

Debate on Proposed Basic Law: Human and Civil Rights

Introduction

Pursuant to the decision adopted by the First Knesset, then called the Constituent Assembly, a subcommittee of the Constitution, Law and Justice Committee, headed by a former Supreme Court Justice, had been working diligently for three years on a draft of a Bill of Rights. The fruit of its labors did not come up for debate in the plenum before the Seventh Knesset officially concluded its term. At the request of thirty Knesset Members a Special Session of the Knesset was convened to discuss the draft. Although it was obvious that the Seventh Knesset would not be able to complete the legislation of such a fundamental and important law, it was believed by some that even a first step in the plenary would be useful as an indication of intent, thereby imposing at least a moral obligation on the following Knesset. In line with the campaign being waged at the time, others were inclined to judge the initiative less kindly. Both sides believed, however, that this Special Session would probably be the last before the forthcoming elections. Little did they realize that the most fateful days of the Seventh Knesset were yet to come.

Sitting 458 of the Seventh Knesset

17 September 1973 (20 Elul 5733)

B. Halevy (Gahal): Mr. Speaker, distinguished Knesset...on 14 May 1948 the Jewish state, the State of Israel, was established. The Proclamation of Independence stated: "We resolve that from the moment the Mandate ends, at midnight on the Sabbath, the sixth of Iyar 5708, the fifteenth day of May 1948, until the establishment of the duly elected authorities of the state in accordance with a Constitution to be adopted by the Elected Constituent Assembly not later than 1 October 1948, the National Council shall act."...Further on the Proclamation states: "The State of Israel...will maintain complete equality of social and political rights for all its citizens, without difference of creed, race or sex. It will guarantee freedom of religion and conscience, of language, education and culture." That is the subject which I am proposing that the House debate today, before the conclusion of the term of the Seventh Knesset.

In accordance with the Proclamation of Independence, the Constituent Assembly was elected, though somewhat belatedly, in January 1949....Only at a later stage, by means of the Transition Act, did it de-

cide to call itself the First Knesset, and it was determined that the subject of the Constitution should be discussed....The parties constituting the majority in the First Knesset opposed introducing a Constitution, while the minority demanded that the Constituent Assembly complete the work which it had been elected to do before transforming itself into the Legislature...regarding the formulation of a Constitution as its principal task....A compromise solution was found, and in 1950 the majority supported the proposal that the Constitution, Law and Justice Committee be given the task of preparing a proposal for a Constitution....

Thus, the constitutional authority of the Constituent Assembly was transferred to the First Knesset, and thence, by virtue of the Transition Law, to subsequent Knessets, including the Seventh, which is therefore authorized to introduce a Constitution....The Committee was instructed to prepare the Constitution in separate chapters, and for this purpose a subcommittee was appointed....This subcommittee has prepared the proposal for the Basic Law: Human and Civil Rights, and this has been reviewed and approved by the Constitution, Law and Justice Committee....This is one of the rare cases in which legislation is initiated by one of the Knesset's committees, rather than by the Government or a Knesset Member....It is significant that the State of Israel should fulfill the declared intention of the Constituent Assembly and the Knesset....

Bills of rights are known to be particularly difficult and delicate, requiring the widest possible agreement, across party lines if possible...and this is what the committee aspired to attain....We did this in a spirit of friendly cooperation, basing our work on an extensive comparative study of human and civil rights legislation undertaken for us by the Faculty of Law of the Hebrew University of Jerusalem....The work took us three years...and the process of review by the Constitution, Law and Justice Committee was unnecessarily protracted because the subject was not given sufficient priority, so that discussions ended only one week before the conclusion of the final sitting of the Seventh Knesset, and hence the present Special Session....The President of the Supreme Court and four Supreme Court justices were kind enough to appear before us and give their views on the constitutional aspect of the bill, most of them approving the course we had taken....In order to avert possible problems where a conflict might arise between the Basic Law and other legislation, the final clause of the bill contains the following sentence: "This Basic Law does not detract from the validity of a law passed before its enactment." Any laws passed after the Basic Law which are contradictory to it will be invalid....In the final event, the courts—and particularly the Supreme Court—will decide....

The difficulty in preparing a bill of rights is a basic one, in that whereas we did not want it to be solely a declaration of principles, like the Proclamation of Independence...the human rights we are defining

Debate

Introduction

Pursuing the Constitution Committee's working fruit of its eighth Knesset Member's draft. Unable to call the law, it was useful as an obligation waged at a kindly. Probably I realize that the

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B. Halevy 1948 the election of the Mandate authorities (Elected Council of Israel... for all its antediluvian culture." Today, before the constituent / 1949.... Or

should essentially be assured vis-à-vis both the government and the Knesset.... Thus, once the Knesset has passed this law it cannot harm the human rights guaranteed in it.... This Basic Law determines that certain freedoms, such as the freedom of speech, association, unionization, are subject to law. Other rights, such as freedom of religion and the right of every Israeli citizen to enter the country... are limited, and cannot be restricted by law

One of the more important sections of the law deals with the protection of individual privacy, and forbids entry to a person's house in search of his person or possessions unless this is done by authorized law.... This law pertains particularly to wiretapping.... Another controversial section of the law deals with equality before the law and prohibits discrimination... thereby implementing the passage in the Declaration of Independence I referred to previously.... The relevant section of the bill reads as follows: "A. Everyone is equal before the law. B. There may be no discrimination between individuals on the basis of race, sex, national affiliation, ethnic group, country of origin, religion, outlook, social status, organizational or political affiliation." These aspects are generally adhered to in Israel.... What this law achieves is to limit the Legislature, so that it will not in future be able to pass laws denying these civil liberties to any particular group or person....

H. Tzadok (Ma'arach): Mr. Speaker, distinguished Knesset... in MK Halevy said one could detect a note of criticism directed at the chairman of the Constitution, Law and Justice Committee.... As a member of the Committee I feel that this does MK Goldschmidt an injustice.... The Committee had a great many pressing subjects on its agenda, and MK Halevy can surely not find fault with the fact that the Constitution, Law and Justice Committee saw fit to treat his very thorough proposal with the thoroughness it deserved.... This, inevitably, took time... and, as MK Halevy has himself said, the bill deals with a difficult and delicate subject....

I suggest that MK Halevy's proposal be transferred to the Committee for consideration. I feel that the undue haste with which it has been brought before the plenum for a first reading so soon before the election has been done with the intention of gaining an electoral advantage for Gahal.... I propose that the two majority parties guarantee to bring this proposal before the Eighth Knesset.... This will appear in the Ma'arach's election platform....

J. Nehushtan (Gahal): Why are you opposing it now?

H. Tzadok (Ma'arach): I know that there are phrases and sections which should be amended....

Hechterman (Gahal): For that there are the second and third readings.

Tzadok (Ma'arach): I think that these issues can be clarified during the first reading in the next Knesset, in the serious atmosphere it deserves, rather than in one of elections....

Toubi (Rakah): Distinguished Speaker and Knesset, during the past five years of its existence, our party group has often demanded the introduction of a Constitution, which would establish human and civil rights. The Labor Party—today the Ma'arach—together with the religious parties is responsible for the fact that this has not been done to date... and Gahal also had a share in the parliamentary maneuvering which prevented it... Gahal's transparent demonstration of today is a death contempt... being obviously intended for use as election propaganda.... The Ma'arach's proposal is equally meaningless.... Rakah therefore suggests that MK Halevy's proposal be removed from the agenda, not because we oppose the law but because we object to transparent election ploys....

The Vote

Those in favor	47
Those against	36

(MK Tzadok's proposal to transfer the bill to the Committee is rejected.)

Lorincz (Aguda): Mr. Speaker, distinguished Knesset, my party group abstained on the vote... because the proposal before us contains a great many blemishes, particularly concerning our continued existence as the people of the Bible, a special people.... We feel that there was no justification in calling a Special Knesset Session... particularly since a bill of this kind should not be debated under pressure of time....

Halevy (Gahal): Distinguished Speaker and Knesset, the Gahal, the National List and Free Center party groups abstained on the vote because we regard the decision to transfer the proposal back to the Committee from which it originated as illogical and inappropriate.... This is obviously a stratagem for sidestepping the issue and burying it in committee... so that it never comes before the plenum.... The arrangements for holding a debate on the proposal in the course of the week had already been finalized with the Knesset Presidium....

I would also like to make it clear that by bringing this proposal before the Knesset today our intention was not to make electoral capital out of it. Nothing could be further from the truth. The Knesset Speaker

and all my colleagues on the Committee know how hard we worked to prevent the proposal coming before the Knesset during the recess, and that the subject was already on the agenda beforehand....MK Tzadok's gentlemanly proposal that the subject be brought before the Eighth Knesset has no basis in law, and cannot be enforced....

G. Hausner (Independent Liberals): Mr. Speaker, distinguished Knesset, we abstained from voting on MK Tzadok's proposal to transfer the bill to the Committee because we regard this as tantamount to a general rejection of the entire subject at this stage....Our party group feels that this important subject should be discussed in the plenum at the earliest opportunity....

In its guidelines, the Government undertook to bring a bill of rights before the Knesset, a fact which none of today's speakers mentioned.... Today's opportunity to advance the treatment of this subject should have been utilized, despite the fact that the elections are approaching.... Since our party group supports the idea of a Constitution in which human rights are guaranteed, we prefer not to see the subject buried in committee....

U. Avneri (Israel Radicals): Mr. Speaker, distinguished Knesset...how can a party group bring a supposedly constitutional law before the Knesset at the last minute before the elections...? We did not vote against something which was intended to pay lip service to a Constitution—something which is very dear to our hearts—but neither would we support an election ploy, a parliamentary farce, and therefore abstained.

S. Mikunis (Maki): Distinguished Speaker, Knesset Members, this Special Knesset Session is, in effect, pointless...and is obviously geared towards the elections....I must say, however, that former Justice MK Halevy does not regard it as an election ploy, has taken and is taking it seriously, and has made a decisive contribution to it....The bill contains several internal contradictions, for example in permitting civil liberties to be violated by law when national security or the benefit of the state is involved....We have seen this kind of law used to the detriment of both Arabs and Jews in this country...but especially against Arabs in the occupied territories....I abstained on the vote because this law mixes up morals and conscience, on the one hand...and denies civil liberties in the name of national security, on the other....

Kidnaping of Soviet Jewish Immigrants in Austria

Introduction

On 25 July 1973 the Speaker, Israel Yeshayahu, summed up the work of the Seventh Knesset, recounting its achievements and shortcomings and ending with good wishes for "a life of peace, tranquillity and security for us, the peoples of the region and the world; redemption soon for our brethren suffering in their countries of exile, and prosperity for the State of Israel as a home for its citizens and the Jewish people." He expressed the hope that the campaign for the elections scheduled to take place on 30 October 1973 would be restrained, "maintaining appropriate relations and mutual respect." He considered it possible that there might be one or two Special Sessions, but that basically the work of the Seventh Knesset was completed. Little did he or anyone else divine the fateful events which were yet in store—the Yom Kippur War and its aftermath.

However, the first Special Session called during the pre-election recess was devoted to a different subject, the kidnaping of Soviet Jews en route to Vienna and thence Israel on 28 September 1973 by Palestinians—who had boarded the train concerned in Czechoslovakia—and the subsequent decision of the Austrian Chancellor, Bruno Kreisky, to restrict the transit rights of Jewish refugees in Austria and close down the Schoenau camp. E-Saiqa, a terrorist organization known to be closely linked with Syrian Army Intelligence, took "credit" for the kidnaping. Indeed, some years later one of its commanders boasted that it had been a deliberate diversion, intended to deflect Israeli attention from the preparations for the Egyptian-Syrian offensive, which were well under way at that time.

Since the Prime Minister, Golda Meir, had travelled to Vienna in order to prevail upon Kreisky to revoke his decision, her Deputy delivered the Government statement.

Sitting 460 of the Seventh Knesset

1 October 1973 (5 Tishrei 5734)

The Deputy Prime Minister, Y. Allon: Mr. Speaker, distinguished Knesset, our New Year rejoicing has been cruelly marred, first by the despicable kidnaping of immigrants on their way to their only true homeland, and then by the Austrian Government's decision to restrict