

Minorities' Political Participation in a Nationalising State: the Case of the Arab Minority of Israel

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National Minorities and Nationalising States: a comparative perspective.

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Introduction

Israel corresponds in many ways to the concept of “nationalising state” developed by Brubacker. The Zionist project, following the nation-state model of its epoch was founded on the wish to create a “state of the Jews”. In 1948, Israel was established as the state of the Jewish people, and its symbols, goals and policies derive from this very definition of the state (Rouhana and Ghanem 1998). The Law of Return granting every Jewish person the right to automatically receive Israeli citizenship is amongst other policies, the most obvious element of the nationalising dimension of the Jewish state.

In this context, the place of the Arab populations integrated in Israel after Israel formation has been quite complex and their inclusion in the polity has been only partial: if most of them have been granted citizenship after the independence, this is not the case of the East Jerusalem inhabitants who only enjoy a resident permit, meaning that they have the right to vote only in the local elections¹ and enjoy no representation in the national assembly. But even for the Israeli Arab citizens, the nationalising Jewish dimension has had major consequences on their symbolic and political place in the polity. Despite the fact that it represents 19% of the Israeli population according to the 2001 statistics (Israel Central Bureau of Statistics 2002), and in spite of many demands within and outside the Parliament, the Arab community² of Israel has never been recognised as a specific minority, suffers from many discriminations and, as a matter of fact, has never been granted minority protection and rights. In this perspective, the question of the Arab minority's political participation in a “nationalising state” that defines itself as the state of the Jewish people seems primordial. As a channel of demands formulation and interests representation, political participation is indeed the specific tool of integration in contemporary democracies.

This paper will not present all the political difficulties engendered by the definition of Israel as a “Jewish and democratic state” for the Arab minority. Its aim is to focus on the rationales that have been employed to justify the curtailment of the Arab parties' political participation in elections for the legislative assembly, the Knesset. The paper is constructed in three parts. First, it briefly presents the complex political status of the Arab minority in Israel. In

¹ After the annexation of East Jerusalem by Israel, permanent residents were permitted, if they wished and met certain conditions, to receive Israeli citizenship. These conditions included swearing allegiance to the State, proving that they are not citizens of any other country, and showing some knowledge of Hebrew. For political reasons, most of the residents did not request Israeli citizenship B'tselem *Legal status of East Jerusalem and its residents*

² There is no consensus on the denomination of the Palestinian who received the Israeli citizenship and their children. While the “Israeli Arab” denomination is seen as part of a process implemented by the authorities to separate these population from their “real nation”, the “Palestinians of Israel” denomination also seems to load a specific image of the minority, as separated from the Israeli polity and citizenry. Hence, I have chosen to use the term that is referred to by most of their organisation, namely “Arab citizens” or “Arab minority”.

a second part, the article identifies the rationales of the legislator to justify the enactment of several laws restricting participation to the elections. In a third part, the paper provides with an analysis of the discourses of three major actors over the question of political lists' disqualification for elections: the political discourse, the legal discourse and the Jewish media's discourses. The analysis shows that all the discourses over the Arab lists' electoral participation entails a securitisation of their participation, which renders the Arab citizens inclusion extremely complicated.

Political participation of the Arab minority in Israel

Described as a "distinct national-religious-linguistic, non-assimilating and dissident minority, whose loyalty is suspect, who is discriminated against, does not accept its situation as a decree of fate, and is enlisted in a struggle to change its status" by a recent academic report (*Index of Arab-Jewish Relations in Israel 2004*, Smootha) the Arab minority's political integration in Israel has been only partial. Due to the Jewish nationalising dimension on the one hand and the security dimension on the other, the Arab minority is indeed quite peripheral. As Shafir and Peled have shown, the construction of the state as that of the Jewish people has engendered the formation of a barrier between two spheres of citizenship: the republican citizenship for Jews on the one hand and the liberal citizenship for the Arab citizens (Shafir and Peled 2002)³.

Besides, the Arab minority has often been depicted as a minority culturally and symbolically identifying with neighbouring Arab states and as a result, the Palestinian citizens of Israel have been perceived as allies of the "enemy states", and labelled as security risk with suspect loyalty to the state (Smootha 1993). As a consequence, a military administration was imposed on Arab inhabited regions⁴, severely restricted their freedom of association (Smootha 1993). Hence, the only representatives the Arab minority had in the Knesset were lists named "minorities' lists", which were Arab lists running in the elections under the tutelage of a Zionist party -in most cases the Mapai. During the first decades, the Arab minority's political alternative was thus either to vote in favour of a Zionist list or to vote in favour of the only non-Zionist party represented in the assembly: the Arab-Jewish communist party that historically defends a bi-national state. After the military rule was lifted up in the mid-1960s, other non-Zionist parties defending the Arab minority were created: the El Ard party in 1965; the Progressive List for Peace in 1981⁵; the Democratic Arab Party (Balad) in 1984; the Arab Movement for Change in 1996, and finally, in 2003, the united Arab list (Ta'al). Today, all Arab parties together dispose of 10 seats in the Knesset. However, despite this objective improvement in their representation, the Arab minority has remained excluded from all governments. Moreover, as will be shown in this paper, despite the formal improvement of the Arab political representation in the Knesset, political and legal discourses prevent a full legitimisation of their political participation in the democratic process.

Drawing on Kymlicka's study of the Central and Eastern Europe elites' discourses over minority's rights⁶, this paper offers an analysis of the rhetoric used by the legislator, the judiciary

³ For more in-depth analyses of the status of the Arab minority in Israel, see amongst others : Lustick 1980, Stendel 1996, Dowty 1998, ch.9, Smootha 1989 and 1992, Shafir and Peled 2002.

⁴ Galilee, "great triangle" near Oum el Fahm and "little triangle" in the Taybé region.

⁵ The party was an Arab-Jewish list defending the creation of a Palestinian state. It disappeared in 1992 after having lost representation in the Knesset.

⁶ In one of his articles, Kymlicka shows that in order not to grant minority's protection to their national minority, the political elites have used three kinds of arguments in order to delegitimise the minority's demands: the priority to stabilisation discourse, the historical injustices discourse and the securitising discourse (Kymlicka 2004).

and the media on the question of political participation of the Arab minority in Israel. It shows that two interrelated discourses are used toward the Arab political participation: a rhetoric linked to the security argument on the one hand and one relating to the Jewish definition of the State of Israel. Both contribute to the delegitimation of the Arab political participation and more broadly to their symbolic exclusion of the state.

Legal constraints for running for the Knesset election: between defensive democracy, defence of the Jewish state and security concerns

The objective of this section is to present the laws and the rationales underlying the laws specifying conditions for a party to be allowed to take part in the elections for the Knesset⁷. The literature that is used to do this analysis are secondary sources as well as the Knesset protocols.

During the two first decades of the state, all political parties were allowed to take part in the electoral process. It is in 1965 that discussions over the limitation of a party's participation in elections first appeared when the El Ard movement tried to register on the electoral lists. The Central Electoral Committee (CEC), composed of Knesset members and headed by a Supreme Court justice, entitled to supervise the electoral process and to register parties for the electoral competition, then decided to deny the registration of El Ard. The major argument of the CEC to disqualify the party was that its platform denied Israel territorial integrity and right to exist. The argument was based on the party's platform which comprised statements, such as "the Palestinian problem [can be solved] by seeing it as an indivisible unit in accordance with the desire of the Arab Palestinian people" (Cohen-Almagor 1997). When the movement petitioned the Supreme Court to challenge the decision, the Court authorised the disqualification of the party on behalf of "[...] the most elementary right of every state to defend its freedom and very existence against enemies from without and against their followers at home" (Election Appeal E.A. Yardor, 1965). By so doing, the Court introduced an extra-constitutional principle that could limit the access to political competition.

But the most fundamental legal shift took place in 1985, when the Knesset introduced an bill that would add to Basic Law: The Knesset the following amendment:

"A list may not take part in the national elections if its goals or action include, implicitly or explicitly one of the following:

1. Negation of Israel's right to exist as the state of the Jewish people
2. Negation of the state's democratic nature article
3. Incitement to racism" (article 7a, amendment 12)

When we look at the debates, it appears very clearly that the bill's major target was to respond to two perceived dangers against two basic foundations of the state. The first was the danger emanating from the Kahanist party Kach, whose platform demanded the transfer of the Arab populations out of Israel. Indeed, during the first reading of the law, the promoters of the bill insisted time and again on the attachment of Israel to democratic principles and to the binding of Israel to anti-racist international conventions (Minister of Justice Nissim, first reading of the law, 07-05-1985). The notion of "defensive democracy" was used several times by the Justice minister to describe the need for democracy to defend itself against those who want "to destroy

⁷ It is beyond the scope of this paper to discuss the reasonableness and legitimacy of the restricting legislation and the compatibility of such laws with the democratic principle of freedom of speech. For a discussion on the issue, see Amalgor (1997) and Navot (2008).

democracy from within". The second perceived danger was that coming from anti-Zionist parties represented as an "existential threat" against the Israeli state and "the natural and historical right of the Jewish people to live independently" (id.). On this issue, the discourse of the Minister of Justice when presenting the law was very ceremonial, referring several times to the Holocaust and to the wars that Israel had gone through (id.).

Against the bill, its opponents criticised the focus on the Jewish pattern of the state and two amendments were presented that aimed at lessening this dimension. The first one was raised by an Arab member from the Communist party. It demanded that a party could only be disqualified if it denied "the existence of the state of Israel" (Toubi, first reading of the law) while the second, introduced by a Jewish MK from the Progressive List for Peace proposed to disqualify a list only if it denied the "State of Israel as the state of the Jewish people and of its citizens" (Peled, first reading of the law). Both were however rejected by the majority of the Knesset members who considered the terms of the law as particularly necessary and the law was passed without modification with 66 votes in favour of the law (third reading, 31-07-1985). At the same time, and to limit the effects of the law, another section was added to the Basic Law that allowed any concerned party to appeal to the Supreme Court against a CEC's decision either to authorise or to ban a list to take part in the elections (Shamir and Weinshall-Margell 2002).

An additional legal step was taken with the introduction of the Parties Law (1992) enacted by the Knesset in 1993 which states that "a party will not be registered if its goals or actions include, explicitly or implicitly, one of the following:

1. Negation of the State of Israel as a Jewish and democratic state
2. Incitement to racism
3. Reasonable grounds for the inference that the party is going to be used as a front for illegal activities." (article 5).

The law thus reinforces the existing restrictions entailed in the amendment of the Basic Law: the Knesset. First, with the enactment of the law, a party disqualification becomes possible even before it started to function. Secondly, it provides with the possibility to permanently disqualify a party, in contrast to the punctual disqualification envisaged in the Basic Law. Finally, the law stipulates one additional criterion allowing disqualification in comparison to the Basic Law: the Knesset.

An analysis of the debates that took place in 1992 shows us a very different picture to that of 1985. Indeed, contrarily to the debates that had taken place in 1985, the rhetoric of the law's promoters was much less ceremonial. The reference to the right of the Jewish people to self-determination or to the Jewish identity of the state was not referred to and only the "defensive democracy" argument understood as a protection against those aiming at undermining the regime was raised up (first reading of the law, 20-01-1992). The law was finally voted by 59 votes in favour of the law.

In 2000, right after the beginning of the second Intifada, two new modifications were proposed for the Basic Law: the Knesset (amendment 35). The first one added a supplementary reason for disqualifying a list: support for armed struggle of an enemy state or of a terrorist organisation. The second change introduced the possibility to ban not only a list, but also an individual to take part in the elections. Despite the words of the law, which would suggest a focus on the security dimension, the question of security was not invoked as such and even the notion of defensive democracy was not very much used (only one of the National religious party member used the term once. First reading of the law, 05-11-2001). In fact, when we analyse the

bill and the debates, the security argument is even less pregnant than during the previous debates and the major rationales invoked is clearly to find a way to hush up Arab MKs' speeches inside and outside of the Knesset. Hence, the bill presents its *raison d'être* as "the radicalisation process of a part of the political leadership amongst Arab of Israel, and of parliament members that incite to rebellion against the state of Israel and against Jews and that express support to terrorist movements" (bill 30-10-2000). The law was passed in 2003 (amendment 35).

A last amendment was finally introduced in 2008 by a group of MKs and enacted by the Knesset. The amendment states that a candidate that has visited "enemy states" as listed in the law against infiltration in Israel – Syria, Lebanon, Iraq, Saudi Arabia, Yemen, and Iran– without permission from the minister of the interior, during the seven years that preceded the date of submitting the list of candidates will not be allowed to take part in elections. According to the new amendment, these visits, when not allowed by the Ministry of Interior must be considered as part of the definition of "support for armed struggle against the State of Israel". The rationales presented to justify the law stressed that it was formulated in the context of recent visits by Arab MKs to some Arab states (Bishara) and reasserted the need to ban those visits for security reasons (Orlev, first reading, 26-05-2008). The effective security risk represented by these visits was not developed but the proponents of the law stated that these visits made injure to the relations between Arab and Jewish citizens of Israel by "sending a message of support to the armed struggle against Israel" (first reading of the law, 26-05-2008).

Table 1. Evolution of debates on the right to political participation

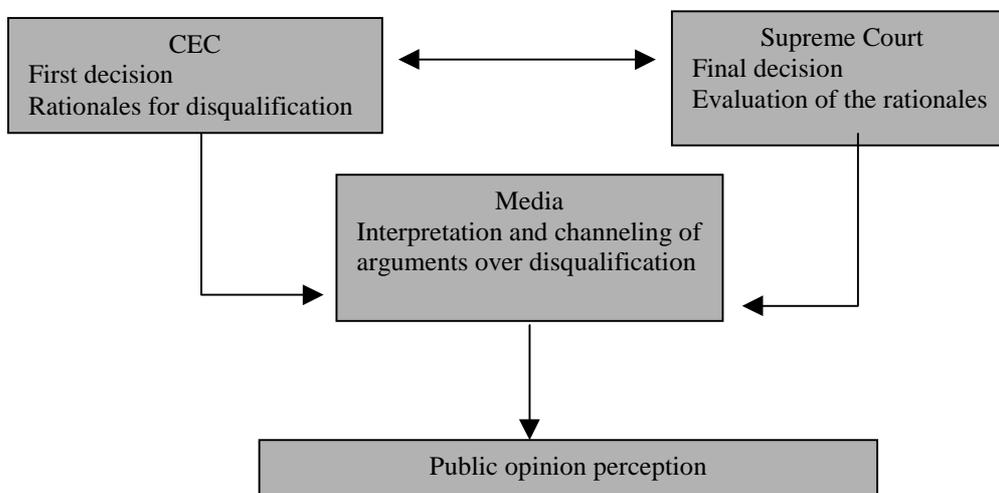
	1985	1992	2002	2008
New dimensions in the law	- Democratic principles - Jewish self-determination	Security dimension	Security dimension	Security dimension
Target of the law	-Racist parties (Kach) -Anti-Zionist parties	Not mentioned	Arab leadership	Arab MKs
Additional tools	-Banning racist and anti-democratic political platform -Banning anti-Zionsist programs	Banning illegal activities	Banning "subversive" political speeches	Banning visits to "enemy states"
Arguments raised during the debates	-Defensive democracy -Defence of the right to survival of the Jewish people	Defensive democracy	Defence against those challenging the principles of the state	Defence against subversion/political discourses

From the analysis of the discourses over the law, three major rationales to support the amendments can thus be identified: the defence against anti-democratic groups or the defensive democracy argument, the defence of the Jewish self-determination and right to sovereignty and finally the security dimension that "subversive" discourses and behaviours are supposed to threaten. The tools employed in this perspective have evolved, going from banning certain political programs to the banning of political visits to neighbour enemy states. All the same, the targets of the laws have evolved. While the political targets of these legal constraints were originally, both the extreme right Jewish lists (amongst which, Kach) and the Arab anti-Zionist parties, the latter progressively became the central concern of the legislator who has increasingly conceived their actions and discourses as potentially dangerous for the state's security.

Discourses over disqualification: growing securitisation of the Arab parties' participation

The overview of the law making process helped us grasp the rationales, which were at the origin of the law and its developments: the democratic concern, the right to sovereignty concern and the security concern. Moreover, we have seen, that while the political targets of these legal constraints were originally, both the extreme right Jewish lists (amongst which, the list Kach) and the Arab parties, the latter progressively became the central concern of the legislator who has increasingly conceived their actions and discourses as potentially dangerous for both the foundations of the state and the security of its citizens. We will now focus on the mobilisation and diffusion of the rationales included in the law by analysing the arguments invoked by the Central Electoral Commission and the Supreme Court when confronted to the question of parties' disqualification. The following questions will be asked: what rationales have been used to disqualify Arab lists? Was there a consensus on the rationales used? How did the Supreme Court positioned when ruling over the disqualification? Secondary sources (press release and press articles) and primary sources (the Central Electoral Committee protocols and decisions of the Supreme Court) will be used in this perspective. When the events have been channelled by the media and are accessible, the way they were perceived and reinterpreted will also be analysed. Indeed, the perception and reinterpretation of the events by the media constitute a channel without which, the decisions cannot be known by the public and are also an actor of (de)legitimation and securitisation as the table 1 suggests. For reasons of feasibility, three major newspapers have been chosen: Haaretz, the Jerusalem Post and the Yediot Haharonot.

Table 2. Dialog over party disqualification



The first use of the article 7 a was made in 1988, when for the first time, the CEC was confronted to several appeals emanating from political parties demanding the disqualification of 21 lists. Amongst these disqualification's demands, the most seriously discussed concerned the extreme right party Kach and the Progressive List for Peace (PLP). Against Kach the arguments that were raised related to the racist declaration of the party's platform which, amongst other thing promoted the transfer of the Arab populations out of Israel. In a vote of the CEC's members on the issue, 27 members voted in favour of the disqualification against 6 objections and 3 abstentions. Regarding to the PLP, the argument referred first to the supposed link that the PLP had established with PLO. According to the appeal, these links were in conflict with the section 1

of the article 7 a of the Basic Law banning the denial of Israel as the state of the Jewish people (Shamir and Weinschall-Margel 2004). Moreover, the platform of the party stating that Israel should be “the state of all its citizens, Jewish and Arab in the same degree” was also seen as contravening the Jewish pattern of the state. After debating the issue, the CEC’s members however decided not to exclude the Progressive List for Peace by a vote of 20 against and 19 for (id.).

In an appeal on the disqualification to the Supreme Court, a five judge panel unanimously approved the Committee’s decisions to disqualify Kach. In contrast, the Supreme Court decided by a vote of three against two to reject the appeal against the PLP. The majority opinion stated that the disqualification should be rejected on the basis that no evidence existed which could prove that the party aimed at working against the state as the state of the Jewish people (Shamir and Weinschall-Margel 2004). In contrast, one of the minority justices raised the question of the mere compatibility between both the universal dimension promoted by the party and the Jewish character of the state. He concluded that both were in conflict and hence that the party should be disqualified for praising universalist demands. Due to a lack of online archive, we have not been able to analyse the way the press had covered the event at the time. However, a few months afterward the Jerusalem Post published an editorial that fiercely criticised the minority position⁸. The editorialist pointed out the dangerous discourse of the minority justices, who denied the possibility to call for the application of democratic principles on behalf of the Jewish identity’s survival.

The second use of the article against Arab lists was made in 1996: in reaction to the enlistment of the Arab Movement for Change by the Parties registrar, an appeal was introduced to the Supreme Court to review the decision of the Registrar on the ground that the party supposedly aimed at destroying Israel and was a cover for illegal activities. The Court once again rejected the appeal unanimously due to lack of evidence (Cohen-Almagor 1997: 105). For the 1999 elections, an appeal was made by a citizen to the CEC against Balad. It was also rejected almost unanimously by the CEC (Shamir and 2002: 111). Neither of the events provoked debates in the press at the time.

Thus, since the passing of the law in 1985 until 1999, and despite many attempts, no political Arab list had been banned by either the CEC or the Supreme Court on the basis of article 7 a. In fact, the only party against which the law had effectively been used was the extreme right party Kach in 1988 and 1992. This situation however drastically changed after the second Intifada. Indeed, for the first time, in 2003 and then in 2009, appeals introduced to the CEC to disqualify Arab lists were followed by a decision to disqualify two of the Arab parties.

In 2003, the disqualification followed several demands against 6 lists and candidates on virtue of article 7 a. Amongst them, one was a far-right wing candidate -Marzel- allegedly racist, and six were Arab candidates and lists: Bishara from Balad, Balad itself (that had one seat in the Knesset), Tibi from Ta’al, Ta’al (2 seats) Dehamshe from the United Arab list (Ra’am) and its list (3 seats). Against Bishara and its party, two major arguments were raised. On the one hand, the appeals raised the potential threat constituted by Bishara due to several speeches the candidate delivered in Syria and Israel in support of the Palestinian people and of the armed resistance against occupation. But the most often used argument related to the defence of the Jewish pattern of the state. The proponents of the disqualification indeed claimed that Bishara’s list’s demand to turn Israel into “a state of all its citizens” was a way to deny and undermine the Jewish character of the state of Israel, in contradiction of article 7 a, section 2 (Pedahzur 2004:

⁸ “A nation’s self-inflicted wounds”, *Jerusalem Post*, December 1989.

92). On this topic, one of the CEC member asserted that the Jewish character of the state was a prerequisite for its democratic aspect, which meant that any threat to the Jewish dimension of the state was also a threat to the democratic character. Another member of the CEC went further by stating that the Jewish dimension was more important than the democratic one. Finally, a member of the Labour party also pointed out that the disqualification was right for the “Jewish defence of democracy” (Pedahzur 2004: 93). Against Ta’al and its leader Tibi, the main argument which was put forward referred to Tibi’s public support of Yasser Arafat and the Palestinian Authority. Against Ra’am and its leader, the arguments related only to the support of the creation of a Palestinian state’s establishment. Hence, the focus was put especially on Bishara and Tibi on whom a majority of the CEC members demanded to use the article 7 a.

During the debates in the Electoral Committee, its chairman, the justice Cheschin, tried to convince the members of the committee not to bar Bishara and Tibi from taking part in elections. He declared that although Bishara’s discourses of support to Hezbollah was a contentious and problematic issue, “Israel democracy is strong and can tolerate irregular cases.” He also pointed out the need to analyse the issue from a juridical and non-political perspective and hence to focus on the validity of the evidence. Political representatives opposing disqualification argued that democracy and freedom of expression should prevail and Arab parties raised the racist dimension of the appeal. In the end, the CEC voted to disqualify Tibi with 22 votes in favour (all coming from right wing and religious parties) against 18 (from the left and secular parties), Bishara (21 against 19) and its list (21 against 20). Marzel was not disqualified on the ground that he had abandoned his racist Kahanist racist beliefs⁹.

When seized on the issue of Balad and Ta’al disqualification, the Supreme Court ruled in a panel of 11 justices. Four minority justices agreed that the material presented constituted sufficient evidence that both the list and its candidates supported an armed struggle by terror organizations against the state and invoked the defensive democracy argument. On the other hand, the majority of them (seven justices) adopted quite the same reasoning as justice Cheschin in the CEC. They started from the premises that the derogation of such an important right as the participation to elections deserved the most prudent ruling and should be based on evidence. They also insisted on the very thin frontier between a full democracy and a defensive democracy that denies those who threaten its principles and on the need to have clear evidence of the threat against it to disqualify a basic right such as the right to representation. They finally held that “intentions of a political character that are purely theoretical are insufficient for disqualification. To be disqualified, the candidates’ list must repeatedly be seen to work towards the realisation of its goals the strength of which are given serious and extremist expression. The evidence of the constitutional purposes must be clear, persuasive and unequivocal”¹⁰. Hence, the Supreme Court overturned Bishara and Balad’s candidacy by a margin of 7 against 4 while Tibi’s candidacy was unanimously overturned (Shamir and Weinschall 2004).

In the press, the events were channelled with great details and ardour. A tiny minority of opinions criticised the decision of the CEC and the entire logic behind the article 7 a¹¹. The main argument raised related to the necessity to respect democratic values, such as freedom of expression or minority protection (Smooha, 01-01-03), even for those who challenge the “fundamental truth of the nation’s spirit” (Editorial Haaretz, 11-01-03). The second argument criticised the fact that the CEC’s decision put forward the Jewish pattern of the state before its

⁹ Ettinger, Yair, “Court to rule on MK, party bannings today”, *Haaretz*, 09-01-03.

¹⁰ Kremnitzer, Mordechai, Policy Paper of the Israel Democracy Institute, 59.

¹¹ Smooha, Sammy, “A collective punishment” 01-01-03 (heb.), *Yediot Haharonot*, Barel, Zvi, “Fall of the fig leaf“, *Haaretz*, 05-01-03, Editorial, *Haaretz*, 11-01-03.

democratic values, which comprise freedom of expression for all. The last argument related to the unjustified fear provoked by the Arab parties' supposed capacity to alter the Jewish and democratic patterns of the regime by their discourses. Authors defending disqualification¹² put the emphasis on the "wrong judgement" of the justices, who by supporting an "almost completely open contest of lists, no matter how improper or flawed", rendered the article 7 a "almost completely superfluous" (Segal 19-05-03). As in the debates over the law in 1985, the main argument referred to the principle of "defensive democracy". However, while in the law making process, the concept was used to refer to racist and anti-democratic parties or to illegal movements, here, the notion applied only to the Arab parties that were described as potential threat due to two elements. First, the speeches made by the political leaders of the Arab parties, qualified of "infamous" or "subversive" were labelled as potential threat justifying the defensive democracy model. Less prominently, the challenge entailed in the Arab parties platforms against the "Jewish nature of the State of Israel" was also pointed out as a justification for "Israeli democracy to defend itself"¹³.

The arguments presented in the appeals introduced to the CEC in order to disqualify Arab lists were almost identical in 2009. Three separated appeals were filed to the CEC to disqualify Balad (3 seats) and one appeal was introduced against the Ta'al-Ra'am list (4 seats). The ban's initiators claimed their appeals were to be seen as a reponse to the Arab parties' displays of disloyalty to the state in recent years¹⁴. The motion to disqualify Balad was based on security allegations linked to several speeches made by Bishara during the Lebanon war. Although Bishara had since quit his function in the Knesset and left the country, different speeches and quotations of Bishara were present on the website of Balad, that the party did not take distance with. Other security concerns were raised toward the supposed support of Balad to "enemy states" (Adalah Birefing Paper, January 2009). The two other motions against Balad focused once again on the demand of the party to make of Israel "a state of all its citizens", which was again presented as a contradiction to the article 7 a. Against Ta'al-Ra'am, the motions invoked the "identification" of the party to Palestinians and enemy entities (id.). In response to these arguments, the racist and political strategies behind the decision were raised up. Both lists were finally disqualified by a 21 in favour against seven for Ta'al-Ra'am and 26 members in favour of the disqualification of Balad against three (Adalah Center Press Release, 19-01-09). This time, right wing and religious parties as well as all the coalition parties, including the Labour party and Kadima voted in favour of the disqualification. Opponents to disqualification included the Arab parties and the left wing party Meretz.

Seized by the Adalah centre for the Arab minority's rights, the Supreme Court analysed the case in a panel of nine justices. The disqualification of Ta'al-Ra'am was overturned unanimously by the Court while Balad's disqualification was rejected with a majority of eight against one justices. In their ruling the majority justices stated, like in their former decisions that judging on "principles was not enough to disqualify a list. Actions are necessary to determine if the party really represents a threat" (HCJ 561/09, 19-01-09). The arguments concerning the challenge of the Jewish identity of the state were assessed similarly, that is, not in regard to the party's platform but rather in regard to its actions. Hence, as in 2003, the lack of evidence

¹² Editorial, "Limits on the right to be elected", *Haaretz*, 22-12-02; Segal, Ze'ev, "Democracy's thin line", *Haaretz*, 19-05-03; Goell Yosef, Opinion, *Jerusalem Post*, 13-01-03; Editorial, "No double standard at the CEC", *Jerusalem Post*, 02-01-03.

¹³ Editorial, *Haaretz*, 22-12-02.

¹⁴ Jeffrey, Nathan, "Citing Disloyalty, Knesset Band Main Arab parties From Elections", *Forward*, 15-01-09.

regarding the supposed threat constituted by the parties against security lead the Court to overturn the disqualification.

In the media, the Arab parties' disqualification was covered but much less debated than in 2003. Indeed, only three opinion articles positioned on the question of the disqualification, with two criticising it (in *Haaretz*) and one justifying the CEC's decision (in *Jerusalem Post*). The diminution of articles supporting disqualification in 2009 could seem paradoxical, if we look at the growing radicalisation of the CEC. However, this might be explained by the fact that Lieberman's political platform demanding conditional citizenship to the Arab citizens (with the motto "no loyalty, no citizenship") has eclipsed the question of the Arab disqualification. Moreover, the context in which the disqualification occurred, namely during the operation Cast lead can also explain a diminished interest on the issue in comparison to that of 2003.

For those criticising the disqualification, the arguments raised were similar to that of 2003. They mainly referred to the need to protect democratic principles and to resist to the "fear and panic"¹⁵. The critics also made use of an argument formerly used by the proponents of the law on disqualification: the effect on the radicalisation of the Arab minority¹⁶. Amongst the arguments in favour of the disqualification, two dimensions were emphasised. On the one hand, the defensive democracy argument was raised. For instance, the *Jerusalem Post* editorial stated that the reason to disqualify Balad were linked to its support to Bishara's anti-Israel statements and supposed activities. The article referred to the ETA in Spain and to the fact that "democracies are not obligated to commit suicide". At the same time the Jewish identity of the regime was stressed. Hence, the same article, which stated that the reasons of the disqualification was security-related, concluded by stating that "in a world where 21 state define themselves as 'Arab' and 56 proudly identify as Islamic, we do have a problem with Knesset members who begrudge Jewish self-determination".¹⁷

From the analysis of the Arab lists' disqualification attempts, several observations can be made (see table 2 for a summary of the arguments). First of all, we observe a growing consensus within the CEC on the need to disqualify Arab lists. Until 2003, the CEC did not disqualify any of the lists despite several appeals in favour of their disqualification. In 2003, the CEC disqualified two Arab lists for the first time, with a narrow majority. In 2009, the CEC banned Arab lists for the second time, with a big majority in favour of the disqualification even amongst left and centre-left parties.

Secondly, regarding the arguments used to demand disqualification in the CEC, we observe a development that is similar to that of the law-making process analysed in the previous section. Indeed, before 1996, two rationales were raised to defend disqualification: threat against democracy and against the right to sovereignty of the Jewish people. After the introduction of the 1992 amendment, a third argument was raised in the appeals of 1996, 2003 and 2009: the threat to security due to discourses and trips of the Arab Knesset members. Moreover, while until 2003, the CEC discussed the question of both Arab lists and racist candidates, in 2009, only the first were at the centre of the CEC's discussion, showing the same development as in the legislative arena.

Third, we observe a repetitive discourse in the Supreme Court vis-à-vis the arguments raised in the disqualification appeals. In each of its ruling, the same arguments were invoked, namely the lack of evidence to justify the curtailment of basic rights. Besides, as if in response to

¹⁵ Golan, Avirama, "Democracy in panic", *Haaretz*, 14-01-09.

¹⁶ Editorial, "Don't disqualify Arab parties", *Haaretz*, 12-01-09.

¹⁷ Editorial, "What a democracy owes itself", *Jerusalem Post*, 13-01-09.

the radicalisation of the CEC, we also notice a spreading consensus amongst justices toward the defence of the lists' participation over time.

Table 2. Summary of the arguments in 1988, 2003 and 2009

	1988		2003		2009	
	CEC		CEC		CEC	
Political target	Kach, Progressive list for peace		Marzel, Balad, Ta'al		Balad, Ta'al-Ra'am	
Vote for/against	19/20		22/18 (Tibi) 21/19 (Bishara) 21/20 (Balad)		21/7 (Ta'al-Ra'am) 26/3 (Balad)	
Arguments for disqualification	-Denial of the Jewish people's right to sovereignty (PLP) -Defensive democracy (Kach)		-Threat to security due to subversive discourses -Denial of the Jewish pattern of the state -Racist discourse (Marzel)		-Threat to security -Disloyalty -Denial of the Jewish pattern of the state	
	Supreme Court		Supreme Court		Supreme Court	
Supreme Court vote	3/2 against		7/4 (Balad) against 11/0(Tibi) against		8/1 (Balad, Ta'al Ra'am) against	
Supreme Court arguments	Lack of evidence	Universalism contradicts Jewish identify of the state	- Lack of evidence -Politically problematic - Democracy is strong enough	- Defensive democracy	-Lack of evidence	
	Media		Media		Media	
Position for/against disqualification	1 against		4 for 2 against		1 for, 2 against	
Arguments	- Disqualification undermines democracy		- Defensive democracy - Need to agree with the Jewish pattern of the state	- Democratic rules must be respected - Jewish pattern of the state must not prevail over democratic pattern	-Jewish defensive democracy	- Democratic principles must prevail - Impeding radicalisation

Finally, when looking at the way the rationales in favour and against disqualification have been channelled and assessed in the media, we clearly see that, for the proponents of disqualification, both the security argument and the need to protect the Jewish pattern of the state have been mobilised, and often interconnected as the "Jewish defensive democracy" notion used in 2009 clearly shows. This resulted in the diffusion of the *defensive democracy* argument, seen as the need for a state to curtail its democratic principles in order to defend not only against those aiming at undermining democracy as was the case in 1985, but also against those challenging the very legitimacy of Jewish foundation of the state itself.

Conclusion

The objective of the paper was to tackle the question of the Arab minority's political participation in a Jewish state. Starting from the premises that the Arab minority's status is complicated by both the Jewish nationalising dimension of the state of Israel, and by its construction as a threat to security, the article aimed at analysing discourses over the political participation of the Arab minority. More specifically, drawing on Kymlicka's analysis of the rhetoric used in the Central and Eastern Europe countries to delegitimise the demands of the national minorities to be granted minority rights, the paper sought to identify the arguments used to justify limitations to the Arab political parties' limitation. Four types of discourses have been analysed : in a first part, the discourses of the legislator, in order to grasp the rationales underlying the law; in a second part, the way these rationales have been mobilised by the CEC and the Supreme Court as well as conveyed by the media has been scrutinised.

The analysis of the arguments used, shows us four important trends. First, we observe in the law-making process as in the CEC and the media, a growing attention given to security arguments besides the democratic survival concern. Indeed, while in 1985, the aim of the law was both to prevent anti-democratic and anti-Zionist movements from applying their political programs, in 1992, the goal was to prevent illegal dangerous activities and the arguments raised in the Knesset, in the CEC as in the media after 2002 have progressively shown a willingness to hush up "subversive discourses" seen as destabilising and threatening for the state even if not followed by actions. Second, this trend has been coupled with a growing consensus amongst the political elite acting both as lawmaker and decision takers in the CEC on the need to focus on the Arab political parties. These have thus, as in Kymlicka's analysis been subject to a growing securitisation process. This process has been answered to by an increasing consensus in the Supreme Court on the need to overturn disqualification due to lack of evidence that the discourses of Arab lists were effectively followed by security threatening actions. However, the securitisation process has been conveyed by at least one part of the media that has insisted on the necessity to protect the Israeli regime from those lists. Finally the arguments as mobilised both in the CEC and the media especially since 2003, have reconstructed and reinforced the defensive democracy concept as a notion referring not only to the "need of democracy to fight against those who want to destroy it from within" but also as the need for the "Jewish democratic state" to defend itself against those who merely challenge the legitimacy of such definition of the state. Constructed as such, the defensive democracy prevents the full participation of the Arab population who is censured in his discourses and political views and the full inclusion of the Arab minority in the polity.

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