

Prof. Yaakov Ne'eman Ministerial Committee on Legislation
Minister of Justice

Atty. Yehuda Weinstein
Attorney General

Urgent – Regarding the Ministerial Committee on Legislation 26.6.11

Re:

1. Proposed Associations Law (Banning Support of Political Associations in Israel from Foreign Diplomatic Entities) / M.K. Akunis
2. Proposed amendment of the Income Tax Order (Taxation of Income to Public Institutions Received from a Foreign State Entity) / M.K. Kirshenbaum

In light of the deliberations scheduled for Sunday of the Ministerial Committee on Legislation concerning these two tabled bills, we herewith submit the position of the Association for Civil Rights in Israel:

We note at once that we consider these two bills to be improper and anti-democratic, and we urge you to express your opposition to them.

Introduction: Campaign against Human Rights Organizations – Undermining Democratic Principles

These two bills are part of a larger effort to curtail the work of human rights and social change organizations whose agenda and/or activities are not approved by various MKs and/or ministers.

The attempt by MK Akunis to submit a broader version of the bill (covering contributions from foreign state entities to all associations in Israel) incurred a setback recently in the Ministerial Committee. As a result, he sought to narrow the bill to those who, from the outset, were intended to be the target of this legislation – human rights organizations. This is also patently clear from the explanatory notes, in which Israeli human rights organizations are presented as “inciting” against the State of Israel. In the bill proposed by MK Kirshenbaum, the intent to harm these organizations is made clear immediately and unequivocally.

It is troubling and of concern that the fundamental principles of the democratic system must be repeatedly explained. Every rational person knows that for a democracy to exist, and in particular for it to flourish, it is necessary to safeguard the freedom of expression, freedom of association, and the freedom of public criticism and protest, which encompasses the freedom of activity of human rights organizations and the spectrum of views and opinions (including those about which not everyone agrees).

The Importance of Human Rights Organizations

The protection of human rights, including criticism of the policies and/or activities of the government, is critical for safeguarding democracy and human rights in Israel. Freedom to criticize the government, exercise oversight of its activities, and proffer assistance to those injured by it – are all vital and legitimate modes of operation in a democracy, and ensure its ongoing existence and flourishing. Indeed, the importance and even robustness of a democracy is embodied by its protection of human rights and of minority groups from the majority, and its assurance of the right to express and promote views that are not in consensus.

The attempt to harm the activities of organizations that deal with human rights in these and other bills currently being advanced undermines the foundations of democratic rule. It should be kept in mind that attacks on human rights organizations harm the weakest groups in the population, groups that these organizations represent and to which they give voice. Denying the legitimacy of organizations to act and criticize government activity also contravenes the 1999 “UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, which was ratified by Israel.

It is important to emphasize that, in complete opposition to the view of these organizations as harmful to the state, official bodies in Israel – civilian and defense alike – seem to be aware of the importance of human rights organizational activity in Israel. These organizations are not only cited in official state reports, but all these official bodies maintain ongoing contact with the organizations, and seriously address their claims and findings. What’s more, all the activity of these organizations is transparent – their views, findings, projects, and funding, including funding from foreign state entities.

Contributions from Foreign States to Human Rights Organizations in Israel

The efforts of proponents of the bill is surprising, if not ridiculous, in their presentation of foreign states (the U.N. and the European Union are particularly singled out in the explanatory notes) as seeking to subvert Israeli sovereignty and interfere in internal matters. Israel wishes to be part of the family of nations, and as such has committed itself to a range of conventions and agreements in all walks of life with these very same states. Beyond the fact that the basis for Israel’s relations with democratic countries is shared values – democracy and human rights above all (see, for example, Israel’s agreements with the EU and other bodies) – the State of Israel is a recipient of funds from these very same countries, both in the framework of trade agreements, investments, and loans, as well as the donation of enormous sums (many billions). What’s more, the “intervention” of these states via their funding is manifested in all areas of life – education, culture, health, welfare, and, of course, security. Indeed, it is quite likely that the influence and ramifications of their intervention in some of these areas are much more significant than the ramifications of the donations they make to human rights organizations. To illustrate, the European Union transferred EUR 158 million to Israel in 2010, of which only EUR 1.8 million went to human rights organizations.

Foreign support for democracy and human rights in Israel (and in the world in general) is a direct product of the lessons culled the atrocities of World War II, as a result of which the international community agreed never to remain on the sidelines. Events of World War II led the countries of the world, including Israel, to become part of a family of nations and thereby together ensure the safeguarding of democracy and human rights.

Bill Tabled by MK Akunis – Banning Donations to Political Organizations – Additional Remarks

This bill proposes a ban only on contributions from foreign states and only those made to “political associations”. Narrowing the bill in this way makes patently clear that it is a matter of political persecution. Why? Limiting it to donations from foreign state entities ensures that the funding from private foreign donors – in total no less than the funding from foreign states to human rights organizations – some of which has a profound impact on the politics and/or policies and/or security of Israel (e.g., the financing of a widely distributed, free newspaper in Israel; the acquisition of homes in the territories or expansion of settlements; support for various political or social organizations, etc.) will remain unharmed. Organizations identified with the positions and views of proponents of the law do not receive moneys from foreign state entities, only because they do not seek to promote human rights. On the contrary, their overriding aim is to influence politics. Furthermore, narrowing it to “political associations” is designed to ensure that organizations whose activities are acceptable to and approved by those who proposed the bill will not be harmed.

Is it really possible to define a “political association”? The definition in the proposed bill includes two elements: (1) “an association whose goals include an attempt to impact on the State of Israel’s political and security agenda”; (2) “or an association in the framework of which activities of political nature take place”. This leaves the interpretation of views to the eyes of the beholder. Proponents of this bill seemingly want to claim that human rights protection is political activity; they apparently wish to argue that promoting change in the form of government, or Jewish-Arab dialogue, or peace initiatives and ideas by civil bodies, or criticism of the government in the areas of security or politics – are all political activity. Human rights organizations are neither party-affiliated nor political. The attempt to present them as such reflects a lack of understanding or deliberate misrepresentation of fundamental democratic principles and international agreements.

Bill Tabled by MK Kirshenbaum – Taxation of Organizations – Additional Comments

This bill proposes cancellation of the tax exemption given to public institutions, and imposing a 45% tax on donations from a foreign state entity, even though these are clearly not-for-profit institutions. The logic of this bill is unclear – is the taxation intended as punishment for the receipt of donations, donations that are legal under Israeli law, only because the proponents of the law disapprove of their source? Or is a punishment called for because of the use to which these organizations put the money, which is not endorsed by proponents of the bill?

The fate is not clear of public institutions that do not receive state support, but are involved in areas considered “legitimate” by proponents of the bill (education, culture, medicine, etc.) – will they also be required to pay 45% tax on their income?

It should be recalled that human rights and/or social change organizations generally abide by a core principle of not accepting government funding to allow them to criticize the government on human rights matters without fear that the criticism would harm their funding, and also to avoid a conflict of interest or bias. Is the bill designed to undermine or abolish this important principle? And if these human rights organizations decide to accept government support, will it exempt them from this legislation?

This bill has other far-reaching implications – although the proponents of this bill clearly aimed to harm human rights organizations in Israel, also likely to be harmed if it passes are all institutions that the government decides not to support financially. This means that cultural, academic and research institutions, health institutions, and civil society organizations in every field will all become hostage to the government, which can rescind or threaten to rescind its support at any moment that the organization’s activity appears incompatible with the government’s views.

In Summary –

A democratic state must ensure freedom of expression and assembly, pluralism of views, thoughts, and activities. A democracy must not constrain political, social or other activity based on the political, religious, or social worldview *of one part of the population by exploiting political power for purposes of silencing those in disfavor*. This is not “defensive democracy”. This is simply not democracy.

We urge you to reject these two bills and ensure the continued important activity of civil society in Israel, above all human rights organizations, as well as freedom of assembly, and the freedom of expression of all citizens and residents of Israel, irrelevant of their worldview.

Respectfully yours,

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