

Summary of Israeli Supreme Court Decision on the Jewish Nation-State Basic Law

Released by the Court in Hebrew - English Translation by Adalah – The Legal Center for Arab Minority Rights in Israel

HCJ 5555/18 Hassoun v. The Knesset and 14 other petitions

Date of Decision: 8 July 2021

Justices of the Panel: President E. Hayut, Vice President (Ret.) H. Melcer, and Justices N. Hendel, U. Vogelman, Y. Amit, N. Sohlberg, D. Barak-Erez, M. Mazuz, A. Baron, G. Karra and D. Mintz.

The Supreme Court today ruled by a majority that there is no justification to invalidate the Basic Law: Israel - The Nation State of the Jewish People (also known as the Basic Law: The Nation) or any of its provisions. The Court ruled that the Law should be interpreted consistent with the other Basic Laws and with the principles and values of the legal system. The Court emphasized that the Basic Law: The Nation is a chapter of Israel's emerging constitution designed to enshrine the state's identity as a Jewish state, without detracting from the state's democratic identity anchored in other Basic Laws and constitutional principles in the system.

In the matter of the Basic Law: The Nation, fifteen petitions were filed in which the Court was asked to determine, as precedent, that due to the content of its provisions, it should not be a part of the future constitution of the state. The majority of justices on the panel held that as long as Israel does not have a complete Constitution, the Knesset, even in its limited capacity as a constituent authority, cannot deny in the Basic Law that Israel is both a Jewish and democratic state. Denial of one of these two pillars, it was determined, would lead to the collapse of the entire constitutional structure.

The principle of equality is a fundamental principle in our law, and by virtue of it, equal rights are granted to all citizens of the state, including minority groups, which form an integral part of the state's fabric. Most of the justices, however, thought that it would have been better if the principle of equality had been explicitly included in the Basic Law, but clarified that the fact that the principle is not included in the law does not detract from the principle's status and importance as a foundational principle in our legal system.

The majority opinion also stated that the provisions of the Basic Law: The Nation must be interpreted with the goal of constitutional harmony among all the Basic Laws. The court emphasized that the difficulties [in the law] pointed out by the petitioners could be addressed by way of interpretation, relying on the interpretive principles and rules used in the legal system. In accordance with this interpretation, it was determined that Section 1 of the Basic Law deals with the right to national self-determination and does not deny recognized personal or cultural rights at the "sub-national" level; that Section 4 establishes the Hebrew language as

the main language of the state but without detracting from the status of the Arabic language in practice and the possibility of continuing to promote the status of this language in the public sphere; and that the value of Jewish settlement enshrined in Section 7 can be realized alongside the value of equality, and that this section is not intended to legalize the discrimination and exclusion of non-Jews from state lands, as even clarified by the State respondents in their arguments.

In the dissenting opinion, Justice Karra stated that the provisions of Sections 1(c), 4, and 7, of the Basic Law deny the democratic identity of the state and rattle the foundation of the constitutional structure, and therefore the law should be null and void.

For Justice Karra, the Law's disregard of the accepted "balancing formula" of the state's dual identity as "Jewish and democratic"; the Law's disregard for the very existence of the indigenous minority, citizens of the state, the Arabs and the Druze, who are referred to as "present absentees": "present" for the purpose of harming their language and "absent" by virtue of their exclusion from the law; the exclusion of the values of equality and democracy in the Nation Law; and all against the backdrop of the lack of equality that actually exists for the Arab minority – underscore the violation of the principle of equality, which itself has not been constitutionally enshrined or protected. Additionally, the justice wrote, the purpose (stated explicitly in the law) of the provision concerning Jewish settlement is to create an operative constitutional norm that would de facto negate the legal situation following the Qa'adan decision and the Admissions Committees Law: that is, to deny the principle of equality in the allocation of state lands and in housing, without prohibiting discrimination on the basis of national affiliation.

Justice Karra added that a "declarative reading" of the Law is still inconsistent with the manner in which the other Basic Laws are interpreted and applied. The Nation Law has operative legal implications, such as, it seems, providing constitutional protection for discriminatory legislation and discriminatory decisions that may be made under its auspices.

Due to the intensity of the violation of the values of equality and democracy and due to the normative status of the Nation Law as a Basic Law, the justice was of the opinion that there is no interpretive method that cures the Law of its unconstitutionality.