

HCJ 4908/10

1. MK Ronnie Bar-On
 2. Kadimah Party
- v.
1. Israel Knesset
 2. Speaker of the Knesset

The Supreme Court sitting as the High Court of Justice
[January 11, 2011]

Before President D. Beinisch, Vice President E. Rivlin, Justices A. Grunis, M. Naor, E. Arbel, E. Rubinstein, U. Vogelman

JUDGMENT

President D. Beinisch

1. On 22.6.2010, Basic Law: State Budget (Special Provisions) (Temporary Provision) (Amendment) (hereinafter: the Law or Basic Law (Temporary Provision)) passed its second and third readings in the Knesset. Basic Law (Temporary Provision) provides that the state budget for the years 2011 and 2012 will be a biennial one, enacted in a single law. Basic Law (Temporary Provision) is the continuation of an earlier basic law that stated, also as a temporary provision, that the state budget for the years 2009 and 2010 would be a biennial one (hereinafter: Original Temporary Provision). Basic Law (Temporary Provision), like the Original Temporary Provision, changes the provisions of ss. 3(a)(2), 3(b)(1) and 3A of Basic Law: The State Economy, whereby the state budget is to be set for a single year only.

(...)

32. The doctrine of the unconstitutional constitutional amendment has been discussed at length in foreign legal systems (for a comparative review of this issue see: Kemal Gözler, *Judicial Review of Constitutional Amendments: A Comparative Study* (2008)); and see: Aharon Barak, "The Unconstitutional Constitutional Amendment" (forthcoming, Bach Book) (Hebrew)). At its base, the doctrine of the unconstitutional constitutional amendment addresses the question of whether the courts have the authority to examine the constitutionality of amendments to the constitution. The answer to this question is directly connected to the nature and the character of the constitution in the framework of which the constitutional amendment is examined. Accordingly, there are states whose constitutions include "eternity clauses" – constitutional provisions that cannot be amended (see, e.g., art. 4 of the Constitution of the Republic of Turkey; art. 79(d) of Basic Law for the Federal Republic of Germany). In a number of states, courts have struck down amendments to the constitution on the basis of eternity clauses. There are states, such as India, in which the constitution does not

include an eternity clause, but despite that the court has struck down amendments to the constitution for the reason that they were injurious to “the basic structure of the constitution” (for a review of the decisions of the Indian Supreme Court, see Gözler, pp. 88-95). In both situations – cases based on eternity clauses and those in which there was no such clause – the courts that were prepared to subject constitutional amendments to judicial review did so where the constitutional amendment breached or changed a fundamental, basic meta-principle of the constitution and the regime in the relevant state (such as the republican structure and the secular regime in Turkey. See also the abovementioned ruling of the Czech Constitutional Court, which nullified the law for bringing forward the elections based, inter alia, on an eternity clause in the Constitution according to which “any changes in the essential requirements for a democratic state governed by the rule of law are impermissible.” For further examples, see Gözler, *ibid.*).

Justice U. Vogelman

I concur.

Justice M. Naor

1. I concur in the opinion of the President

(...)

Justice E. Rubinstein

1. This case, even if outcome is denial of the petition, highlights, in my opinion, ...

9. As stated, in the circumstances I concur in the ruling of my colleague, the President.

Justice E. Arbel

I concur in the judgment of my colleague, the President.

Vice President E. Rivlin

I concur.

Justice A. Grunis

I concur.

The petition was denied as stated in the ruling of the President D. Beinisch.

There is no order for costs.

3 Nissan 5771.

7 April 2011.

Translated by

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(<http://versa.cardozo.yu.edu/opinions/bar-v-knesset>),

<http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Bar-On%20v.%20Knesset.pdf>.