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The Banning of Political Parties in Israel 1948–2019*

ABSTRACT: The research paper analysed all legal norms related to the abolition of political parties in Israel until the second decade of the 21st century, as well as examining several of the most significant cases of attempted abolition throughout the history of this state. In the time of the prohibition of the List of Socialists, the institutions were alerted as the state was often in conflict with its neighbours. In the period after the Oslo Accord, the growth of the Jewish right-wing religious influence became a challenge from within the society for the democratic foundation of the state of Israel. When political conditions in the state were stable, the threshold of tolerance towards parties whose policies were hostile to the state and society increased. A stable political situation allows many political options to advocate their policies if they do not actually threaten the state.

KEYWORDS: Israel, Supreme Court of Israel, Central Election Commission, political parties.

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Introduction: Political circumstances of Israel in the first decades of its existence

The birth of Israel as a secular state in the aftermath of the Second World War led to the very specific historical experience for the founders of the state that was additionally influenced by the immediate war with its neighbours after the state of Israel gained independence in May 1948.[1] That experience is important for understanding the complexities regarding the banning of the political parties in the state that faced both internal and external existential challenges.

The scope of the laws relating to political parties in Israel is broad,[2] but in this paper we focused on three sources, relevant for the parties in Israel. The first is the Law on Political Parties from 1992;[3] the second is the Law on Party Financing from 1973;[4] and the third, the practice of the Supreme Court of Israel.[5]

Parties that threaten Israel can be divided into two groups. One group consists of right-wing parties oriented towards religious fundamentalism; the other consists of parties that express the secessionist aspirations of the Palestinian cause. The specificity of both groups of parties consists in the fact that they (occasionally) strive to achieve their goals through aggressive actions, not hesitating to use illegal, sometimes terroristic, acts. For this reason, the

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1 For more literature regarding history of Israel and Israeli-Arab conflict, see: Martin Gilbert, *Israel: A History* (Boston: Mariner Books, 2008); Elie Podeh, *Chances for Peace: Missed Opportunities in the Arab-Israeli Conflict* (Austin: University of Texas Press, 2015); Anita Shapira, *Israel: A History* (Waltham: Brandeis University Press, 2014); Ian Black, *Enemies and Neighbors: Arabs and Jews in Palestine and Israel, 1917–2017* (New York: Atlantic Monthly Press, 2017); Ussama Makdisi, *Age of Coexistence The Ecumenical Frame and the Making of the Modern Arab World* (Oakland: University of California Press, 2019).

2 European Commission for Democracy through Law (Venice Commission), *Supreme Court of Israel Working document for the Circle of Presidents of the Conference of European Constitutional Courts*, Vilnius, 7 September 2006, 13.

3 Sefer HaHukim, *The Parties Law, 5752–1992*, *Book of Laws No. 1395*.

4 Sefer HaHukim, *Political Parties (Financing) Law, 5733–1973*.

5 Ariel L. Bendor, „Parties in Israel: Between Law and Politics", *San Diego International Law Journal* 1/1 (2000), 117.

socio-political system of Israel is regulated by fighting for the preservation of democracy by neutralising political parties that support terrorism. This explains the fact that the regulations governing the banning of political parties are primarily concerned with the threat of terrorism.

Since the formation of the State of Israel (May 14, 1948), religion has been a separate political entity. The religious bloc saw Israel as a religious state, the creation of which was connected exclusively to the coming of the Messiah. Any attempt to establish a secular state was meaningless for them. Alongside their religious motivations, they viewed Zionism as a creation of the secular West, which fundamentally threatened their authority.

After the Second World War, there was a greater homogenisation of the Jewish elite, so the religious community tacitly supported Israel.[6] As it was impossible to establish an absolute dominance of one party, the head of state, David ben Gurion, wrote a letter to the leaders of the main Ashkenazi religious party on the 19th of June, 1947, offering them a draft of guidelines that would become tacit Israeli policy, known as the status quo.[7]

Maintaining the status quo was the foundation of the prevailing power of the Labour Party (which formed all Israeli governments until 1977) and the religious parties for three decades. Indeed, despite the dominance of the Labour Party, it advocated a compromise with the religious public,[8] which still represented only a small segment of society. An interest in changing this policy occurred after 1977, when religious parties joined the Likud Party (Likud) as its political allies. The Likud replaced the Labour Party in government in 1977 and through their deepened cooperation with their mainstay, religious parties, they began to promote religious interests, increasing their influence in and on the public sphere. They advocated the introduction of religious laws, which imposed restrictions on citizens in wider society,[9] and in 21st century endangered secular legacy. They also allocated more and more funds for

6 Luke Howson, *The Role of Ultra-Orthodox Political Parties in Israeli Democracy* (Liverpool: University of Liverpool, 2014), 49–50.

7 Ibid., 50.

8 Daphne Barak-Erez, „Law and Religion Under the Status Quo Model: Between Past Compromises and Constant Change", *Cardozo Law Review* 30/6 (2009), 2498.

9 One of these restrictions was the Festival of Matzot (Ban of Leaven) during Passover, when merchants were forbidden to display leaven in public, because, according to the legend, the Jews ate unleavened bread during their escape from Egypt.

religious schools and institutions.[10] The subsequent policy of ultra-right parties and the manifestation of racist tendencies among the leaders of certain parties was largely due to the disruption of the policy of maintaining the status quo.

After the defeat of coalition of Arab states in the war of 1948 and the failure to establish an independent Palestinian state, mass deportations of Arab refugees from the newly founded Israel followed. The revival of Palestinian identity began with the creation of the Palestine Liberation Organization (PLO) in 1964 and the establishment of El-Fatah as a political-military organisation under the leadership of Yasser Arafat in 1965. In an atmosphere of tension between the two nations, the PLO issued the National Charter (1964), which declared that the establishment of Israel was illegal–and should be null and void–and that the Jews had no right to establish a state in Palestine. The existing tensions were followed by conflict between communists and pan-Arabists, and it was in such an atmosphere that the El-Ard organisation was born. This organisation emphasised "finding a just solution to the Palestinian problem" as its primary goal. Their just solution was–and is–reflected in the return of political rights to the Arab Palestinian people, which would enable them to determine their destiny within an Arab nation. El-Ard is a political movement that is known in the world for its connections with terrorists but the parliamentary aspirations of its members, who are also active in political parties, has led to it being a subject of our interest.[11]

At the beginning of the 1960s, the executive and judicial power of Israel influenced the Arabs' political reality. Using a range of legal means, the authorities blocked most political activity that seemed threatening to them. Palestinians organised through the El-Ard organisation in response to the government's approach, making them fight outside institutions. Civil disobedience and public protests were just some of the forms of struggle available to them. Although the legal framework for the movement's activities was narrow, El-Ard officially chose the tactics of legal struggle, which brought them to the Supreme Court six times between 1960 and 1965.[12]

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10 Barak-Erez, „Law and Religion", 2499–2501.

11 Ron Harris, „State Identity, Territorial Integrity and Party Banning: The Case of a Pan-Arab Political Party in Israel", *SSRN* (2016), 10–11, accessed on 5. 3. 2024, DOI: http://dx.doi.org/10.2139/ssrn.2871318

12 Ibid., 15.

Both sides–the Jewish ultra-right and pan-Arabists–tried to solve the decades-long conflict in a violent manner. Furthermore, racism, armed attacks, hatred and threats only increased mistrust and tension. Threats for the state were aiming for the change of the government in Israel. Sometimes, in later period, those threats were not necessarily calling on violence but on a binational state with a shared government. Therefore, the state was forced to treat both sides in a similar way, because their acts were often similar and led to a high degree of violence against all other citizens. One of the effective ways was to ban such destructive, undemocratic parties.

The banning of political parties in Israel is a complex process for several reasons. The regulations by which the state governs these issues are not systematised but are acts of different legal forces, the implementation of which is complicated. In addition, authorities with different competences have certain powers to limit the political freedom of parties. The multi-decade judicial practice of limiting political freedoms in the country shows several different approaches of the competent authorities, which contributes further to legal uncertainty.

The legal framework for banning political parties in Israel

While Israel does not have a formal constitution as a codified written act of law, it has certain rules and regulations that enable us to refer to it as an advanced and liberal democratic nation.[13] Israel's democratic structures outline several modalities of denying the right of political parties that undermine democracy in the country and encourage (or support) violence in the country. The mechanism of banning parties was implemented shortly after the establishment of the state. The first structure of sanctioning a political party that advocated terrorism was related to the war in 1948–the Regulation on the Prevention of Terrorism.[14] According to this decree, authorities have the

[13] Amnon Rubinstein, „Israel's Partial Constitution: The Basic Laws", *Jewish Virtual Library Publications* (2009), 1, accessed on 7.3.2024, https://www.jewishvirtuallibrary.org/jsource/isdf/text/Rubinstein.pdf

[14] There is no legal or scientific consensus on the definition of terrorism. State of Israel approach to terrorism and defining of the terrorism changed over time since the foundation of the state in 1948. Isak Kfir, „Israel's approach to counter-terrorism", *Handbook of Terrorism and Counter Terrorism Post 9/11*, edited by David Martin Jones, Paul Schulte, Carl

power to penalise for verbal ("words of praise, sympathy or encouragement") or written incitement to violent acts. The Regulation on the Prevention of Terrorism defines a terrorist organisation as a "body of persons" that resorts to violent activities in order to cause death, injury or threaten other persons.[15]

According to the Regulation, a member of a terrorist organisation is a person who belongs to such an organisation and participates in its activities, i.e. a person who advocates on behalf that organisation and/or collects money and/or other goods for its benefit. Sanctions for persons participating in the work of these organisations are imposed according to the person's importance and role in the organisation.[16]

Sanctions imposed on or towards a terrorist organisation often completely neutralises such an organisation. First of all, all their property, regardless of when it was acquired, is confiscated. Designated government officials have the power to close down any place that serves a terrorist organisation or its members. Defendants, meanwhile, can appeal to the District Court within 15 days from the day of learning about the decision. In order for the aforementioned measures to be applied, it must be proven that at least one member of the organisation–on its behalf or at its behest–committed violence intended to cause death, injury or make threats, if it is determined that the organisation itself shared those aims.[17]

The decree stipulates that, therefore, each organisation (political party) that has been prescribed as such has been declared a terrorist organisation by the government of Israel. If the government declares a certain organisation a terrorist body through a notification in the official gazette, that announcement will serve as indisputable evidence in any other legal proceedings (unless proven otherwise). If a legally binding judgment establishes that the organisation is a terrorist organisation, the judgement will be considered in any other legal procedure as indisputable evidence (prima facie) of the terrorist nature of the organisation.[18]

Ungerer, and M. L.R. Smith (Cheltenham, UK/Northampton, MA: Edward Elgar Publishing, 2019), 228–238.

15 *State of Israel Official Gazette*, No. 24 of the 25th Elul, 5708 (29th September, 1948), Sections 1–3.

16 Ibid., 1–3.

17 Ibid., 5–7.

18 Ibid., 8–11.

The most important state issues in Israel are regulated by the Basic Law,[19] including the mechanism of banning political parties, as regulated by Article 7a of the 1958 Basic Law. According to this article, a party cannot participate in Knesset elections (nor can individual candidates associated to the party) if their goals or actions imply, explicitly or implicitly, one (or more) of the following activities: 1) denying the existence of the State of Israel as a Jewish and democratic state; 2) inciting racism; and 3) providing support to the armed struggle of an enemy state or terrorist organisation against the State of Israel. A candidate who has illegally resided in an enemy state in the seven years prior to the date of submission of the list of candidates is also considered a person whose actions express support for armed struggle against Israel until proven otherwise.[20] This Article foresees that the decision to ban the participation of a party in parliamentary elections will be made in the first instance by the Central Elections Committee (CEC) and that the decision of the CEC, in the event of an appeal, must be confirmed by the Supreme Court.[21]

The broad scope of this Article has been corrected by the interpretation of the competent authorities. The character of Amendment 7a is not to punish but to prevent the candidacy of terrorist organisations in elections. Although its wording is extensive, the Supreme Court interprets the law in a particularly narrow way.[22] The amendment was adopted in response to the

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19 „Which do not rank higher than ordinary laws, i.e. have some constitutional significance"; Gregory H. Fox, Georg Nolte, „Intolerant Democracies", *Harvard International Law Journal* 36/1 (1995), 34.

20 *Israel's Constitution of 1958 with Amendments through 2013*, 11, accessed 20. 3. 2024, https://www.constituteproject.org/constitution/Israel_2013.pdf?lang=en

21 *Amendment 7A*, accessed 30. 3. 2024, https://www.knesset.gov.il/laws/special/eng/basic2_eng.htm When the first amendment to Article 7 of the Basic Law from 1985 was passed in 2002, the mechanisms for banning a political party were expanded and this is how paragraph 3 of that article was formulated. Available at: Suzie Navot, „Fighting Terrorism in the Political Arena: The Banning of Political Parties", *Party Politics* 14/6 (2008), 750.

22 The Venice Commission considers the Supreme Court of Israel to be the cornerstone of the protection of democracy in the country. Interpreting Section 7A of the Basic Law, the Supreme Court took the position that Israeli democracy must be defended against undemocratic forces that try to exploit it. This amendment balances democratic freedoms of expression and pluralism while preserving Israel as a Jewish and democratic state. European Commission for Democracy through Law (Venice Commission), *Supreme Court of Israel*, 14.

Yeridor decision, along with the failed 1984 bans of political parties.[23] The court analysed the proposed amendment and concluded that the right to choose and the right to vote are two fundamental rights, but it also concluded that the amendment in question does not negatively affect the idea of equality, freedom of expression nor freedom of association.[24] As this regulation limits the exercise of basic political rights, the court ruled that the provisions of Article 7a would be applicable only in the most extreme circumstances. In order for the amendment to be implemented, it is necessary to prove that a party has actively acted towards the achievement of its goals and that its illegal activities or goals play a central role in its platform.[25]

The Law on Political Parties (1992) is also important when it comes to regulating the issue of banning political parties. This law foresees two further methods of banning political parties. Section 5 of the Law stipulates that the Registry of Parties will not register a party if its goals or actions, explicitly or implicitly, are aimed at: denying the existence of Israel as a Jewish state and a democratic state; inciting racism; supporting the armed struggle of an enemy state or terrorist organisation against Israel. The final reason for refusing to register a party is the conclusion that it will serve as a mask for illegal activities. Each decision of the Registry must also be confirmed by the Supreme Court. It is also explicitly noted that the section must be interpreted in accordance with Article 7a of the Basic Law.[26]

Apart from the provisions governing the Registry's refusal to register a political party, the last section of the Law on Political Parties, entitled "Dissolution of Political Parties", stipulates that a party can decide its own voluntary dissolution by a decision of at least two-thirds of the members of the main committee. Dissolution of a party can also be carried out by order of the court, at the request of the state prosecutor, the Registry of Parties or its creditor.[27]

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23 EA 3, 2/84 *Neiman v. Chairman of the Central Election Commission for the Eleventh Knesset*; *Avni v. Chairman of the Central Election Commission for the Eleventh Knesset*, IsrSC 39(2) 225.

24 EA 1/88 *Kach v. Central Election Committee for the Twelfth Knesset*, 1988, § 7, accessed on 15. 4. 2024, https://versa.cardozo.yu.edu/opinions/kach-v-central-election-committee-twelfth-knesset

25 Navot, „Fighting Terrorism", 749.

26 Sefer HaHukim, *The Parties Law, 5752–1992, Book of Laws 1395*, section 5.

27 Ibid., section 21.

The complexity of Israel's legal system has encouraged the competent authorities to find support for their decisions through various legal acts. The CEC found grounds for their decision to ban the right-wing ultra-nationalist religious party Kach, for example, in several different sources: First, in the Law on Associations (Company Law), which claims that associations cannot be registered if they deny the existence of the State of Israel, its democratic character or are a cover for illegal actions. Although Kach was created before this law entered into force, the Commission applied the regulation on the basis that the legislation was aimed at prohibiting the formation of any association that denies the democratic character of the state of Israel.[28] Secondly, the International Convention on the Elimination of All Forms of Racial Discrimination, which Israel signed in 1979, was also applied as a source of law, as the leader of Kach, Rabbi Kahane, constantly emphasised the religious differences between Arabs and Jews.[29]

The Ministry of the Interior has the power to "deny recognition to a particular group on the grounds that it denies the existence of the State of Israel." The Ministry's decision is subject to a review by the High Court of Justice (known by the acronym BAGATZ), which is comprised within the Supreme Court. BAGATZ evaluates whether the party in question has the right to exist in the legal system of Israel, using not only positive law but also "supra-constitutional principles."[30] The Criminal Code of Israel also contributed to the complexity of this issue. Article 145 of the law provides for circumstances under which a "prohibition of association" may occur.[31]

It is possible to ban a political party from being registered in the Register of Political Parties, deny it participation in elections, and also dissolve a political party in Israel. Without intending to argue about the terminology that indicates each specific type of ban, we consider that all the presented solutions are forms of a ban on political parties. Without that ability, a political party ceases to be–that is, it remains but a form of political organisation.

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28 Raphael Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984): Retrospect and Appraisal", *Law and Philosophy* 13/1 (1994), 64–65.

29 Ibid.

30 Amos N. Guiora, Kristine J. Ingle, „Militant or Bystander: How to Protect Democracy", *Brigham Young University Journal of Public Law* 33/31 (2019), 44.

31 Sefer HaHukim, *Penal Law 5737 (1977)*, Article 145.

In support of this claim, potential legal solutions (also outlined in the system) testify that parties that do not participate in elections should be removed from the register of parties by the competent authorities. For the sake of a simpler understanding of the problem, we have classified the ban on political parties in Israel into two groups: 1) a ban in its narrower sense; and 2) a ban in a broader sense. The prohibition of political parties in the narrower sense is regulated by the provisions of Article 21 of the Law on Political Parties, which has the same subtitle. The other two types of limiting the basic functions of political parties, which are achieved by banning entry into the register, will be labelled as a ban on political parties in a broader sense. On the other hand, in a narrower way,[32] the Basic Law (1958) stipulates that the CEC will not allow the participation of political party that pursues those precisely defined goals in elections. However, in the last part of the Law on Political Parties, an additional (practically third) modality is foreseen–the "pure" prohibition of parties, i.e. that the "dissolution of a party can be carried out by an order of the court, at the request of the state prosecutor, the Registry of Parties or the creditor to whom the party owes."

Such a solution has caused additional problems, primarily due to the variety of competent authorities that can deny the right of political parties to operate freely. On the one hand, the registration of a political party can be prohibited by the Registry of Political Parties, which is an administrative body under the Ministry of Justice. On the other hand, there is the CEC, a political body made up of representatives of parliamentary parties. The judges of the Supreme Court fear and persistently claim that decisions made by the CEC are wrong, because they are biased. It, therefore, considers the policy of the disputed party in relation to its own policy, which, in practice, has proven to be justified. Therefore, the freedom of political organisations to become political parties in Israel is reliant on each of the administrative, political and judicial-administrative authorities of the country. The role of the court, indeed, is not always the same. When banning political parties in the narrower sense, the court will ban the party at the request of precisely specified applicants; however, when banning a political party in the broader sense, the court's role comes through a second-instance decision.

[32] Notwithstanding the covert conduct of illegal activities under the name of a political party.

The legal framework for banning political parties in Israel is very complex. Israeli theory and practice also face a dilemma when "choosing" the legal basis on which to limit the rights of political associations. In proceedings against the Yemin Israel party, the Supreme Court judges noted, among other things, that the differences between the two regulations (the Political Parties Act and the Basic Law of 1958) were "so thin that human beings are unable to understand them", according to one of the judges.[33] From the similarity of the language used in the regulations, it appears that the Knesset wanted to make the same legislative arrangement in the Parties Law (Section 5) as exists in the Basic Law (Section 7a).[34]

Cases of banning political parties in Israel

The process of banning of political parties in Israel can be understood across three different phases. The first phase, from the creation of the state to the 1980s, was characterised by the absence of an elaborated legal basis for banning political parties. Hence, the competent authorities were forced to justify their decisions by applying natural law and to put the preservation of the state above the rule of law. The second phase lasted between 1985 and 1992, when, for the first time, a regulation was passed allowing the disqualification of a party based on the content of its platform and its political views. With the adoption of the Law on Parties (1992), we witness the final phase, which is in force today. At this stage, there is a noticeable trend of facilitating the disqualification of parties. Since 2002, it has been possible to ban a party in Israel for supporting or encouraging terrorism or armed struggle against the state.[35] The fact that no political party has been banned under that provision allows us to count Israel as a modern democracy,[36] as it uses this tool in accordance with the situation in which the state finds itself.

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33 The main difference is that the Law on Parties provides for a special basis for the disqualification of a party. These are parties that serve as a front for illegal actions.

34 Raphael Cohen-Almagor, „Disqualification of political parties in Israel: 1988–1996", *The Emory International Law Review* 11/1 (1997), 101–102.

35 Navot, „Fighting Terrorism", 756–757.

36 Israel is considered as the modern democracy, still in recent years the independence of the judiciary was weakened that led to the broader debate about the status of the Israel as democratic society, as well as treatment of the parts of population treated by the state.

The hypothesis that Israeli system is more tolerant than before is supported by the unsuccessful attempts to ban the Balad party. Although the Supreme Court had legal options available to disqualify this Arab party that had links to terrorism on several occasions (2003, 2009 and 2019), it did not do so. One of the constant problems in Israel has been the distinction between– i.e. the separation of–legitimate and illegitimate (anti-democratic) parties.[37]

With religious, religious-Zionist and right-wing parties on one side, and pro-Arab secessionists on the other, Israel's democracy has strived for decades to enable all citizens to live peacefully. This process was jeopardized after the Oslo Accord by failure of the Two state solution. Such political circumstance has created a rich tradition of limiting (and attempting to limit) political freedoms in the country. The abundance of examples of (un)successful bans of political parties has forced us, for the purposes of this paper, to focus on cases that indicate some peculiarities and to understand the development of the system of banning political parties in Israel. The analysis is focused on the first ban of the List of Socialists, through cases against the Progressive List for Peace and (the ban of) Kach, concluding with decades of attempts to ban the Balad party. The Israeli Supreme Court has overturned and confirmed decisions of the CEC for decades, which, like all political bodies, often makes its decisions in accordance with the political reality of the day.

The case of banning the List of Socialists (the Yeridor case)

The issue of preventing the List of Socialists from participating in elections in Israel was first raised before the 1965 elections, when the case was presented to the CEC (the case is known in jurisprudence as *Yeridor*). The ban occurred because members of the El-Ard movement were on the list of candidates for the parliamentary elections. The CEC, therefore, banned the List of Socialists from participating in the elections.[38] The List of Socialists' appeal against the decision of the Commission was rejected by the Supreme Court. When making their decision, the court considered the CEC's authority

https://v-dem.net/weekly_graph/democracy-in-decline-in-israel, Dahlia Scheindlin, „Netanyahu's Government Is Rekindling Its War on Democracy and Dissent in Israel", *Haaretz*, 20 November 2024.

37 Navot, „Fighting Terrorism", 757.

38 Ibid., 747.

to prevent a political party from participating in elections to the Knesset. There was no explicit legal authorisation for such a procedure by the Commission. Therefore, the analysis of the judges of the Supreme Court in this case provides a valuable contribution to the theoretical question of the need for the highest state authorities to protect democracy in situations where legal solutions make it impossible for institutions to defend themselves.[39]

The CEC distinguished between parties that aims to act against the state–that is, to threaten its territorial integrity–and parties that are part of the political being of the state but want to change the regime. In their opinion, the List of Socialists was a new version of El-Ard because the political platforms of both organisations were identical and both completely denied the existence of Israel. The Commission expressed the belief that democratic procedures should not be allowed to be used to undermine a democratic regime, and anti-state parties should have no place in the Knesset.[40]

Israel's legal system faced a dilemma regarding the jurisdiction of the Commission, however. The CEC certainly had the right to deny the List participation in the elections if there were any technical deficiencies. However, it was not competent to evaluate the party's policy and, on that basis, allow or deny it participation in the elections. The representatives of the List of Socialists submitted an appeal to the Supreme Court with such an explanation, which decided by a two-thirds majority to support the CEC's decision. The main point of dispute between the judges was the grounds on which the Commission can ban a party from participating in elections if the parties' technical documentation is correct.[41] Theory dictates, therefore, that this decision was among the most important in Israeli legal history and that it has become a symbol of the idea of defending democracy. Aware that its judgment was contrary to the law and therefore deviating from the rule of law, the Supreme Court justified its decision by openly referring to "natural" law and "supra-constitutional" principles.[42]

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39 Dan Gordon, „Limits on Extremist Political Parties: A Comparison of Israeli Jurisprudence with that of the United States and West Germany", *Hastings International and Comparative Law Review* 10/2 (1987), 350.

40 Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 51.

41 Gordon, „Limits on Extremist Political Parties", 347–348.

42 Navot, „Fighting Terrorism in the Political Arena: The Banning of Political Parties", 748.

Supreme Court judge Shimon Agranat justified the action of the Commission and then verified the Supreme Court's decision. Judge Agranat referred to the fact that, when exercising their powers, the competent administrative and judicial authorities should always bear in mind the vision of Israel as a Jewish state. If a group categorically denies such an existence of Israel and if the Supreme Court of that country declared it a threat, then the Commission "has the power" to ban it.[43] Referencing earlier decisions of the Supreme Court, the judge pointed out that "no free regime will support and recognise a movement that undermines the regime itself."[44] In his explanation, Agranat did not want to "balance" between the issue of state survival and political freedom. The existence of the nation of Israel was established as a constitutional principle that cannot be measured against (or undermined by) any other objective. He also added that electoral law should be interpreted in light of these principles and that the powers of the CEC can be expanded based on them. By expanding its powers, it was able to refuse the electoral registration of subversive political parties. Such parties do not have a "licence of legitimacy" and it was not necessary to prove that the danger that they pose was present or probable.[45]

Judge Yoel Sussman agreed with Judge Agranat. He insisted that unwritten, supra-constitutional 'natural' law took precedent for the protection of the state. He claimed that judges should apply such norms even if they are not explicitly outlined in electoral law, referring to the constitutional practice of the Federal Republic of Germany and the well-founded concept of militant democracy. Without trying to hide the factual and legal situation, he reasoned, "Just as a person does not have to agree to be killed, neither does the state have to agree to be destroyed and erased from the map."[46]

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43 Formally, the Commission does not have the 'power' to ban a party by analysing its politics. The competence of the Commission in terms of enabling political parties to participate in elections is limited to regulating the correctness of the electoral process, that is, issues such as signatures on lists, candidates' fulfilment of requirements, etc.; Claude Klein, „The Defence of the State and the Democratic Regime in the Supreme Court", *The Israel Law Review* 20/2–3 (1985), 398.

44 EA 2/84 *Neiman v. Chairman*, 13; Gordon, „Limits on Extremist Political Parties", 351–352.

45 Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 52–53.

46 EA 2/84 *Neiman v. Chairman*, 13; Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 53–54.

Judge Haim Cohn advocated legal positivism. He stated that the electoral law did not allow the Commission or the courts to deprive anyone of the right to be elected based on the candidate's affiliation with an illegal or subversive organisation. All parties that meet the technical requirements have the right to participate in the elections, and the Commission and the court cannot, based on natural law, prohibit a party from participating in elections.[47]

Regardless of the fact that the judges expressed different views, the court did not refer to the fact that the candidates of the List of Socialists were not guilty of any illegal or violent acts. Their only guilt was that they were members of the illegal organisation, El-Ard. The court, therefore, did not dispute the fact that the only criterion for disqualifying the party from standing for election was its platform.[48]

The unstable political conditions of a young democracy in danger required a decisive reaction from the authorities, because such circumstances often leave no opportunity to correct a mistake. In order to assess how realistic the goals of the List of Socialists were, we have to look at them exclusively in a historical context.

At the time of the *Yeridor* case, Israel was at war with its Arab neighbours. The outcome of the war(s) was uncertain and the fear of terrorism by Arab extremists persisted for decades even after the case was resolved. Despite the 'illegal' ban on the List of Socialists, we see three different positions in the reasoning of the Supreme Court. The judges expressed different approaches in their explanations but, from a legal point of view, they did not fundamentally differ. All judges of the Supreme Court confirmed in their own way that there was no right to legally prevent the List of Socialists from participating in elections. However, some judges actually emphasised the (vital) need to do so. For this reason, Agranat referred to a metaphysical category–natural law–as 'legal fiction' in the service of current needs. With the different explanations of the judges in the *Yeridor* decision, the Supreme Court proved it was not unanimous even in the most difficult of times. The judges, however, showed a high degree of professionalism and approached the problem according to their theoretical jurisprudential beliefs.

47 Gordon, „Limits on Extremist Political Parties", 352.

48 Ibid., 352–353.

Proceedings against Kah and the Progressive List for Peace 1984–1994.

Section 7a of the Basic Law was passed by the Knesset in August 1985 in response to a 1984 Israeli Supreme Court decision allowing two political parties to participate in the Knesset elections.[49] The right-wing ultra-nationalist religious organisation known as Kach, led by Rabbi Meir Kahane was the first of the two parties that the CEC tried to ban from elections.[50] The second was the Arab, left-wing party, the Progressive List for Peace (PLP). Both parties filed appeals against the bans on their participation in the elections, after which a five-member panel of judges of the Supreme Court of Israel decided[51] to overturn the decision of the Committee and allow them both to participate in the elections. This decision is known as the *Neiman* case.[52]

The CEC initially refused to allow Kach to participate in the elections because, according to it, the party "promotes racist and anti-democratic principles that contradict the Declaration of Independence of the State of Israel." It was accused of openly supporting terrorism, trying to inflame hatred and enmity between different parts of the population of Israel, intending to continue to violate the religious feelings and established values of citizens of the state, and denying the foundation of the democratic regime in Israel.

Meanwhile, the Commission claimed the PLM's policy did not differ from the policy of the El-Ard organisation, which was disqualified in 1965. The Commission stated that "there are indeed subversive elements and tendencies in this party and the leaders of the party identify themselves as enemies of the state."[53]

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49 Fox, Nolte, „Intolerant Democracies", 34.

50 Rabbi Kahane was an aggressive and colorful personality. Some of his recorded statements reflect the politics of this party. Among other things, in 1984 Kahane declared: „I am ready to blow up the mosques of the Holy Temple." From intercepted letters, which the rabbi sent back in 1973, we can conclude that his threats were serious. He ordered his men in the US to kill a Russian diplomat and blow up the Iraqi embassy. In the same letter, putting pressure on associates to find a perpetrator, he wrote: „If we can't find some Jews willing to [commit these acts]... then we are Jewish pigs and deserve what we get."; Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 64.

51 EA 2/84 *Neiman v. Chairman.*

52 Gordon, „Limits on Extremist Political Parties", 347.

53 EA 2/84 *Neiman v. Chairman*, 1; Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 63–64.

In between the *Yeridor* and *Neiman* cases, the *Negbi* case (1981) also influenced the subsequent practices of the Supreme Court. In 1981, some members of the CEC opposed the right of Rabbi Meir Kahane's Kach party to participate in the elections to the Knesset once more. This time, the reason for their opposition was the party's neo-Nazi policy and advocacy of laws akin to the Nuremberg Laws, but this time in favour of Jews. The intention was to establish 'Aryan laws' but, instead of Aryans, the 'superior' race would be Jews, while Arabs would take the place of the once subordinate Jews. Kach also advocated the introduction of discriminatory legislation, the expulsion of Arabs, the prohibition of sexual relations between Jews and non-Jews, etc. Most members of the Commission, however, did not see these as reasons to ban Kach and allowed it to participate in the elections.[54]

As Kach's policies ran contrary to Israel's democratic regime, private citizen Moshe Negbi appealed to the Supreme Court seeking to annul the CEC's permission for Kach to participate in the elections. Negbi asked whether a party explicitly racist in its ideas could stand for election in a Jewish democratic state. His appeal was rejected on a technicality. One of the judges explained the rejection of the appeal by claiming that an appeal to ban a party retrospectively can only be filed if the Commission has incorrectly allowed a party to stand due to technical deficiencies. This decision, i.e. 'the establishment of the very asymmetry in electoral law', served as evidence for certain judges to draw conclusions in their further work. They concluded that the Commission had the right to examine only the form related to the candidacy and not to investigate or judge the essential reasons why a party could not participate in the elections. Otherwise, such an asymmetry could not be established because approving subversive lists is much more dangerous than banning their participation in elections.[55]

Twenty years after the *Yeridor* case, the Supreme Court's position on democracy and political conditions in Israel changed. In the *Neiman* case, the justices also took different views. They claimed that the case of *Yeridor* was unique and that the ban on the List of Socialists was justified because its desire to participate in the elections was solely to devote itself to the destruction of

54 Ibid., 43–45.

55 Gordon, „Limits on Extremist Political Parties", 355–356; Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 45.

the State of Israel. The attempt to prevent political parties from participating in the 1984 elections opened several questions. If parties can be banned from participating in elections, the question arises as to whether a distinction should be made between 'disloyal' parties, which could be banned, and non-democratic ones, which should be allowed to participate in elections. It is also fair to ask whether a party's (disloyal) programme is sufficient reason to be banned from standing for election or whether the probability that its policy will be implemented should be taken into account. The final theoretical question posed at the time was "Should any government agency be allowed to ban a party without the express authority of the legislature?"[56]

Responding to the appeals, the judges took three different positions once more. The first position was that political parties could indeed be banned if a specific goal of their platform was to destroy the state of Israel. The second position referred to the protection of the rights of political parties, whereby the Court had a duty to narrowly interpret the restrictions on the freedom of political expression. The third position was represented by only one judge, Barak, who supported the restriction of anti-democratic parties but insisted that the limit for the application of this instrument must be based on the standard of "reasonable possibility"–meaning it should only be possible to limit the actions of political parties when there is a credible opportunity to achieve those political goals. This position actually emphasised the protection of the freedom of political expression.[57]

A Supreme Court panel agreed that there was no evidence that the PLP denied the existence of the State of Israel. Certain judges took the position that neither in the *Yeridor* case nor in this case were there any legal grounds for such action by the Commission, especially since no danger was either imminent nor certain.[58] The political platform of the PLP, was no different from a few other parliamentary parties that had never been accused of endangering the security of the state. Apart from the politics of the Haolam Haze and Shely parties, the politics of the PLP did not differ much from the politics of Hadash (the Israeli Communist Party). Both parties (PLP and Hadash) called on Israeli forces to withdraw from the occupied territories, including East Jerusalem. They also

56 Gordon, „Limits on Extremist Political Parties", 347–348.

57 Ibid., 362–364.

58 Ibid., 353–355.

supported the idea of establishing a Palestinian state in these territories. They advocated the achievement of all goals by conducting negotiations between the Israeli government and the Palestine Liberation Organisation (PLO). Although there was no real evidence to ban participation in the elections, the Commission voted 17 to 12 to ban the party.[59]

There was a thorough discussion about Kach, too. Among others, Judge Aaron Barak (Aharon Barak) argued that although the Kach programme displayed an anti-democratic character, the mere existence of the programme was not enough to de facto ban the party. The fact that this party "seriously intends to defend its position" and that the actions of the party's leader represented a "danger to the security of the state" were not sufficient grounds to legally prohibit it from participating in the elections, either. It was necessary for the party to have a "reasonable possibility" to actually realise its platform. Therefore, it was not important whether it was serious about fulfilling its intentions, but rather whether there was a real possibility to realise its intentions.[60]

According to Barak's position, the process of banning a political party from participating in elections is a two-stage process. In the first step, the party's policy must be checked, i.e. a programmatic negation of the right of the state to exist or its democratic character must be evident. This first criterion is followed by a second; the existence of a "reasonable possibility" for the party to implement its programme. The starting point was explained through so-called interpretive standards–the law is not only a direct legal text, but it also includes basic principles; It is an umbrella that extends over the entire field of legislative acts. The disadvantage of this standard is that it is based on the assessment of the probability of the occurrence of future events, so that "the legal decision is based on some kind of prophecy."[61]

The Supreme Court was unanimous in its decision to allow the two parties to participate in the elections. Judge Miriam Ben-Porat, relying on earlier decisions, opted for a formalistic explanation. The judge concluded that the CEC had the authority only to examine the technical deficiencies of the list and not to analyse how dangerous the party is. Relying on the decision in

59 Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 68.

60 Gordon, „Limits on Extremist Political Parties", 359–360.

61 Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 76–79.

the *Negbi* case, she concluded that, if the legislator's intention was to assign the CEC the role of ajudicator on the platform and objectives of political parties, then the legislator must also have a kind of judicial body designated to review decisions related to the validation of electoral lists. In her reasoning, she reflected on the earlier question of what happens if a subversive party is (by mistake) confirmed.[62] Therefore, no parallel could be drawn between the precedents in the *Yeridor* case and this case.[63]

The case with the PLP was somewhat more complicated than Kach but it did not give Judge Shamgar a dilemma either. While five out of ten party members in the case of *Yeridor* were at one time members of the El-Ard organisation, in the case of the PLP only one of the 120 candidates was a former member of that group. The leader of the party stated unequivocally that his party was not the successor of El-Ard. The evidence incriminating the party stemmed from old military reports about the party's hostile intentions, and did not clearly demonstrate subversive tendencies.[64] In a part of his explanation, Shamgar recollected that, in such cases, a logical connection must always be established between the degree of danger and the reaction to it. Shamgar expressed concern about solving this problem by passing special laws because this could lead to further restrictions, and laws can also become outdated and become a burden at any given moment. Therefore, the problem must be solved by an "open exchange of ideas."[65]

The Supreme Court made its decision by relying on the interpretation of the decision in the *Yeridor* case, according to which the CEC could only disqualify a party that disputed the existence of the State of Israel. Regardless of the fact that Kach threatened the democratic nature of the state and advocated racism, the CEC could not disqualify it for these reasons. The alleged subversiveness of the PLP was evidenced only by old and circumstantial evidence, gathered long before the issue of banning the party was raised. While the court overturned the decision in the Kach case due to the lack of jurisdiction of the CEC, the decision related to the PLP was overturned due to lack of evidence.[66]

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62 Klein, „The Defence of the State", 398, 400–402; Cohen-Almagor, „Disqualification of Lists in Israel (1948–1984)", 72–74.

63 Ibid., 72.

64 Ibid., 73.

65 Ibid., 74.

66 Klein, „The Defence of the State", 404.

When Kach won its parliamentary mandate in the Knesset in 1984, it led to the implementation of Amendment 7a to the Basic Law from 1958. The amendment prompted a number of initiatives to 'disqualify' parties for the 1988 elections. Again, the CEC held a discussion about the same two parties– the PLP and Kach. Because of their aggressive and undemocratic actions in the Knesset, many parties were hostile towards Kach. This time, the CEC debate was significantly different from its earlier ones. Representatives of just two religious factions, Mafdal and Morash, remained loyal to Kahane. Other right-wing parties, including Likud, joined the proponents who either demanded the disqualification of the party or, as a last resort, abstained from voting.[67]

The same accusations from 1984 were repeated against the PLP. It was accused of negating the right to exist of the State of Israel and its leader Muhammad Mairi, it was claimed, often attended PLO conferences. The argument used to ban the party was the need to prevent Israel's external enemies from using democracy to destroy the state. The proponents concluded that the preservation of Israel as the state of the Jewish people was above the right of subversive parties to participate in the elections. The PLP rejected such claims, proving to the CEC that the party was not against the existence of Israel, but that it advocated the idea of Israel being a state of two peoples, Jews and Palestinians.[68] The CEC disqualified Kach for advocating racist policies and spreading undemocratic principles, as affirmed in Israel's Declaration of Independence. The party did not stop advocating hatred between Jews and Arabs, however; on the contrary, it constantly supported every form of discrimination against Arabs.[69]

The commission faced a dilemma on what basis it could ban Kach. The Chairman of the Commission, Judge Goldberg, believed that Kach could be disqualified as a party that encouraged racism, rather than as one that negated the democratic character of the state. The basis for this was that the procedure needed to prove a high degree of probability that the party in question could lead to the destruction of democracy. In any case, the disqualifi-

67 Ami Pedahzur, *The Israeli Response to Jewish Extremism and Violence: Defending Democracy* (Manchester: Manchester University Press, 2002), 51.

68 Cohen-Almagor, „Disqualification of political parties in Israel: 1988–1996", 71.

69 Ibid., 73.

cation of Kach on both grounds was voted by a large majority. Kach was banned from participating in the elections because it denied the democratic character of the state and because of racism.[70] The CEC was divided over the ban of the PLP. Party representatives in the Commission voted according to the political agendas (right and left) to which they belonged. Given that 19 members of the body voted for the ban, and 19 against, the vote of the CEC president, Judge Goldberg, was decisive. The President voted to allow the PLP to participate in the elections.[71]

The Likud party, which initiated the ban on the PLP, took advantage of the amendment to Article 64 of the Electoral Law, which provided that an appeal could be sent to the Supreme Court even if the Commission confirmed the challenged party's candidacy. Acting on appeal, in a ratio of three to two, the court found that no 'red line' had been crossed and that there was no need to disqualify the Arab party. The court's argument was that the party did not advocate any violence. On the other hand, if the platform of the PLP could be grounds for disqualification, then all religious parties in the Knesset should be disqualified, because they aimed to utilise democracy to turn Israel into a theocracy.[72]

The Supreme Court's unanimous rejection of Kach's appeal raised some important questions. It was clear that a mistake was made in allowing Kach to stand earlier and that Kach entering the Knesset was a "luxury" afforded to it. After that, Kahane's discriminatory ideas became more widespread. Attempts by the Israeli system to reduce their influence proved unsuccessful. In response to the above, Section 7a was implemented into the legal system (in the Basic Law from 1958). The Intifada (rebellion of the Palestinians) in December 1987 strengthened Kach, which resulted in an increase in hostility between Arabs and Jews and the weakening of democracy as a whole.[73]

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70 Ibid., 74–75.

71 For decades, the Supreme Court insisted that the CEC, as a political body, should not decide on the eligibility of political parties to participate in elections. Regardless of the possibility of an appeal to the Supreme Court, this body considered that a procedure in which prosecutors were also judges should be avoided. On the contrary, decisions in such important issues should be made by a special panel of the Supreme Court or a special committee should be formed; Cohen-Almagor, "Disqualification of political parties in Israel: 1988–1996", 79.

72 Ibid., 72–73.

73 Ibid., 76–77.

After the CEC's decision, Kach appealed to the Supreme Court, but the court confirmed the CEC had the authority to ban Kach from participating in the elections. Judge Shamgar stated that Amendment 7a of the Basic Law contributed to the "immunisation" of democracy in Israel. He added that the amendment was not of a technical nature and would inevitably be implemented under certain factual circumstances, without an essential analysis. The judge concluded that this interpretative approach did not contradict the decision, however. The goal of the provision was not to reduce the achieved level of political rights and freedoms, but to protect them from real danger.[74]

The assassination of Kahane in New York in 1990 divided his supporters into two political parties – Kach and Kahane Lives. Both parties had a similar political platform, which is why their fate in 1992 was similar. The parties' rhetoric pointed to terrorist tendencies, although, from experience, they tried to put up democratic facade. The leader of the Kahane party, Benjamin Zeev, threatened that the elections would not be held if his party was disqualified. One of the brochures of his party also called for the bombing of the Arab city of Umm al-Fam in order to "wipe it off the face of the earth." The statements of the leaders and their brochures indicated the violent, racist politics of this party, while also calling for genocide.[75]

Many sources testify to the destructive intentions and activities of Kach. For years, the party's activists attacked Arabs, called for the liquidation of Palestinians, entered closed areas and attacked the police. During the change of party leadership due to the assassination of Kahane, the new leadership stated that their goals remained the same, and that the party would wait for a change in circumstances to fulfil them. The damage that would be caused by the disqualification of such parties from elections would be significantly less than the damage that could be caused if they were allowed to participate. The CEC was not convinced by the fact that Kahane Lives was a new party as, visible even through the claims of its leaders, it had not even managed to compromise. The party was banned from the elections and, at the same time, was also banned outright.[76]

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74 Pedahzur, *The Israeli Response*, 52.

75 Cohen-Almagor, „Disqualification of political parties in Israel: 1988–1996", 84.

76 Ibid., 85–86.

The Supreme Court of Israel rejected the appeals of the two parties, as there was too much evidence of the continuity of Kach activities between 1988 and 1992. Statements made in the party newspaper were proof that the new leaders followed Kahane's policies after his death. The Court concluded that the movement only tried to camouflage its activities, and that the CEC was right when it decided to disqualify Kach. In the court's decision regarding Kahane Lives, the court found that it continued the politics of Kahane and that, despite hiding behind religious principles, its ideology was racist and undemocratic, which is why it was determined that there were grounds for disqualification.[77]

The political history of Israel became even more turbulent after these events. The signing of the Oslo Peace Accords between Israel and the PLO did not sit well with the right-wing, which constantly tried to disrupt the peace. It succeeded in this intention when Baruch Goldshein, one of the leaders of Kach, attacked worshipers in a mosque inside the Cave of Machpellah (or the Cave of the Patriarchs). He killed 29 Palestinians, while wounding more than a hundred. After this attack, the Government decided to ban Kach and Kahane Lives on the 13th of March, 1994.[78] The legal source for the ban was found in clause 8 of the Prevention of Terrorism Ordinance (1948). The ban applied to both parties, their leaders, as well as to any other group of people who promoted Kahane's policy, regardless of the symbols they displayed and how they formally presented themselves.[79] The influence of the Kahane's policy increased in Israel in the 21st century as his ideological successors became part of the right-wing coalition in 2022.[80] The negative consequences of activities of the politicians that are admired of Meir Kahane for the contemporary Israel and the wider region are not topic of this research.

77 Ibid., 87–88.

78 Ibid., 89.

79 Israel Ministry of Foreign Affairs, *Cabinet Communique – March 13, 1994*

80 Strengthening of the extreme right wing parties was also facilitated by the leader of Likud, Benjamin Netanyahu, who advocated for the coalition of the far-right extremist parties. Ash Obel, „Can't take the risk: Netanyahu issues public call for union of far-right parties", *The Times of Israel*, 23 August 2022; Noa Shpigel, „Once Outliers, Now Indistinguishable: How Netanyahu Brought Kahanist Politics Into Israel's Mainstream", *Haartez,* 15 May 2025.

Attempts to disqualify the Balad party (2003–2019)

As the leader's actions and policies cannot be separated from the party's policy, the leader's actions are attributed to the entire organisation, which reaps the consequences of their actions and words. The Balad party also bore the brunt of its leader's actions, as its president, Dr. Azmi Bishara, was accused of supporting terrorist activities and denying the "Jewish character of the state." Bishara advocated that Israel should be a state for all its citizens, both Jews and Arabs. After he was elected to the Knesset for the first time in 1996, he made controversial statements about the conception of Israel as the Jewish homeland and travelled to 'enemy countries; several times, even publicly supporting Hezbollah in Syria,[81] praising its resistance against Israel. Terrorist attacks on Israelis caused insecurity, which had the effect of increasing (legal, political and social) pressure on the non-Jewish population, which had supported the violent uprising in Palestine.[82]

Amendment 7a to the Basic Law (made just before the 2003 parliamentary elections) introduced new possibilities into Israel's legal system. The competent authorities were now allowed to ban parties from participating in elections if they supported 'the armed struggle of an enemy state or terrorist organisation against Israel.' The CEC banned Balad from participating in the 2003 Knesset elections. In its explanation, it stated that Dr. Bishara denied the existence of the State of Israel as a Jewish and democratic state, and that he provided support to an enemy state and a terrorist organisation for its armed struggle against Israel.[83]

The Supreme Court annulled the decision of the Commission. While a few judges considered Bishara's support for Hezbollah as sufficient for banning the party and other judges claimed that the very appearance of the politician in enemy countries is a kind of support for terrorism, and that Ballad should be banned; the majority of judges (the voting ratio was seven to four against the ban) interpreted the aforementioned Amendment 7a in a way that

81 A proscribed terrorist organisation from the south of Lebanon.

82 European Commission for Democracy through Law (Venice Commission), *Supreme Court of Israel*, 13–14.

83 Pedahzur, *The Israeli Response*, 53; Navot, „Fighting Terrorism", 750.

verbal and symbolic support of terrorism, which Bishara was charged with, was not grounds enough. The implementation of such a drastic measure required active membership and, therefore, meetings with Hezbollah or members of a Palestinian terrorist group must be for the express purpose of organising or inciting an attack in order for there to be grounds for a ban.[84]

The Court took the position that the terms "Jewish state" and "democratic state", on which Bishara based part of his policy, should not be misinterpreted. "Jewish state" implies the right of every Jew to immigrate to Israel, the establishment of Hebrew as an official language, the central position of Jewish heritage in Israeli state culture. This does not mean that the Jewish character of the state contradicts the fact that all its citizens, Jews and non-Jews, have the right to equality.[85]

In its decision, the Court stated that it could not be proven that Dr. Bishara supported the armed struggle of terrorists. Although the legislator's intention was to allow the competent authorities to ban parties and the work of politicians associated with terrorism, the Court refused to deny the right to such a party. The court remained of the opinion that, while the political goals and ideology of a party could be the basis for a ban, its character must be dominant.[86] "Promoting terrorism" (i.e. the armed struggle of terrorists) as a term raises certain questions. The main problem is the definition of terrorism. Many definitions of terrorism are associated with violence. Terrorists use violence against governments or citizens in order to incite political or social change by creating fear. The court should disqualify only parties that encourage the violent activities of terrorists. A clear distinction was made between material support for terrorists, which is reflected in active participation in the fight, and political support for terrorists.[87]

The CEC tried several times to ban Balad and its leaders from participating in the elections after 2003. For example, in 2009 it disqualified the party for inciting terrorist groups and refusing to recognise Israel's right to exist. The Supreme Court lifted the ban and allowed the party to participate

84 Nancy Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton, NJ: Princeton University Press, 2008), 426.

85 European Commission for Democracy through Law (Venice Commission), *Supreme Court of Israel*, 14–15.

86 Navot, „Fighting Terrorism", 751.

87 Ibid., 752–753.

again. They also attempted to ban the party before the 2013 elections, when the Commission tried to disqualify one of the party's leaders, Mrs. Haneen Zoabi. The last attempt by the Commission to ban Balad from participating in the elections took place in 2019 but the Supreme Court annulled the CEC's decision to disqualify Balad for the fourth time, allowing it to participate in the elections once more.[88]

Concluding remarks on the banning of political parties in Israel

We have seen that the ban on political parties in Israel is a measure to preserve democracy with the aim of preventing the operation of non-democratic parties in the political system. The idea that the fight against terrorism does not fall under the concept of militant democracy is not valid in the case of this country. Palestinian supporters of 'terrorism'–that is, representatives of the Balad party–tend to use the methods of parliamentary struggle, so their attitude towards terrorism is not a sufficient reason for blocking them from participating in the system in today's Israel. However, this does not mean that the CEC will not continue to 'warn' them with first-instance bans to keep a close eye on their political involvement.

The reasons given for banning the List of Socialists and Kach allow us to classify Israel as a democracy that bans political parties according to the socio-political situation of the day. For the first two decades of its existence, the frequent wars with the Arabs required the attention of the entire Israeli public and the state's institutions. As such, the political circumstances of the time did not leave much room for legality. In the *Yeridor* case, the Supreme Court upheld the party's ban because its members had previously been active in an organisation linked to terrorists. The List of Socialists was then treated as a subversive party just because it seemed that it could engage in something subversive–however, it was not the List of Socialists' political programme that determined this, rather that part of its membership had an undesirable historical background. It was, therefore, blocked from participating in the electoral system as a precaution, and we saw, indeed, how the Supreme Court justified the lack of legal provisions in this case, putting its decision in the context of Israel's political position.

[88] Dana Blender, „Disqualification of Electoral Lists and Candidates by the Central Elections Committee", *The Israel Democracy Institute* (3 Mar 2021)

In the almost two decades following the *Yeridor* case, Kach openly advocated racism and racist policies. In 1984, the Supreme Court accepted the appeal of the leader of Kach and overturned the decision of the CEC to ban it. Only when it was noted that Kach's entry into parliament was a mistake did the legal system implement and utilise mechanisms to ban that very party, specifically to remove it from the 1988 Knesset elections.

Just as the unsuccessful attempt to ban Kach in 1984 initiated the adoption of Amendment 7a to the Basic Law (1958), so the actions of the Balad party led to amendment of that provision again in 2002. The Supreme Court applied Amendment 7a in relation to Kach, while the amendment to the provision 'intended' for the Balad party has never been implemented. The reason is obvious. After 2002, the country had enough strength and self-confidence to respond to the challenge of Balad's politics. In order to be able to carry out its policy publicly, the authorities treated Balad's contact with 'terrorists' from abroad as legitimate.

While Kahane mobilised the Jewish right-wing with his aggressive policy, Bishara and his followers, at the same time, promoted Arab nationalism with their activities. Both tendencies are dangerous to Israel, however Balad did not carry out its activities as openly as Kach. In theory, for the security of Israel, advocating racism, inciting Arab nationalism and political flirtation with terrorism–which Bishara was undoubtedly guilty of–are equally dangerous. Additional weight should be given to the fact that Balad has been a parliamentary party since the first elections in which it participated (1996) until today, and has a significant number of followers and a strong opportunity to spread its ideas. Despite all of the above, the Supreme Court has not banned the party.

The three cases we have analysed in this article demonstrate how Israel's democratic system reacts when it is threatened in the period from its foundation until the end the 2019. Regardless of existing legal norms, the competent executive and judicial authorities do not allow Israel's existence to be threatened. When political conditions become stable, the threshold of tolerance towards hostile (disloyal or undemocratic) parties increases. A stable political situation allows many political options to advocate their policies as long as they do not actually threaten the state.

Summary

The authors focused in the paper on the mechanism and cause for the banning of political parties in Israel from 1948 until 2019. The ability to restrict political freedoms in Israel is complicated and leaves the competent authorities with much room for action. Existing legislation foresees removing an unwanted political party practically at all levels, regardless of how established it is. If an oversight is made at the beginning of the political life of a non-democratic party and the competent authority registers it, the party may later be denied participation in elections or banned outright. The authors analyse the banning of both Jewish and Arab political parties from the 1960s until the 2010s. In the time of the prohibition of the List of Socialists, the institutions were alerted as the state was often in conflict with its neighbors. In the period after the Oslo Accord, the growth of the Jewish right-wing religious influence became a challenge from within the society for the democratic foundation of the state of Israel. During the period of stability of both political and security conditions, we could see higher tolerance to political parties that threaten the state with their policies.

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Резиме

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ЗАБРАНА ПОЛИТИЧКИХ ПАРТИЈА У ИЗРАЕЛУ 1948–2019

Апстракт: Овај рад анализира све правне норме које се односе на укидање политичких странака у Израелу до друге деценије 21. века, као и неколико најзначајнијих случајева покушаја укидања током историје ове државе. У време забране Листе социјалиста, институције су биле на опрезу, јер је држава често била у сукобу са својим суседима. У периоду након Споразума из Осла, раст утицаја јеврејске десничарске верске струје представљао је изазов изнутра за демократске темеље државе Израел. Када су политичке прилике у држави биле стабилне, праг толеранције према странкама чије су политике биле непријатељски настројене према држави и друштву се повећавао. Стабилна политичка ситуација омогућава многим политичким опцијама да заговарају своје политике уколико оне не представљају стварну претњу држави.

Кључне речи: Израел, Врховни суд, Централна изборна комисија, политичке партије

Аутори су се у раду фокусирали на механизам и узроке забране политичких странака у Израелу у периоду од 1948. до 2019. године. Комплексност могућности ограничавања политичких слобода у Израелу остављала је надлежним органима много простора за деловање. Постојеће законодавство предвиђало је уклањање нежељене политичке странке практично на свим нивоима, без обзира на то колико је она била институционално утемељена. И у околностима када странка начини пропуст, истој касније може бити ускраћено учешће на изборима или она може бити потпуно забрањена. Аутори анализирају забрану и јеврејских и арапских политичких странака од шездесетих до друге деценије 21. века. У време забране Листе социјалиста, институције су биле узбуњене јер

је држава често била у сукобу са својим суседима. У периоду након Споразума из Осла, раст јеврејског десничарског верског утицаја постао је унутрашњи изазов за демократске темеље државе Израел. Током периода стабилности и мањих политичких и безбедносних изазова, може се уочити и већи степен толеранције државних институција према политичким странкама чије политике представљају претњу држави Израел.