

PETITION TO THE ISRAELI SUPREME COURT CONTESTING THE LAW

I. INTRODUCTION

On 19 July 2018, the Knesset passed the Basic Law: Israel – The Nation-State of the Jewish People (hereinafter: the Nation-State Basic Law or the Basic Law).

The Basic Law states that the “Land of Israel” is the historical homeland of the Jewish people; the State of Israel is the nation-state of the Jewish people, and the realization of national self-determination in the State of Israel will be exclusive to the Jewish people; immigration leading to automatic citizenship is exclusive to Jews; “Greater and united Jerusalem is the capital of Israel”; Hebrew is the official language of the state, and Arabic will have special status; the State will act to encourage, consolidate and promote Jewish settlement; the national anthem is “Hatikvah”; the flag is the Israeli flag [a prayer shawl]; Independence Day is a national holiday; the Hebrew calendar is an official calendar of the state; the official memorial days and holidays are Zionist-Jewish holidays; and the state will work to foster ties with Diaspora Jewry.

This Basic Law sets forth and comprises the constitutional identity of the regime. It determines the identity of the sovereign, its will and its goals. Therefore, the effect of this Basic Law on the constitutional regime will be broad and comprehensive. A comparative survey of national constitutions reveals that today there is no democratic constitution in the world that designates the regime as serving only one ethnic group. The historical-legal review shows that states that have grounded the meaning of “We, the People” in ethnic and exclusionary terms, have turned the dispossession, oppression and degradation of the natives into policy.

The Basic Law’s overriding objective is to violate both the right to equality and the right to dignity. It is no coincidence that proposals to ground the principle of equality in the Basic Law were rejected. In essence, the principle of non-discrimination is irrelevant, because, from the outset, Arabs and Jews are not equal under the Basic Law’s constitutional regime. Therefore, discrimination on the grounds of Jewish separation and supremacy is reflected in all articles of the Law. For example, although the Basic Law applies to a very large Arab population within the Green Line, it states that only Jews are citizens or potential citizens; and the Basic Law assigns exclusive collective rights to the Jewish majority as if it were a minority in danger of assimilation. And, contrary to international law, it completely ignores Arab citizens’ collective rights as a homeland minority, and it also nullifies the status of Arabic as an official language. Indeed, the principles articulated in this Basic Law are among the most extreme since the end of the apartheid regime [in South Africa].

The petitioners will argue that the Knesset, as a constituent authority, exceeded its powers in the most extreme manner by enacting the Basic Law, since the Basic Law negates basic democratic principles to the point of damaging the constitutional structure [of the state]. The Basic Law severely violates human rights, especially the prohibition on discrimination and the right to human dignity. It also violates the norms of international law, and especially those that prohibit, *inter alia*, the existence of laws that create a constitutional identity on racial grounds. In addition, the petitioners will argue that the Knesset abused its constituent authority in that the Basic Law was legislated for improper purposes; and it was passed with coercive motivations and without seeking

a broad, cross-national consensus. Further, the law's implications for non-Jewish populations were not taken into consideration during the legislative process.

The petition is organized as follows: First, the petition will present the basic assumptions upon which the constitutional discussion will be based. Second, it will discuss the articles of the Basic Law, according to the following divisions: Article 1 of the Basic Law; citizenship; language and collective rights; and Article 7 of the Basic Law. Third, the petition will discuss the constituent authority's deviation from its authority and the abusive exercise of its power according to the doctrine of the unconstitutional constitutional amendment.