

Israel Government and Politics: Constitution

Israel does not have a written constitution, even though according to the Proclamation of Independence a constituent assembly should have prepared a constitution by October 1, 1948. The delay in the preparation of a constitution resulted primarily from problems that emerged against the background of the alleged clash between a secular constitution and the Halacha (the Jewish religious law).

Background

Despite what the Proclamation of Independence of the State of Israel states regarding the preparation of a constitution by the Constituent Assembly, Israel has no written constitution in the formal sense, even though it has a constitution in the material sense - in other words, laws and basic rules that lay down the foundations of the system of government and the rights of the individual. Some of these are formulated in basic laws, some are scattered in other laws, and part - at least until the passing of basic laws dealing with human and civil rights - were interpreted and formulated in a series of decision by the Supreme Court.

There were those who were inclined to view the Proclamation of Independence as a constitution, since it dealt with the foundations of the establishment of the state, its nature, part of its institutions, the principles of its operation and the rights of its citizens. However, in a series of decisions the Supreme Court ruled that the Proclamation of Independence does not have the validity of a constitutional law, and that it is not a supreme law, in light of which laws and regulations that contradict it are nullified. Nevertheless, article 1 of the Basic Law: Human Dignity and Liberty and of the Basic Law: Freedom of Occupation relates to the principles mentioned in the Proclamation of Independence as a normative source. According to this article "the basic human rights in Israel are based on recognition of the value of man, the sanctity of his life and his being free, and they will be respected in the spirit of the principles (mentioned) in the proclamation of the establishment of the State of Israel."

The debate in the First Knesset on the issue of the constitution even before the establishment of the state, the National Council Executive set up a committee, headed by MK Zerah Warhaftig (Mizrahi), to deal with the issue of the constitution. However, already in this committee it became apparent that the work of preparing a constitution would not be easy. The first Knesset held several debates on the issue.

Arguments in Favor

The main arguments in favor of a constitution were: the fact that the founders of the state favored the preparation of a constitution and the explicit declaration to this effect in the

Proclamation of Independence; the need for a document that would bind all the state institutions, including the legislature, and would serve as the basis for the rules by which the state functions; the need to respect resolution 181 of the United Nations General Assembly of November 29, 1947, which dealt with the plan for the partition of Palestine into a Jewish and Arab state. The resolution called for the preparation of a democratic constitution by a Constituent Assembly, which was to include instructions relating to the preservation of the basic rights of the state's citizens; the fact that most states have constitutions; the educational and cultural value that is embodied in a constitution, to the light of which the younger generation can be educated and which serves as the state's visiting card; the value of a constitution in advancing the "melting pot" process; and the value of a constitution as an expression of the revolution that took place in the life of the Jewish people.

Arguments Against

The main arguments put forward by those opposed to the constitution, headed by David Ben-Gurion and the religious parties, were: the idea of the constitution developed in previous centuries, against the background of social and economic struggles that no longer exist; despite and perhaps even because of the absence of a written constitution in Great Britain, the rule of law and democracy there are solid, and civil freedoms are upheld; the Proclamation of Independence includes within it the basic principles of any progressive constitution, and the Transition Law of 1949, which was passed by the Constituent Assembly, constitutes a fulfillment of the state's obligations towards the United Nations on this issue; only a minority of the Jewish people is in Israel, and the state does not have the right to adopt a constitution that will bind the millions that have not yet arrived; because of the nature and special problems of the state, it is difficult to reach a consensus regarding the spiritual principles which are to shape the image of the people and the essence of its life, and the debate about the constitution could lead to a cultural war between the religious and secular communities; the State of Israel is in the midst of a continuous process of change and crystallization, and this does not go together with a rigid constitution.

The Harari Proposal

At the end of the debate, on June 13, 1950, the Knesset decided to adopt a resolution known as "the Harari proposal," named after MK Yizhar Harari of the Progressive Party, who proposed it. According to this proposal "the First Knesset assigns to the Constitution, Law and Justice Committee the preparation of a proposed constitution for the state. The constitution will be made up of chapters, each of which will constitute a separate basic law. The chapters will be brought to the Knesset, as the Committee completes its work, and all the chapters together will constitute the constitution of the state." Following the passing of this resolution, the Constitution, Law and Justice Committee set up a sub-committee on the Constitution.