

The 18th Knesset

Bill proposed by MK Uri Ariel

/1220/18P

Preserving the Values of the State of Israel Bill (Legislative Amendments), 2009

Amendment of the Companies Law	1.	In the Companies Law, 1999 –
		(1) In Section 1, the word "or" will be deleted, and at the end will come "or does not harm the values of the State of Israel as a Jewish and democratic state.";
		(2) In Section 32 –
		(A) In paragraph (1), at the end will come "that does not undermine the existence of the State of Israel as a Jewish and democratic state.";
		(B) In paragraph (2), instead of "legal" will come "as stated in paragraph (1).";
		(C) In paragraph (3), at the end will come "that are consistent with one of the values of the State of Israel as a Jewish and democratic state.";
		(3) In Section 354(A), after paragraph (5) will come:
		"(6) Acted to promote an objective that is inappropriate according to Section 2."
Amendment of the Companies Ordinances	2.	In the Companies Ordinances [New Version], 1983 –
		(1) In Section 257, after paragraph 4 will come:

		"(4A) The court learns that the company acted to promote an objective that is inappropriate according to Section 2 of the Companies Law, 1999.";
		(2) In Section 261, instead of "and (3)" will come "(3) and (4)".
Amendment of the Non-Profit Organizations Law	3.	Non-Profit Organizations Law, 1980 –
		(1) In Section 3, in the end will come "or those that endanger the Jewish or democratic character of the state.";
		(2) In Section 49, in paragraph (2), after "its character" will come "the Jewish or" [<i>Translator's note: I assume the paragraph will read – "its Jewish or democratic character" – i.e. in English the adjective precedes the noun it describes and not "after"</i>]

Explanatory Remarks

The current legal situation is that the Registrar of Companies is not authorized to prevent the registration of a company because of its declared objectives or expectations; this is in contrast to the broader authority the law grants to the Registrar of Associations, which is authorized to prevent the registration of a non-profit organization because of its inappropriate objectives. This situation enables the existence of associations that aim to promote various activities that pose a threat to the Jewish and/or democratic character of the State of Israel. Thus, for example, under the existing Section 10(A), the Registrar is not empowered to prevent the registration of a company whose declared objective is to proselytize Jews if it fulfills all of the requirements of the law regarding registration.

Indeed, the freedom to form associations is one of the fundamental rights in a constitutional democracy, as the courts in Israel have noted on various occasions (see for example: Further Hearing: 16/61

Registrar of Companies v. Kardosh, PD 16 1209, (hereinafter: the Kardosh case); Civil Appeal 4531/91, **Nasser v. Registrar of Associations**, PD 48(3) 294; Civil Appeal 1282/93 **Registrar of Associations v. Kahane** PD 47(4) 100, 106; Permission for Civil Appeal 7504/95 **Yassin v. 'Yamin Yisrael'**, PD 50(2) 45 (hereinafter: the Yamin Yisrael case) and the supporting references there). But as is known, there is no constitutional right that is absolute. In this spirit, Justice Zussman stated in the Kardosh case that "even a company that masks its real, illegal objective in a declared objective that is ostensibly legal, such as a company that ostensibly seeks to build a hotel while its intention is [to build] a brothel, will not be registered."

In the Yamin Israel case, the president of the Supreme Court (his title at the time) [Justice Barak] cited the constitutional reasons for the existence of the right of association, and after explaining the centrality of the right in a democratic regime he adds (Section 15) that "a democracy must be tolerant toward intolerance; but, in its tolerance, a democracy does not need to allow for its very destruction." And from the Jewish aspect, he adds (Section 16): "The perspective that the State of Israel is a Jewish state constitutes a basic principle of our law and our system. This principle finds expression in a number of matters, such as [the Law of] Return, Jewish heritage and the fundamental values of Judaism. We seek to preserve the character of the State of Israel as a Jewish state. We are not willing to have the freedom of association, like a political party, result in the cessation of the Jewish [character] of the state of the Jews."

The amendments proposed here are intended to grant the Registrar [of Companies] the authority to prevent the registration of a company that aims to undermine the Jewish and democratic character of the State of Israel (sections 2, 10, 32), to enable it to impose a monetary sanction against a company that acts to promote this type of objective (Section 354) and finally, also to order the dismantling of such a company if the monetary sanctions are not paid in accordance with this section.

Section 367(A)(1) of the Companies Law, 1999 retains the directive that appears in Section 257 of the Companies Ordinances, stipulating the reasons for which a court may decide to dismantle a company. In this section, the lawmakers did not restrict the court's authority to business reasons only, but also stipulated that the court is authorized to order the dismantling of a company if it "believes that it is just and right for the company to be dismantled." This directive is consistent with the view recognizing that despite the centrality and constitutional importance of the right of association this right is not absolute. *[Translator's note: This section repeats the case law noted above beginning with "Kardosh", and the next section repeats the paragraph on the Yamin Israel case, quoting Justice Barak, also noted above]*

This bill proposes to also provide the court with suitable tools for protecting the Jewish and democratic character of the state, and this via a special rationale that would enable the court to order the dismantling of a company that acts to promote objectives that are inappropriate according to Section 2 of the Companies Law.

The Law of Associations recognizes the authority of the Registrar of Associations to refrain from registering a non-profit organization because its objectives are inconsistent with the values of the State of Israel. For this reason, Section 3 of the law states that a non-profit organization whose objectives include rejecting the democratic character of the state will not be registered. This proposed amendment seeks to add to the reasons for denying the registration of a non-profit organization the reason by which a non-profit organization would not be registered if one of its objectives is to reject the Jewish character of the state, and that it would also be possible to dismantle a non-profit organization that acts to promote such an objective.

Prof. Gavison clearly noted the critical significance of the loss of the state's Jewish identity when she argued that from the perspective of the Jews, in Israel and the world, the loss of the Jewish state would thus mean the elimination of all of these many advantages it offers them – and since there is no other Jewish-Hebrew state, these advantages

have no replacement; without a Jewish state. The Jews would again exist as a minority among populations whose culture, religion and language are different than theirs ... the loss of the Jewish state could mean a return to an existence that is associated with constant fear of a renewal of anti-Semitism, persecution, expulsion or genocide; a return to a closed existence that is on the defensive for fear of assimilation and absorption into a foreign culture and non-Jewish environment; a return to an existence of limitations and restrictions. It would not be overly dramatic to say that the demand of the Jewish people to give up its state is tantamount to a demand for national suicide (see Gavison, "The Jewish State: Legitimacy and Character", Tchelet 13, 57-58).

Three basic laws (The Knesset, Section 7A; Human Dignity and Liberty, Section 1A; Freedom of Occupation, Section 2) have defined the State of Israel as a Jewish and democratic state, and in all of them the expression "Jewish" appears before "democratic". The Declaration of Independence also gives precedence to the Jewish character of the state. This is not coincidental, as Justice Alon stated:

“The principle that the State of Israel is a state of the Jewish people is the foundation and purpose of the State of Israel, and the principle of equality of rights and duties for all of the citizens of the State of Israel is of the essence and character of the State of Israel. The latter principle comes to supplement the first principle and not to change it (cited by Y. Peled [in] "Strangers in Utopia: The Civic Status of the Palestinians in Israel," Theory and Criticism 3 (1993), p. 30).

Against this background, and in order to make the Law of Associations consistent with the Law of Political Parties, it is proposed to amend the Law of Associations such that a voluntary association that is legally registered will not be able to act against the fundamental characteristics of the state.

The amendment to Section 3 is intended to allow the Registrar to prevent the registration of a non-profit organization whose objectives include rejecting the Jewish character of the state, and the amendment

to Section 49 is intended to enable the court to order the dismantling of a non-profit organization if one of its objectives is to reject the Jewish character of the State of Israel.

An identical bill was submitted to the 17th Knesset by MK Uri Ariel (P/3629/17)

Presented to the Knesset speaker and deputies
and submitted to the Knesset on
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