

Election Confirmation 11280/02

Election Confirmation 50/03  
Election Appeal 55/03  
Election Appeal 83/03  
Election Appeal 131/03

The Central Elections Committee for the Sixteenth Knesset

v.

MK Ahmed Tibi  
MK Azmi Bishara

Election Confirmation 11280/02  
Election Confirmation 50/03

MK Ophir Pines-Paz and 16 others

v.

1. Baruch Marzel  
2. Central Elections Committee for the Sixteenth Knesset  
3. The Attorney General

Election Appeal 55/03

The Attorney General

v.

1. Baruch Marzel  
2. Central Elections Committee for the Sixteenth Knesset  
3. The Israel Labor Party  
4. The Herut National Movement

Election Appeal 83/03

The National Democratic Assembly List

v.

Central Elections Committee for the Sixteenth Knesset

Election Appeal 131/03

### Judgment

[...]

### The General Normative Framework

1. The original [Basic Law: the Knesset](#) did not include a provision that prevents a party from participating in the elections on the basis of its platform or activities. In Elections Appeal 1/65, *Yardur v. the Chairman of the Central Elections Committee to the Sixth Knesset* (hereinafter: the *Yardur* case) the majority opinion held that despite the silence of the law and the Basic Law, the Central Elections Committee is authorized to disqualify a list of candidates that rejects the very existence of the state from participating in the elections. In Election Appeal 2/84 *Neiman v. the Central Elections Committee for the Eleventh Knesset* (hereinafter: the first *Neiman*), the majority opinion held that this rule should not be applied to preventing participation in the

elections of a racist list of candidates that denies the democratic character of Israel. In light of these rulings, the Basic Law: the Knesset was amended adding Article 7A which states as follows:

“A list of candidates shall not participate in the elections to the Knesset if its aims or actions, explicitly or implicitly, include one of the following:

- (1) Rejecting the existence of the State of Israel as the state of the Jewish people;
- (2) Denying the democratic character of the state;
- (3) Incitement to racism.”

[...]

### **“Denial of the Existence of the State of Israel as a Jewish State”**

11. There are many democratic states. Only one of them is a Jewish state. Indeed, the rationale for the existence of the State of Israel is that it is a Jewish state. This aspect is central to its existence and - in the words of Justice M. Cheshin before the Central Elections Committee – it is the “axiom” of the state. It must be viewed as “a fundamental principle of our law and our system” (the *Yassin*[v. *Parties Registrar*, LCA 2316/96], page 63). Denial of the State of Israel as a Jewish state disqualifies a list of candidates or an individual candidate from participating in the elections to the Knesset. There are many, varied, aspects to the essence of Israel as a Jewish state. Only the “core” or “minimal” characteristics are taken into account in regard to disqualification from participation in the elections. In the *Yassin* case, it was noted that “the threat to the Jewish or democratic character must be central and fundamental...it must harm the core that characterizes the state as Jewish or democratic. It must affect matters that are foremost in determining this character” (the *Yassin* case, page 66). In the *Ben Shalom*[v. *Central Elections Committee for the Twelfth Knesset*, EA 2/88] case, Justice S. Levin specified that the focus must be the “minimal definition” (Ibid, page 248).

12. What are, therefore, the “core” characteristics that shape the minimal definition of the State of Israel as a Jewish state? These characteristics have at one and the same time both Zionist and traditional features (see HCJ 6698/95 [Ka’adan v. the Israel Land Administration](#) (hereinafter: the Ka’adan [10] case. At their center is the right of every Jew to immigrate to the State of Israel, where the Jews will constitute the majority; Hebrew is the official, principal language of the state, and its holidays and symbols reflect the national revival of the Jewish people; Jewish heritage is a fundamental element of its religious and cultural heritage. A list of candidates or an individual candidate shall not participate in the elections if the negation or denial of these characteristics is a principal and dominant aspect of their aspirations and activities, if they act vigorously to realize these aspirations, and if it is possible to provide proof of this on the basis of compelling, explicit, and unequivocal evidence.

13. Is a list of candidates or an individual candidate whose principal goals include the objective of a State of Israel as “a state of all its citizens,” which rejects the existence of the State of Israel as a Jewish state precluded, therefore, from participating in the elections? This question must not be answered without understanding the phrase “a state of all its citizens.” If all that is demanded by this objective is equality among the citizens of Israel, then this aim does not present a threat to the existence of the state of Israel as a Jewish state. This question arose in LCA 2316/96 *Isaacson v. Registrar of Political Parties* concerning the contention that a party whose goals include the aspiration that Israel will be a “state of all its citizens” must not be registered, as this aim constitutes a denial of the existence of the State of Israel as a Jewish state (Article 5(1) of the Political Parties Law). This argument was rejected. Justice M. Cheshin ruled that it must not be held that someone who maintains that the State of Israel is a “state of all its citizens” inherently denies the existence of the state as a Jewish state. In the judgment it was stated that:

“The assertion that the State of Israel is a ‘state of all its citizens’ does not negate the existence of Israel as a Jewish state. And was a claim made that the State of Israel is not a state of all its citizens? Is it possible to argue that the State of Israel is a state of only some of its citizens? A fundamental principle of democracy is equality of all citizens (ibid, page 549).

In a similar vein, it was noted in another case that “we do not accept the concept that the values of the State of Israel as Jewish state justify ... discrimination by the state between citizens of the state ... the values of the State of Israel as a Jewish state do not in any way dictate discrimination by the state between its citizens. Jews and non-Jews are citizens with equal rights and duties in the State of Israel” (see the *Ka’adan* case, pp. 280-281). We noted in the same case that “the values of the State of Israel as a Jewish and democratic state do not dictate discrimination on the basis of religion or nationality, on the contrary, these values themselves prohibit discrimination and mandate equality between religions and nationalities” (ibid, page 281). I added that “the State of Israel is a Jewish state in which minorities live, including the Arab minority. Each member of the minorities living in Israel enjoys full equality of rights. True, a special key to enter the home is granted to members of the Jewish people (see the [Law of Return](#)), but when a person is in the home as a lawful citizen, he enjoys the same equal rights as all the other members of the household” (ibid, page 282). Thus, if the goal of Israel as a “state of all its citizens” is only to ensure equality between the citizens in the home, recognizing the rights of the minority living among us, it does not negate the existence of the State of Israel as a Jewish state. In contrast, if the goal of rendering Israel a “state of all its citizens” aims beyond this, and if it seeks to reject the rationale underlying the establishment of the state and to thereby deny the character of the State of Israel as the state of the Jewish people, then this would harm the core and minimal attributes that characterize the State of Israel as a Jewish state. [...]