

**Summary of Israeli Supreme Court Decision:  
Election Appeal 561/09, *Balad and Ra'am-Ta'al v. Central Elections Committee for the  
18th Knesset*<sup>1</sup>  
Judgment issued 7 March 2011**

**Factual background**

On 7 March 2011, the Israeli Supreme Court published the reasoning for its ruling handed down on 21 January 2009 shortly before the date of the elections for the 18<sup>th</sup> Knesset.<sup>2</sup> Its first ruling was published without arguments due to the short timeframe dictated by election laws. The first ruling simply stated that the court decided by a majority, against the minority view of Justice Levy, to accept the appeals submitted by Adalah on behalf of the Balad candidates list and the Ra'am-Ta'al candidates list, and to overturn the decisions of the Central Election Committee for the 18<sup>th</sup> Knesset of 12 January 2009, which stated that these lists are prohibited from participating in the elections. The appeals were submitted by Attorneys Hassan Jabareen and Orna Kohn from Adalah.

The Election Committee's decision regarding the Balad list was based on three requests for disqualification submitted by MK Avigdor Lieberman and the Yisrael Beiteinu party, and by the National Union faction. According to these requests, the grounds for disqualification included Balad's alleged "rejection of Israel's existence as a Jewish state" and its "support for the armed struggle of a terrorist organization." The Election Committee's decision regarding the Ra'am-Ta'al list was based on a request for disqualification submitted by the National Union faction, which cited as grounds for disqualification the "rejection of Israel's existence as a Jewish state" and a visit to an enemy state. Regarding Balad, the Election Committee's decision to disqualify the list was approved by a majority of 28 out of 38 committee members, and as to Ra'am-Ta'al list, the decision for disqualification was approved by a majority of 21 out of 38.

**The majority opinion**

Chief Justice Beinish delivered the majority opinion, which was joined by all of the other justices on the panel, except for Justice Levy, who wrote a minority opinion.

***Criteria for disqualifying candidate lists***

The majority opinion affirms that the judicial precedent for the disqualification of lists remains unchanged. Accordingly, political party lists are prohibited from participating in elections under Article 7A of the Basic Law: The Knesset (hereinafter: Article 7A) if:

"the goals or actions of the list or the actions of the person, expressly or by implication, include one of the following: (1) negation of the existence of the State of Israel as a Jewish and democratic state; (2) incitement to racism; (3)

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<sup>1</sup> This summary was prepared by Adalah. The full decision of the Supreme Court in Hebrew is available at: <http://elyon1.court.gov.il/files/09/610/005/n03/09005610.n03.htm> For more information, see Adalah's briefing paper on the disqualifications cases available in Adalah's January 2009 newsletter at:

<http://www.old-adalah.org/newsletter/eng/jan09/jan09.html?navi=%2Fnewsletter%2Feng%2Fjan09%2Fjan09.html>

<sup>2</sup> The ruling was issued by Chief Justice Beinish and Justices Procaccia, Levy, Grunis, Naor, Arbel, Jubran, Hayut and Danziger.

support for armed struggle by a hostile state or a terrorist organization against the State of Israel.”

The judicial precedent for this case was summarized in the Supreme Court’s ruling issued in 2003 in the context of the Election Committee’s decisions for the 16<sup>th</sup> Knesset regarding MK Ahmed Tibi, MK Azmi Bishara and the Balad list.<sup>3</sup> In that ruling, the court stated: “A cautious and very limited approach should be used, and strict requirements – legal and factual – should be defined before making a decision to disqualify a party” including:<sup>4</sup>

1. “Dominant characteristics that are central to the [political party] list’s aspirations or activities” and not “marginal things whose impact on the ideological and operational whole is neither significant nor serious”<sup>5</sup> will be considered. The characteristics must be ascertained “from both the explicit declarations and cumulative conclusions that are unequivocally suggested by the activities and path of a list competing [for the Knesset].”<sup>6</sup>
2. “Theoretical goals alone are not sufficient and a distant objective of an abstract nature set by a list competing [for the Knesset] is also not enough. It is necessary to show that a list is acting to realize goals charted in its platform and to put its ideas into practice. For the purpose of examining the de facto activity of a list, sporadic activity is not sufficient. Rather, there must be repeated and systematic activity that is expressed in a way that is severe and significant in its strength.”<sup>7</sup>
3. “The evidence substantiating the goals and actions that form the basis for the request for disqualification must be “convincing, clear and unequivocal.”<sup>8</sup>
4. In regard to the rejection of the existence of the State of Israel as a Jewish state as a grounds for disqualification, the ruling stipulates that it must be proven that the list (or candidate) has harmed the “core” and “minimal” characteristics of the State of Israel as a Jewish state. Only then would this constitute grounds for disqualifying the list from participating in the elections.”<sup>9</sup>
5. In regard to the support of a terrorist organization’s armed struggle as grounds for disqualification, the ruling stipulates that it must be proven that the list (or candidate) “constitutes a part of an organization waging an armed struggle against the state” or “supports this struggle – with material or political support”<sup>10</sup> and that this support “constitutes a dominant or central characteristic of the party or list, and that it seeks repeatedly – and not only sporadically – to fulfill it. In addition,

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<sup>3</sup> Election Appeal 11280/02, **Central Election Committee for the 16<sup>th</sup> Knesset v. MK Ahmed Tibi**, PD 57(4)1 (2003).

<sup>4</sup> Paragraph 3 of Beinisch’s ruling.

<sup>5</sup> Chief Justice Shamgar in Election Appeal 1/88, **Neiman v. Chairman of the Central Election Committee for the 12<sup>th</sup> Knesset**, PD 42(4) 177 (1988).

<sup>6</sup> Paragraph 4 of Beinisch’s ruling.

<sup>7</sup> Paragraph 4 of Beinisch’s ruling, and Permission for Civil Appeal 7504/95, **Yassin v. Registrar of Political Parties**, PD 50(2) 45 (1996).

<sup>8</sup> Paragraph 4 of Beinisch’s ruling, and Election Appeal 2/84, **Neiman v. Chairman of the Central Election Committee for the 11<sup>th</sup> Knesset**, PD 49(2) 225, 250 (1985); Election Appeal 1/88, **Neiman v. Chairman of the Central Election Committee for the 12<sup>th</sup> Knesset**, PD 42(4) 177, 196 (1988).

<sup>9</sup> Paragraph 6 of Beinisch’s ruling, and Election Appeal 11280/02, **Central Election Committee for the 16<sup>th</sup> Knesset v. MK Ahmed Tibi**, PD 57(4)1 (2003).

<sup>10</sup> Paragraph 7 of Beinisch’s ruling.

convincing, clear and unequivocal evidence must be presented to show that this is the goal of a list of candidates or a candidate.”<sup>11</sup>

### ***The problematic nature of the Election Committee’s decision-making process***

The majority opinion addresses the problematic way in which the Elections Committee made decisions, stating:

“The discussion held by the committee was deficient in failing to duly consider the full complexity of the issue. No in-depth discussion of the submitted evidence was held and the criteria formulated in the rulings of this court were not examined. In addition, we did not find in the framework of the discussion held by the committee that its members addressed the arguments of the attorney general’s representative, and the discussion was conducted in the format of slogans without establishing a sufficient evidentiary infrastructure as mandated by the seriousness of this issue. This aspect, naturally, detracts from the weight of the disqualification decisions which are the subject of the appeal before us. In addition, and as we already noted in the previous ruling by this court, the committee is a political body by its makeup, and its considerations are clearly political. This fact affects – even if only potentially – the extent of objectivity and seriousness of the discussion held in its framework. In the circumstances of the matter before us, it appears that this potential was realized, because here too it is evident that the guidelines and criteria stipulated in the court rulings were not given proper consideration when adopting the far-reaching step of disqualifying lists from competing in elections.”<sup>12</sup>

### ***Lack of evidentiary infrastructure for disqualification***

The majority opinion ruled that no sufficient evidentiary infrastructure was found to substantiate the disqualification of the two lists.

**In the case of the Balad faction**, the majority opinion found that in regard to the rejection of the existence of the State of Israel as a Jewish state, the evidence presented did not “prove in a convincing, clear and unequivocal way that the Balad party seeks to reject the core characteristics of the State of Israel as a Jewish state,”<sup>13</sup> and that “the collection of evidence presented to us in this proceeding was less than the collection of evidence presented before us in the Balad case (2003), so even by inference it was not proven to us that the party should be disqualified based on these grounds.”<sup>14</sup>

The majority opinion also stated:

“In light of the findings – general and particular – of the ruling in the Balad case, the evidence presented before us versus the evidence presented before the court in the Balad case, the declaration of MK Zahalka before the Election Committee

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<sup>11</sup> Election Appeal 11280/02, **Central Election Committee for the 16<sup>th</sup> Knesset v. MK Ahmed Tibi**, PD 57(4)1 (2003).

<sup>12</sup> Paragraph 16 of Beinisch’s ruling.

<sup>13</sup> Paragraph 19 of Beinisch’s ruling.

<sup>14</sup> Paragraph 19 of Beinisch’s ruling.

organization.”<sup>15</sup>

The majority opinion also rejected the argument that the connection between Balad and Dr. Bishara justifies the disqualification of the list. The majority opinion states that “this connection in itself does not provide a basis for the disqualification request, and the request must be based on concrete and solid evidence.”<sup>16</sup>

**In the case of the Ra’am-Ta’al faction**, the majority opinion determined that the disqualification request “rests on a very limited evidentiary infrastructure, even much less than that which was presented before us in the case of the Balad party [...] After studying the body of evidence attached to this request and the declarations submitted to the committee on behalf of the chairman of the faction, MK Sarsur, and on behalf of MK Al-Sana, we reach the unanimous conclusion that the evidentiary material attached to the request does not indicate the existence of the grounds stipulated in the law, neither in terms of the nature of the evidence nor in terms of its weight.”<sup>17</sup>

### **The minority opinion of Justice Levy**

Justice Levy’s minority opinion is very short and states, without much explanation, that despite the severity and nature of the infringed right, the characteristics required for disqualifying a list “clearly exist”<sup>18</sup> in the case of the Balad list. The outcome of the vision “for which the appellant works to realize and which forms the basis for its parliamentary and extra-parliamentary activity, is the loss of the national definition of the Jewish people in a political framework and its assimilation in what is presented, ostensibly, as a collection of numerous and various national narratives, yet in actuality is a guise for establishing an Arab nation-state in all of the territory of the Land of Israel.”<sup>19</sup>

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<sup>15</sup> Paragraph 19 of Beinisch’s ruling.

<sup>16</sup> Paragraph 20 of Beinisch’s ruling.

<sup>17</sup> Paragraph 23 of Beinisch’s ruling.

<sup>18</sup> Paragraph 3 of Levy’s ruling.

<sup>19</sup> Paragraph 3 of Levy’s ruling.