieber, *Iraqi Kurdistan sees a Jewish revival, thanks to the Islamic State*, //<https://www.timesofisrael.com/iraqi-kurdistan-sees-a-jewish-revival-thanks-to-the-islamic-state/> [access on: 4.01.2018].

³³ See: *Iraq's Constitution of 2005*, https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en [access on: 16.01.2018].

³⁴ See the original Arabic text: رقم لسنة ٢٠٠٦ لسنة ٢٦ قانون الجنسية العراقية, http://www.iraqinationality.gov.iq/images/qanoon_aljinsiya.pdf [access on: 12.01.2018].

sibility for children of persons who have lost their citizenship on the basis of law No. 1 of 1950 and No. 12 of 1952. In the following part of the document, in Article 19, another reference to the situation of Iraqi and Kurdish Jews can be found.

Article 19

paragraph 1: I Any Iraqi, who was denaturalized on political, religious, racist or sectarian grounds, shall have the right to restore his Iraqi nationality [...].

paragraph 2: Excluded from the benefit item I of this Article shall be those Iraqis who have lost their nationality pursuant to Law No. (1) of 1950 and Law No. (12) of 1952³⁵.

It seems significant that the law depriving people of the possibility to regain their citizenship is not in accordance with the spirit of the 2005 constitution of Iraq. The Kurdish law of 2015 does not mention the recovery of citizenship, but it does talk of respect for the minorities and the possibility of regaining lost property. However, according to the representative of the Jewish community, the new Kurdish law will make it possible to return and obtain Iraqi citizenship. Undoubtedly, this type of position raises some controversy. In Iraq, the state office responsible for such matters is the Ministry of Interior in Baghdad, which overrides Kurdish ministries which do not have the right to grant citizenship. In the view of the above, the Kurdish Jews cannot regain their citizenship, and attempts to recover property or compensation from the current Iraqi authorities may turn out to be impossible. Due to the unconstitutional parts of the 2006 Act, there is a possibility to appeal to the Supreme Court in Iraq in order to challenge this provision. In the light of Israeli law, Iraq, is a “hostile state”³⁶ and any citizen applying for citizenship of such an unfriendly country can be deprived of Israeli documents³⁷. Therefore, in the case of Iraqi and Kurdish citizens currently living in Israel, this may result in their loss of Israeli citizenship³⁸. The lack of coherent Iraqi and Kurdish laws causes information chaos. In the case of the remaining minorities, the right to regain lost citizenship, land or real estate is not controversial. The question concerns mainly Kurdish and Iraqi Jews.

The situation of this group in Iraq and Israel is still not fully standardized. This is mainly due to political reasons, mutual hostility of both states and lack of diplomatic relations. Despite Israel’s efforts to improve its relations with various countries of the Middle East, Iraq is not seeking any reconciliation. As a result, the Iraqi authorities will

³⁵ See: *Iraqi Nationality Law [Law 26 of 2006]*, www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4b1e364c2&page=search [access on: 14.01.2018].

³⁶ R. Arhen, *In Netanyahu’s new illustrated world, Israel has just five enemies*, <https://www.timesofisrael.com/in-netanyahus-new-illustrated-world-israel-has-just-five-enemies/> [access on: 6.01.2018].

³⁷ See: *Can Israelis from Iraq recover their citizenship?*, <http://jewishrefugees.blogspot.com/2010/10/can-israelis-of-iraqi-origin-recover.html> [access on: 11.01.2018].

³⁸ According to Israeli law of 1952, and its amendment, persons who are disloyal to the state or pose a threat may be deprived of citizenship. The change made on March 7, 2017, specifies that if such a person does not have a second citizenship, then he will have the right only to resident status, which strongly limits the social and political rights of the individual.

continue to deny the Jews' right to return to Iraq, even though many people from the Iraqi Jewish community living outside this Arab country are still strongly connected with Iraq, and continue to cultivate the Arabic language and culture and identify with Iraq as the true homeland.

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Abstract: Jews have lived in Iraq and Kurdistan for thousands of years. The vision of the founding of the State of Israel and the emergence of the Nazi ideology in Europe caused that the participation of Jews in social and cultural life and contribution to the development of education and the economy in Iraq ceased to have meaning. The strong influence of Nazi and anti-Zionist ideology led to discrimination and persecution of the Jewish minority in this country. The effect of this was the establishment of laws in the 1950s, which in exchange for permission to travel to Israel deprived Jews of Iraqi citizenship. Nowadays, the legal situation in Iraq and Iraqi Kurdistan has changed after the overthrow of Saddam Hussein's regime. Currently, Kurdish law allows the appointment of representatives of ethnic and religious minorities, the creation of a cultural centres and the reconstruction of important places of worship, as well as obtaining compensation for lost property as a result of repression of previous Iraqi governments. However, the Iraqi New Constitution of 2005 and the Act of 2006, superior to Kurdish law, provide the opportunity to return and regain citizenship to those who lost it, but the exception is Jews who renounced their citizenship on the basis of the 1950 and 1952 laws. Despite the still strong ties with Iraq and Arab culture, Jews, especially Israeli, are deprived of the opportunity to return, regain their citizenship and claim their right to lost property.

Keywords: Kurdish Jews, homeland, Iraqi Kurdistan, Islamic State, Mansani

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