



TONY BLAIR
INSTITUTE
FOR GLOBAL
CHANGE

A Mechanism Against Extremism? Who Gets to Run in Israel's Elections

ALONA FERBER
KAREN KAUFMAN

MIDDLE EAST

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INTRODUCTION

The decision by the Israeli Supreme Court on 18 March to disqualify a far-right candidate from April's parliamentary election exposes the fine line that the Israeli system must tread between allowing free speech and acting against those deemed extremist. Only two parties have ever been disqualified from standing for elections in Israel's history: the far-left Arab Socialist List, in 1965; and the Jewish extremist party Kach, in 1988. The Central Elections Committee (CEC)—the body charged with approving candidates for election to the Knesset (the Israeli parliament)—has frequently debated who should and should not be allowed to stand. The committee has banned candidates and lists, but the supreme court has repeatedly overturned these rulings.

The Israeli Supreme Court's recent decision to bar an extremist candidate from running in the country's 2019 general election shows that the court is still the ultimate check on the political system. But the ruling also raises important questions about definitions of extremism and freedom of expression.

The supreme court's decision to bar Michael Ben-Ari of the extremist Otzma Yehudit (Jewish Power) party, however, marks the first time that the court has overruled a decision by the CEC to allow someone to stand and banned a candidate approved by the committee, on the grounds of incitement to racism. This episode

highlights the strengths and weaknesses of a highly politicised process, albeit one with checks and balances built in.

The CEC panel, which is made up of representatives of the political parties in the outgoing parliament and headed by a supreme court justice, has repeatedly examined whether candidates have violated the country's election law. Since 2003 in particular, Arab parties and their representatives have repeatedly faced disqualification on the grounds of “negation of the existence of the State of Israel as a Jewish and democratic state” or expressing “support for an armed struggle by an enemy state or of a terrorist organisation, against the State of Israel”. On the far right, the issue has been whether Jewish parties or their representatives have committed “incitement to racism”.

Ahead of the election set for 9 April, the CEC this year disqualified a Jewish candidate on an Arab list—Ofer Cassif of the Hadash-Ta'al alliance—as well as a joint Arab slate—Ra'am-Balad—for allegedly negating Israel's existence. The committee permitted candidates from the Kach-linked Otzma Yehudit to run for election, despite the party's history of extreme anti-Arab rhetoric. The supreme court, however, overturned all of these decisions (although it did uphold the CEC's decision to allow Itamar Ben-Gvir, an Otzma Yehudit candidate, to run).

This paper looks at Israel's mechanism for acting against a party or candidate deemed extremist: the process of disqualification as based on election law. The paper provides background on how the system works and who has been banned in the past, as well as the deliberations over candidates in this year's election.

This year's ruling confirms that the Israeli Supreme Court is still the ultimate check on the political system, which it seeks to safeguard against parties peddling extremism while ensuring freedom of speech. The court does not operate in a vacuum, however, and its decisions have repeatedly prompted accusations of bias and failure to apply the law adequately in the cases of the Arab parties.

BACKGROUND

Israel's elections showcase the health of the country's democracy, with its system of proportional representation enabling parties that are often aimed at very specific, limited constituencies to stand and gain representation in the Knesset. The 1984 election of an ultra-right Jewish nationalist, Rabbi Meir Kahane, to the Knesset, however, prompted the system to put in place much more rigid checks and balances to ensure that freedom of expression did not lead to incitement. In recent years, the CEC has seen an uptick in requests for disqualification. Sometimes these discussions are motivated by political point scoring.

HOW THE DISQUALIFICATION PROCESS WORKS

Under the Basic Law: the Knesset, there are three main reasons why a candidate or party can be disqualified from running in an election:

A list of candidates shall not participate in elections to the Knesset, and a person shall not be a candidate in elections to the Knesset, should there explicitly or implicitly be in the goals or actions of the list, or the actions of the person, including his expressions, as the case may be, 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. *Support for an armed struggle by an enemy state or of a terrorist organisation, against the State of Israel.¹*

The law stipulates further that “a candidate who was illegally present in an enemy state in the seven years that preceded the deadline for submitted lists of candidates shall be considered someone whose actions constitute support for an armed conflict against the State of Israel, unless he has proven otherwise” and therefore cannot stand for election.

¹ “Basic Law: The Knesset (5718_1958)”, unofficial translation by Dr Susan Hattis Rolef, <http://knesset.gov.il/laws/special/eng/basiclawtheknesset.pdf>

The body mandated to disqualify a party list is the Central Elections Committee, established in 1969 to carry out and oversee elections to the Knesset.² Members of the 30-strong committee are either members of Knesset (MKs) or their delegates, and the CEC reflects the make-up of the outgoing Knesset. The committee is headed by a supreme court justice, currently Deputy Chief Justice Hanan Melcer.

As part of the panel's responsibilities, it authorises the party lists running for election. The CEC has the power to disqualify an entire list or an individual candidate, in accordance with the Basic Law: the Knesset.³ For the CEC to consider disqualifying a list or candidate, a third of its members must request the disqualification. A vote is then taken at committee, and the decision is carried if supported by a majority of members in the room. The chair of the CEC has a vote but can decide not to use it. Given that the committee is made up mostly of political representatives and that its composition reflects the outgoing Knesset, with the ruling coalition usually having the majority on the panel, it has repeatedly been accused of being a predominantly political body.

The ruling then moves to the supreme court for review, including in cases when the CEC has decided that a candidate or party may run following a petition to disqualify it. The appeal is heard by an expanded panel of at least nine justices, and a majority is needed for their decision to be carried. The supreme court's decision is final—and the court's role is seen as the main check and balance when it comes to the disqualification process.

PAST DISQUALIFICATIONS

Arab Socialist List

Only two party lists have ever been blocked from standing for election in Israeli history. The first disqualification from a general election took place in 1965, when members of the outlawed al-Ard political movement of Arab citizens of Israel presented a Knesset slate for election under the name of the Arab Socialist List.⁴ The

² "Knesset Elections Law (consolidated version) 1969" (in Hebrew), https://www.nevo.co.il/law_html/Law01/190_026.htm#Seif3.

³ "Basic Law: The Knesset".

CEC refused to register the list, arguing that al-Ard was an illegal association, which had denied the existence of the State of Israel.

The supreme court rejected the Arab Socialist List's appeal and agreed with both the CEC chair and the attorney general that the list denied the existence of Israel and wanted to cause its destruction. That decision came 20 years before the Basic Law: the Knesset was amended to stipulate this as a reason for disqualification.

Kach

The most famous case of a party being disqualified was the 1988 decision to bar the racist Kach party. Kach (Thus) was founded in 1971 by ultra-nationalist Rabbi Meir Kahane. The Brooklyn-born ideologue founded the far-right Jewish Defense League in the United States (US) before moving to Israel. Kahane's worldview included advocating the expulsion of Arabs from Greater Israel and the establishment of Jewish law in the Jewish state. His 1981 book *They Must Go*, written while Kahane was in administrative detention in Israel, laid out his views on population transfer as a solution to conflict between Arabs and Jews:

*Eventually, the majorityship [sic] of Jews will be threatened by the Arab birthrate. The result will be bloody conflict. If we want to avoid this terrible result, there is only one path for us to take: the immediate transfer of Arabs from Eretz Yisrael, the Land of Israel, to their own lands.*⁵

In an election poster for the 1981 vote, Kach warned of Jewish women being seduced by Arabs and proposed prison sentences for "every Arab who has sexual relations with a Jewish woman".⁶ And in his book *Uncomfortable Questions for Comfortable Jews*, Kahane made it clear that he saw Judaism as a superior race:

The liberal west speaks of tolerance and the obligation to respect all views regardless of their rightness or wrongness, while Judaism

4 Jacob M. Landau, *The Arabs in Israel: A Political Study* (Oxford: Routledge 2016), 100.

5 Rabbi Meir Kahane, *They Must Go* (New York: Grosset & Dunlap 1981), 7.

6 Emily Burack, "Rabbi Meir Kahane and Israel's far right, explained", Jewish Telegraphic Agency, 28 February 2019, <https://www.jta.org/2019/02/28/israel/rabbi-meir-kahane-and-israels-far-right-explained>.

demands that the Jew choose truth and the path of right and not tolerate evil in his midst.

*And so the homosexual, the prostitute, the abortionist, the addict are not permitted the tolerance of living their own lives as they see fit, for Judaism is not a certificate of license, but of obligation.*⁷

Kach ran in the 1973, 1977 and 1981 elections, but did not pass the electoral threshold until 1984, giving Kahane a single seat in the Knesset. Ahead of that election, the CEC disqualified Kach, but the supreme court overturned the committee's decision and allowed Kahane to run. He was ostracised by the mainstream right, and then Israeli Prime Minister Yitzhak Shamir of the right-wing Likud party routinely walked out of the Knesset plenum when Kahane took to the podium. Likud ministers at the time likened Kach's legislative proposals to the Nuremberg Laws of Nazi Germany.⁸

After Kahane's victory, and to ensure greater clarity on who could and could not run for election, the Basic Law: the Knesset was amended in 1985 to include the stipulation that incitement to racism is grounds for a ban. This amendment led to the party's disqualification in 1988.

Kahane was assassinated in New York in 1990, and Kach split into two factions; one kept the name Kach, and the other became Kahane Hai (Kahane Lives). Both were disqualified from the 1992 election. In 1994, a Kahane disciple, Baruch Goldstein, massacred 29 Palestinians at the Cave of the Patriarchs / Ibrahimi Mosque in Hebron. Goldstein had represented Kach at the Kiryat Arba local council and was third on the 1984 party slate. In response to the massacre Israel declared both Kach and Kahane Hai terrorist organisations and outlawed them.⁹

7 Colin Shindler, "Meir Kahane taught that hate and violence had a place in Jewry. Now Netanyahu wants his followers in government", Jewish Chronicle, 21 February 2019, <https://www.thejc.com/comment/comment/meir-kahane-taught-hate-and-violence-had-a-place-in-jewry-now-netanyahu-wants-his-followers-in-government-1.480474>.

8 TOI Staff, "Prominent Rabbi likens vote for Otzma Yehudit to backing Nuremberg Laws", Times of Israel, 23 February 2019, <https://www.timesofisrael.com/prominent-rabbi-likens-vote-for-otzma-yehudit-to-backing-nuremberg-laws/>.

9 Kach", Israel Democracy Institute, <https://en.idi.org.il/israeli-elections-and-parties/parties/kach/>.

THE 2019 ELECTION AND THE BATTLEGROUND FOR DISQUALIFICATION

Under Israel's system of proportional representation, a party needs 3.25 per cent of the total valid votes to pass the electoral threshold. This gets a party into the Knesset with a minimum of four seats. The threshold has been increased over the years to stop small, single-issue parties from yielding disproportionate power when the time comes to build a coalition. Parties therefore frequently run together on joint lists to minimise the number of wasted votes and ensure they get into parliament. Often these marriages of convenience split once the Knesset is sworn in.

This year's election has a record number of parties in the running. Three parties faced disqualification at the CEC: Otzma Yehudit, Ra'am-Balad and Hadash-Ta'al.

OTZMA YEHUDIT

In the run-up to the 2019 election, Prime Minister Benjamin Netanyahu was concerned that the plurality of parties on the right would lead to wasted votes if some parties failed to pass the electoral threshold, potentially complicating his task of forming a government. He therefore pressured the leaders of the national-religious Jewish Home and far-right National Union parties, which had already agreed to run together, to merge with Otzma Yehudit.

The leaders of Jewish Home–National Union initially rebuffed Netanyahu's efforts, saying that Otzma Yehudit was too extreme. Keen for this electoral buffer, Netanyahu offered them extensive benefits including two key ministries, two seats in the security cabinet and a technical arrangement for one party member to run on the Likud slate—an unprecedented arrangement in Israeli politics.

The merger was sealed just before the final deadline to present the party lists, and the alliance is running under the banner of the Union of Right-Wing Parties. It was presented as a technical bloc to allow the parties to enter the Knesset, with the intent being to split immediately after the election into separate factions.

Origins and Positions

Originally established as Otzma LeYisrael (Strength for Israel) in 2012, Otzma Yehudit is a far-right party whose main figures are devotees of the Jewish extremist ideologue Rabbi Kahane and have past links to the outlawed Kach and Kahane Hai.

Otzma Yehudit's 2019 platform echoes Kahanist principles and places it firmly on the extreme right of Israel's political spectrum. Stated positions include "working against the phenomenon of intermarriage" and "integrating Jewish law into Israeli law". The party's platform states,

*The Torah of Israel represents the constitution, way of life, and basic ethics of the People of Israel. At Mount Sinai, the Torah was given for the Jewish Nation to fulfil its destiny . . . Judaism is a religio-nation. It is not possible to separate Judaism from its foundations in Torah Law, just as it is impossible to separate it from its national foundations. We must return to the original definition of Judaism as a religio-nation, which shall encompass all spheres of public policy.*¹⁰

Otzma Yehudit advocates "Jewish settlement throughout the entire Land of Israel", moving the Israeli army from defence "to offence" and removing "enemies of Israel" from the country. In February 2019, senior Otzma Yehudit figure Baruch Marzel, who served as a parliamentary aide for Kahane in the 1980s, told the Jerusalem Post that Otzma Yehudit supported deporting Arabs it deems enemies of the state.¹¹

The party is also committed to restoring Jewish control over the Temple Mount / Haram al-Sharif, the holy site of major significance for Jews, Muslims and Christians.¹² The Temple Mount / Haram has

10 Raoul Wootliff (@RaoulWootliff), "PM @Netanyahu's newest partners @JewishStrength now putting out campaign material in English", tweet, 25 February 2019, <https://twitter.com/RaoulWootliff/status/1100077682157633537>.

11 "Israel's Most Right-Wing Knesset Candidate Calls to Kick Out Arabs", Jerusalem Post, 14 February 2019, <https://www.jpost.com/Israel-Elections/Podcast-Baruch-Marzel-Israels-most-right-wing-Knesset-candidate-580646>.

12 "The Temple Mount/al-Haram al-Sharif", Tony Blair Institute for Global Change, 18 November 2014, <https://institute.global/insight/co-existence/temple-mount-al-haram-al-sharif>.

become a key issue for Israel's religious far right, and Otzma Yehudit is not the only party running this year to flag the issue in its platform. Zehut, led by former Likud MK Moshe Feiglin, has made a "Jewish Temple Mount" part of its electoral pledge for 2019.¹³

Otzma Yehudit is the latest incarnation of hard-line Israeli parties whose platforms derive from Kahane's worldview, including the Jewish National Front party, established by Marzel in 2004.¹⁴ Ben-Ari, one of Otzma Yehudit's founders, was a student of Kahane, a self-declared Kahanist and a member of Kach.¹⁵ Another Kahane disciple and Kach activist and head of the Otzma Yehudit campaign headquarters (though not on the slate), Bentzi Gopstein, is the founder of anti-miscegenation group Lehava.

Kahane's ideology has been associated with violent terrorism. The 1994 Goldstein massacre was the biggest such attack to have been linked to Kahanism. The US State Department declared both Kach and Kahane Hai terrorist organisations in 1997.¹⁶ Another name on the Otzma Yehudit list whom the supreme court has allowed to run, Itamar Ben-Gvir, reportedly refused a request from a Jewish Home-aligned rabbi, Yaakov Meidan, to remove a photo of Goldstein from his home as part of the terms of this year's collaboration between Jewish Home and Otzma Yehudit.¹⁷ Ben-Gvir also was part of a Kahanist youth movement.¹⁸

13 Allison Kaplan Sommer, "The Jewish Supremacist, Pro-Marijuana Party Tipped to Be in Israel's Next Parliament", Haaretz, 11 March 2019, <https://www.haaretz.com/israel-news/elections/.premium-the-jewish-supremacist-pro-marijuana-party-tipped-to-be-in-israel-s-next-parliament-1.7004431>.

14 Dror Liba, "Otzma Yehudit's History of Racism and Provocation", Ynet News, 21 February 2019, <https://www.ynetnews.com/articles/0,7340,L-5467651,00.html>.

15 Roi Sharon, "HaKnesset Ha-18 Metziga: Haver Knesset Yotzeh Tnuat Kach" [The 18th Knesset Presents: an MK from the Kach Movement], Makor Rishon, 14 February 2009, <https://www.makorrishon.co.il/nrg/online/1/ART1/853/112.html>.

16 "Foreign Terrorist Organizations", US Department of State, <https://www.state.gov/j/ct/rls/other/des/123085.htm>.

17 Arutz Sheva Staff, "Otzma candidate refuses 'Baruch Goldstein ultimatum'", Israel National News, 14 February 2019, <http://www.israelnationalnews.com/News/News.aspx/259075>.

18 Elisheva Goldberg, "Kahane For Kids", Daily Beast, 11 May 2012, <https://www.thedailybeast.com/kahane-for-kids>.

Otzma Yehudit has not passed the electoral threshold in the two elections held since it was founded in 2012. It narrowly missed the threshold by some 12,000 votes in 2015, when it ran together with Yachad. The last time its chairman, Ben-Ari, served as an MK was in 2009 under the National Union, an alliance of right-wing parties. This year, the party's joint slate with Jewish Home–National Union looks set to gain Knesset representation, and it is polling at between five and seven seats.¹⁹ Ben-Ari was number five on the joint slate, and Ben-Gvir is eighth.

The Case Against Otzma Yehudit

The merger between Jewish Home–National Union and Otzma Yehudit was roundly criticised—virtually across the Israeli political spectrum—because it potentially clears the path for Kahane's disciples to enter the Knesset. The deal also exposed Netanyahu to unprecedented levels of criticism from Israel's supporters around the world, particularly in the US. The pro-Israel lobby the American Israel Public Affairs Committee (AIPAC) said it “has a longstanding policy not to meet with members of this racist and reprehensible party”.²⁰

The left-wing Meretz, the Labour Party and the centre party Yesh Atid petitioned the CEC to disqualify Otzma Yehudit, citing its links to Kahane and alleging that its members incited racism. Among the statements by Ben-Ari highlighted in the petition against the party was this from August 2018: “We have to change the equation regarding anyone who dares to speak against a Jew. [Such a person] is a dead man. He must not come out alive. No expelling him, no stripping him of his citizenship. He does not live! A firing squad takes him out as the Arabs understand [best].”²¹ Ben-Ari argued that his remarks had been taken out of context.

19 Chaim Levinson, “Top Posts for Merging with Kahanists: Netanyahu, Far-right Party Reach Deal”, Haaretz, 20 February 2019, <https://www.haaretz.com/israel-news/elections/.premium-netanyahu-to-right-wing-party-merge-with-kahanists-and-get-key-portfolios-1.6956512>.

20 AIPAC (@AIPAC), “We agree with AJC. AIPAC has a longstanding policy not to meet with members of this racist and reprehensible party”, tweet, 22 February 2019, <https://twitter.com/aipac/status/1099010866853359621?lang=en>.

21 “Israel elections: Court bans far-right candidate Ben-Ari”, BBC, 18 March 2019, <https://www.bbc.com/news/world-middle-east-47604361>.

In his legal opinion, Attorney General Avichai Mandelblit described “most if not all” of Ben-Ari’s political statements as incitement to racism, and his racism as “severe and extreme”. Mandelblit supported disqualifying Ben-Ari but permitting his colleague Ben-Gvir to run “despite mounting evidence against him that is incredibly disturbing”. Ben-Ari, said the attorney general, “systematically made racist and inciting statements based on national and ethnic characteristics against the Arab population”.²² The attorney general added that Ben-Ari “acts to realise these [racist] goals in order to turn them from idea to reality, and his candidacy is intended to serve these goals.”²³

The CEC rejected the petition against Otzma Yehudit by just one vote, allowing both candidates to run. The supreme court, however, in its review of the decision, agreed with the attorney general and disqualified Ben-Ari.

This marks the first time that an individual candidate, rather than an entire party, has been banned from running in Israel. In a rare step, the supreme court published a summary of its decision on Ben-Ari, saying that “permitting his candidacy in these circumstances would legitimise racist discourse as legitimate discourse in the State of Israel”. The court said that it had been presented with “a critical, proven and convincing mass of evidence in its quality and quantity, which includes unequivocal, clear and harsh statements that have been repeated over the years - but in particular on the last two years - against the Arab public in Israel”. Most of the justices found that these statements sought to “fuel hatred, instigate hostility and condemnation to the point of systematic and deliberate derision of the Arab public in Israel”.²⁴

22 Moran Azoulay, Toavh Tsimuki and Amir Alon, “AG moves to bar head of far-right Otzma Yehudit from running for Knesset”, Ynet News, 6 March 2019, <https://www.ynetnews.com/articles/0,7340,L-5474390,00.html>.

23 TOI Staff, “AG urges High Court to disqualify Ben-Ari over ‘extreme racism’”, Times of Israel, 13 March 2019, <https://www.timesofisrael.com/ag-urges-high-court-to-disqualify-ben-ari-from-elections-over-extreme-racism/>.

24 “Ha’elyon: Hachsharat moamdoto shel Ben-Ari hayta notenet legitimatzia l’siach hagizani b’yisrael” [Supreme Court: Approving Ben-Ari’s candidacy would have given legitimacy to the racist discourse in Israel], Haaretz, 22 March 2019, <https://www.haaretz.co.il/news/law/1.7044659>.

RA'AM-BALAD

Otzma Yehudit was not the only party up for disqualification. Arab parties were referred to the CEC for negating the existence of the State of Israel and supporting terrorism. The panel decided to disqualify the joint list of Ra'am-Balad following a petition by the ruling Likud party, supported by Yesh Atid.

Origins and Positions

Ra'am-Balad is a joint alliance between two veteran Arab parties. Both were part of the Joint List (a united slate of the main Arab-dominated parties) in the outgoing Knesset. After the Joint List broke apart over internal conflicts, Ra'am-Balad joined forces to pass the electoral threshold come the vote in April 2019.

Balad, the Hebrew acronym for the National Democratic Assembly, was formed ahead of the 1996 election by a group of Israeli Arab intellectuals and activists led by Azmi Bishara. In Israeli terms, the party is on the far left of the spectrum, although Balad does not necessarily see it that way. Its chairman, MK Jamal Zahalka, said in February 2019 that Balad “is not part of the Israeli left, but is an inseparable part of the Palestinian national movement”.²⁵

The party describes itself as a progressive actor that stands for democratic principles and represents the Arab minority, which makes up around 20 per cent of Israel's population. In its own words, Balad “strongly believes in and advocates for universal human values: democracy, freedom, social justice, human rights, and the right of a people to self-determination. Balad firmly opposes racial, national, religious and gender discrimination.”²⁶

Balad is viewed as an anti-Zionist party, and its major principles include positions that are highly controversial in Israel. Balad

25 TOI Staff, “Balad Chair: Party is ‘part of Palestinian national movement,’ PM a war criminal”, Times of Israel, 2 February 2019, <https://www.timesofisrael.com/mtanes-shihadeh-secures-top-spot-on-balad-party-slate-for-upcoming-election/>.

26 See Balad's 2003 election platform: <https://en.idi.org.il/media/6437/balad-16.doc>.

advocates turning Israel into a “state of all its citizens” and proposes to

*fight to transform the state of Israel into a democratic state of all its citizens—Jews, Arabs and others—as is required by a fulfilment of human and civil rights based on full equality between all citizens of the state, with absolutely no discrimination on the basis of nationality, religion or gender.*²⁷

Because of this stance, the party has been up for disqualification repeatedly since the 2003 election on the grounds that it negates Israel’s existence as a Jewish state.

Balad calls for the establishment of a neighbouring Palestinian state with Jerusalem as its capital, Israeli withdrawal from all occupied territories, including the Golan Heights, and a return to 1967 borders. It supports the right of return for Palestinian refugees and advocates the recognition of Arab citizens as a national minority with cultural autonomy. Balad’s platforms have emphasised that Arabs in Israel are part of the “Palestinian Arab people”.

Balad party stalwarts have attracted their share of controversy and calls for disqualification, too. Hanin Zoabi, who served as a Knesset member for a decade but is not running this year, was suspended from Knesset three times, including for her participation in the Mavi Marmara flotilla to break the Israeli-Egyptian blockade of the Gaza Strip in 2010.²⁸ She also faced disqualification ahead of the 2015 election over accusations by right-wing MKs that she was “aiding terrorism”, but this was overturned by the supreme court.²⁹ The party’s founding leader, Bishara, left Israel in 2007 amid

27 See Balad’s 1999 election platform (authors’ translation): <https://en.idi.org.il/media/6439/balad-15.pdf>.

28 Moran Azoulay, “Flotillas and Fights: Israel’s Most Controversial MK Leaves Behind a Contentious Legacy”, Ynet News, 7 January 2019, <https://www.ynetnews.com/articles/0,7340,L-5442428,00.h>.

29 Yonah Jeremy Bob and Lahav Harkov, “Zoabi fights disqualification as Knesset candidate at High Court hearing”, Jerusalem Post, 17 February 2015, <https://www.jpost.com/Israel-Elections/Zoabi-fights-disqualification-as-Knesset-candidate-at-High-Court-hearing-391272>; Jack Houry and Jonathan Lis, “Controversial Israeli Arab Lawmaker Haneen Zoabi Won’t Run for Reelection”, Haaretz, 5 January 2019, <https://www.haaretz.com/israel-news/elections/.premium-controversial-israeli-arab-lawmaker-haneen-zoabi-won-t-run-for-reelection-1.6809333>.

allegations that he had passed information to Hizbullah during the Second Lebanon War in 2006.³⁰ These links were highlighted in the petition against Ra'am-Balad this year.

Since its establishment, Balad has run periodically with other parties. This year, Balad is running on a joint slate with Ra'am.

Ra'am is the Hebrew acronym for the United Arab List. Like Balad, Ra'am was established in 1996, but by the southern branch of the Islamic Movement and the Arab Democratic Party. The Islamic Movement, an Islamist group, was founded in the 1970s by Sheikh Abdullah Nimr Darwish. It advocates the role of Islam in public life and promotes a separatist Islamic identity among Israeli Arabs. The movement's ideology and structure are based on the concepts of the Muslim Brotherhood, though it has no formal ties to the Brotherhood.³¹

The movement's southern and northern branches split in 1996, when the former participated in the general election. The southern branch has continued to run for election to the Knesset represented by Ra'am.³² The northern branch, led by Sheikh Raed Salah, boycotts Israeli general elections. In 2015, the Israeli government outlawed the northern branch, accusing it of collaborating with Hamas, inciting violence and calling to replace Israel with an Islamic caliphate.³³

Ra'am supports the establishment of a Palestinian state with Jerusalem as its capital, and calls for an end to the occupation and the dismantling of the West Bank and East Jerusalem settlements. The party seeks the release of Palestinian prisoners and supports

30 TOI Staff, "Minister Seeks to Strip Citizenship of Fugitive ex-MK", Times of Israel, 30 July 2017, <https://www.timesofisrael.com/minister-seeks-to-strip-citizenship-of-fugitive-ex-mk/>.

31 For more on the Islamic Movement in Israel, see Laurence Rubin, "Islamic Political Activism in Israel", Saban Center for Middle East Policy at Brookings, April 2014, <https://www.brookings.edu/wp-content/uploads/2016/06/Rubin-web-FINAL.pdf>; and Adam Hoffman, "What Is the Islamic Movement in Israel?", Tony Blair Institute for Global Change, 30 March 2016, <https://institute.global/insight/co-existence/what-islamic-movement-israel>.

32 Arik Rudintzky, "Arab Politics in the 2019 Election Campaign", The Israel Democracy Institute, 4 February 2019, <https://en.idi.org.il/articles/25871>.

33 Isabel Kershner, "Israel Outlaws Northern Branch of Islamic Movement", New York Times, 17 November 2015, <https://www.nytimes.com/2015/11/18/world/middleeast/israel-outlaws-northern-branch-of-islamic-movement.html>.

the right of return of Palestinian refugees. Like Balad, Ra'am advocates the recognition of Arabs as a national minority in Israel, and its platforms have called for this recognition in a constitution.³⁴

The Case Against Ra'am-Balad

Likud filed a petition against Ra'am-Balad in response to the petition against Otzma Yehudit. Some critics pointed to the attempt at false symmetry, given that both Ra'am and Balad have ultimately been cleared to run every time they have faced disqualification. The attorney general was opposed to disqualifying the slate, saying there was not enough evidence to support the claims that its members "seek to eliminate Israel as a Jewish state" and support violent Palestinian resistance, as well as the Hizbullah terrorist group.³⁵ The CEC panel decided to disqualify Ra'am-Balad, but the supreme court overturned the ban by a majority of eight to one.

HADASH-TA'AL

The CEC rejected another petition against the alliance of the left-wing socialist Hadash and Ta'al (the Hebrew acronym for the Arab Movement for Renewal), which the supreme court supported unanimously in its review, allowing Hadash-Ta'al to run.

The CEC did, however, decide to bar a candidate from Hadash. Ofer Cassif, a Jewish political lecturer and candidate from the Jewish-Arab party, was barred for allegedly equating Israel and its army with the Nazi regime. He was quoted as calling to fight "Judeo-Nazism", expressed his support for changing Israel's national anthem and called Justice Minister Ayelet Shaked "Neo-Nazi scum".³⁶ Cassif claimed at the CEC hearing that as an academic, he had been speaking in metaphors.

34 "United Arab List – Ta'al (Ra'am-Ta'al)", Ynet News, 2 April 2008, <https://www.ynetnews.com/articles/0,7340,L-3500226,00.html>.

35 "Israel AG rejects petition to bar Arab parties, far-right extremists from April vote", i24news, 6 March 2019, <https://www.i24news.tv/en/news/israel/politics/196473-190305-israel-ag-rejects-petition-to-bar-arab-parties-far-right-extremists-from-april-vote>.

36 Jonathan Lis and Jacky Khoury, "Israeli Arab Slate, Far-Left Candidate Banned from Election Hours After Kahanist Leader Allowed to Run", Haaretz, 7 March 2019, <https://www.haaretz.com/israel-news/elections/.premium-far-left-lawmaker-banned-from-israeli-election-for-supporting-terror-1.6999656>.

Attorney General Mandelblit opposed Cassif's disqualification. In his advice to the supreme court ahead of the appeal, he wrote that while he and the state prosecutor took issue with his comments, there was not the "critical mass of evidence" required for a candidate's disqualification. Here too, the supreme court agreed with the attorney general and allowed Cassif to stand.³⁷

³⁷ "AG Rejects Petitions to Bar Hadash and Arab Parties from Elections", Communist Party of Israel, 6 March 2019, <http://maki.org.il/en/?p=17827>.

A POLITICISED PROCESS?

This year's cases have laid bare the alleged politicisation of the operation of the CEC and the role that the judicial branch—including the attorney general and supreme court—must play as a check and balance to the process. While the supreme court has upheld bans only in the rarest of cases, it has opened itself up to further criticism of having a left-wing, liberal bias by repeatedly permitting Arab parties to run.

The court's role is to safeguard Israel's political system from parties peddling extremism that crosses the grey line into illegality, while balancing the right to freedom of expression that is the lifeblood of any true democracy. However, even though the court's role is one of essential and objective checks and balances, it does not operate in a vacuum. The sensitive and politicised nature of the process before a case reaches the court's justices—and, indeed, Israel's electoral history—acts to an extent as a constraint on the court. Out of a desire to avoid bias, parties on the far right may be allowed to run because Arab parties up for disqualification have ultimately been allowed to run.

This year's decision to bar a far-right candidate does challenge this perceived false equivalence. However, it almost automatically opened the supreme court up for condemnation from the right, with Shaked calling it “gross, misguided interference” in Israel's democratic process. The following day she set out her vision for radical reforms to the supreme court, including proposing that the political echelon appoint judges, should she retain the justice portfolio after the next election.³⁸

38 Ori Lewis, “Right Seethes, left cheers as top court disqualifies far-right candidate Ben Ari”, Times of Israel, 17 March 2019, <https://www.timesofisrael.com/right-seethes-left-cheers-as-top-court-disqualifies-far-right-candidate-ben-ari/>.

CONCLUSION

Extremism is a notoriously slippery concept, with no unanimously agreed definition. The history of Israel's system of proportional representation is replete with small parties and mosaic-like coalitions. Many of those parties stand for positions and declaim slogans that enter the grey zone between extremism and conservatism, straddling the space between allowable free speech, on the one hand, and illegality and incitement, on the other.

The banning of Jewish extremist party Kach in 1988 is the most well-known case of the disqualification of a slate from running in an Israeli election. It is also the best example of how the Israeli system can adapt when faced with how to deal with a party that has crossed the line. When a candidate with views deemed too divisive, abhorrent and racist to merit representation in the legislature gained a Knesset seat, the law was changed to catch up.

In that case, despite failed earlier attempts to disqualify Rabbi Kahane and his party, the newly amended election law ensured that exponents of the virulently anti-Arab views he represented would not take a seat in the Knesset. His participation in parliament made clear that there should be no room for incitement to racism in that chamber. The system has been all the better for it—and it appears that the March 2019 decision by the supreme court upholds this value.

The history reviewed in this paper also shows the less encouraging side of the disqualification system. This year's developments shine a light on how politicised Israel's disqualification process is. The cases that the CEC reviews every general election cycle reflect the public mood rather than objective criteria, often painting a false picture of equivalence between parties that represent Israel's Arab minority and parties on the farthest right of Israel's political spectrum.

The fact that this year, the CEC allowed a figure like Ben-Ari to run, while disqualifying Cassif, highlights this false equivalence. Parties like Ra'am-Balad and candidates like Cassif are seen by their critics as extremists who seek to eliminate Israel as a Jewish state and support the "violent Palestinian resistance". For some, the fact that the court allowed them to run but outlawed Ben-Ari proves

that it is biased towards the left. Balad's platform emphasises pluralism and democracy, but its commitment to a "state of all its citizens", rather than a Jewish state, makes it beyond the pale for most voters. This is key to understanding the dynamics of the disqualification process.

At the same time, while Kahanism has been roundly rejected by the Israel mainstream, some of the sentiments of the likes of Ben-Ari on Arabs and loyalty are no longer considered beyond the pale, and are increasingly voiced, especially on social media. While the system might work to bar an extremist like Ben-Ari, his rhetoric does not occur in a vacuum. Despite his disqualification, Otzma Yehudit remains part of the Union of Right-Wing Parties list, and could still get its candidate into the Knesset. That speaks volumes about the extent to which rhetoric once viewed as acceptable only on the very far right has become part of the mainstream debate in Israel.

Such developments illuminate what is regarded as extreme in the Israeli context. But the fact that virtually every election cycle sees petitions to disqualify Arab parties that are subsequently thrown out by the supreme court also raises important questions about the objectivity and effectiveness of the process. The court's and the attorney general's roles are critical, and their reneging on bans has kept Arab parties in the running—although they have also made clear how distasteful they find some of the comments of the Arab parties' candidates. But these parties continue to be pawns in a system where mainstream Israeli parties need to show they are not leftists to gain votes from a right-leaning public.

The process raises important questions about definitions of extremism and the messages the CEC's decisions on disqualification send to voters. Ultimately, it also raises questions about freedom of expression. Does the system wield its powers to safeguard the legislature—and the country—from parties with an extremist agenda? Or does it act to curb rights to free speech?

This year's review shows that the court continues to serve as the ultimate check and balance to limit the politicisation of the process. The court may have essentially upheld the 1988 decision to ban anti-Arab racists from running for election, but its decision has once

again placed it at the heart of a deeply political controversy over how the law should be interpreted.

The court has protected the right of Arab parties to serve their constituents and campaign on issues at the heart of their interests. Yet the latest ruling comes just months after the passage of the controversial nation-state law, which defines Israel as the nation-state of the Jewish people, and against the backdrop of election campaigning in which Arab citizens are once again portrayed as illegitimate political partners and second-class citizens.³⁹ Beyond the question of what is and is not extremist, the disqualification process exposes the battle lines against the ongoing delegitimation of the Arab minority.

39 See “Basic Law: Israel – The Nation State of the Jewish People”, unofficial translation by Dr Susan Hattis Rolef, <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

The Israeli Supreme Court's recent decision to bar an extremist candidate from running in the country's 2019 general election shows that the court is still the ultimate check on the political system. But the ruling also raises important questions about definitions of extremism and freedom of expression.

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