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## The Direct Election of the Prime Minister in Israel's Constitutional System (1992-2001)

**Abstract:** In Israel, in the period from 1992 to 2001, for the first and only time in the history of modern democracies, the law was changed to enable direct elections for the Prime Minister. This was an attempt to circumvent weaknesses in the political system which were mostly attributed to the strict rule of proportional representation in electing the Knesset: a high degree of fragmentation and ideological polarisation of parliament, excessive power of small sectarian parties, lengthy processes of forming coalition governments, and the dysfunction of government and political institutions in general. Direct elections for the Prime Minister were supposed to increase stability, efficiency and legitimacy of the Prime Minister, government and political system. The reform was unsuccessful because the expectations of its creators – that the voters would adapt to the new institutional rules – failed to materialise. Instead of expressing undivided political loyalty to the Prime Ministerial candidate and his party, most voters divided their votes in the simultaneous elections for Prime Minister and parliament: the huge majority gave one vote to the candidate for Prime Minister of one of the two biggest parties, Labour Party or Likud, while the second vote was used massively to support small parties. The reform further deepened the crisis of the political system and produced numerous theoretical dilemmas about its nature.

**Keywords:** Israel, constitutional system, Knesset, Prime Minister, direct election, government, political parties

**Słowa kluczowe:** Izrael, system konstytucyjny, Kneset, premier, wybory bezpośrednie, partie polityczne

### 1. Constitutional foundations of the State of Israel's political system

The constitutional system of the State of Israel was formed under the significant influence of the British political model and British constitutional conventions<sup>1</sup>.

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1 This is mainly due to the fact that until May of 1948 the British Mandate of Palestine was under legal regulations based broadly on British legislature, which remained in force to a significant extent after the State of Israel was formed. Comp. L. Wolf-Phillips, *The Westminster Model in Israel*, "Parliamentary Affairs" 1973 No. 26, p. 415 onwards.

Additional influence over the eventual shape of the political system of the country was due to some measures deployed in other European democracies as well as in the United States. This resulted in an individual Israeli legal and political system, characterised by the lack of holistic and systematic regulation of all fundamental constitutional matters<sup>2</sup>.

Israel is one of few modern countries which does not have a written constitution as the highest-level normative legal act, regulating the fundamental principles and institutions of the state political system<sup>3</sup>. At the basis of the Israeli constitutional system are currently 11 'basic acts'<sup>4</sup> whose content still does not address several vital issues concerning the political system. In particular, they do not contain the principles of the political system, expressed *expressis verbis*. These even include addressing the measures that are fundamental for all political systems such as indicating the nature of the sovereign, and the fundamental forms of exercising the state's highest powers<sup>5</sup>.

The analysis of the legal-political measures adopted in the ratified fundamental acts engenders the thesis that the concept of national sovereignty forms the foundations of the Israeli public authorities. This stemmed equivocally from the statements included in the Declaration of Independence which stated: "We, the members of the National Council<sup>6</sup>, representatives of the Jewish community hereby proclaim the establishment of the Jewish state". This formula refers just to the Jewish nation, but the same act also expresses the principle of equal political rights of all residents of Israel, regardless of nationality and religion. The de-facto sovereign

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2 Por. S. Navot, *Constitutional Law of Israel*, Alphen aan den Rijn 2007, p. 83 onwards.

3 The project to create a single Act of the Constitution was abandoned within two years of the establishment of the state of Israel when it transpired that it would not be possible to achieve a consensus over the final shape of the fundamental act that all significant political factions could subscribe to. This was the consequence of the Knesset adopting the Harari Act on 13th June 1950, which introduced the principle that the future Constitution should be created in stages, with each chapter being voted through in turn. Each chapter has been conceived as a separate fundamental act, which is passed by the Knesset with the ordinary majority of MPs. More on the reasons for this decision of the Israeli Parliament in: G. Gross, *The Constitutional Question in Israel*, (in:) D. J. Elazar (ed.), *Constitutionalism. The Israeli and American Experiences*, Jerusalem 1990, p. 53 onwards.

4 Moreover basic laws which, however, do not have the character of fundamental acts, include, according to the Israeli constitutional law science, the Declaration of Independence of 1948, as well as some ordinary acts of Parliament. Rubinstein, *HaMishpat Hakonstitutionali shel Medinat Israel* (The Constitutional Law of the State of Israel), Jerusalem 1992 (Hebr.).

5 This article mainly makes use of the texts of the Basic Laws of Israel contained in the English language collection: *The Constitution of the State of Israel 1996-5756*, Jerusalem 1996. The most recent amendments of these acts are sourced from the Knesset official internet service <http://www.knesset.gov.il> (accessed on: 14.05.2014).

6 The National Council was established in the Spring of 1948 as a temporary representative body, which represented different Jewish political organisations. The meeting of this Council in Tel Aviv on the 14th May 1948 passed the Israeli Declaration of Independence.

was therefore the whole nation living on the territory of Israel, included those citizens representing the Arab minority<sup>7</sup>. The role of the sole representative of the whole nation was assigned to the single-chamber Parliament – the Knesset<sup>8</sup>, the membership of which was established from the very beginning on the basis of direct general elections. The 1958 Basic Law: the Knesset guarantees until this day the citizens of Israel both the right to decide the political make-up of the Parliament and the right to stand for a seat in this highest-level representative body.

The contents of the regulations which shape the political system indicate that the ultimate authority in Israel is exercised by the sovereign practically only within the framework of the institutional representative democracy, that is through Members of Parliament elected to the Knesset<sup>9</sup>. Citizens taking part in elections determine not only the political makeup of the Parliament but they also influence directly the makeup of the Cabinet and the direction of domestic and foreign policy pursued later by the governing majority. As the result, the practical deployment of the principle that the government with its typical executive functions, bears direct political responsibility before the elected representative body, seems particularly significant. There is no doubt that the adoption and consistent implementation of this principle gives the guarantee that the will of the electorate, expressed in the act of voting in general elections, will be respected.

## 2. Elections to the Knesset

For over 50 years, from the point of the declaration of independence, the Knesset has been the only main state body in Israel directly elected by the general population<sup>10</sup>.

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7 Compare. S. Navot, *Constitutional Law...*, *op. cit.*, p. 251 onwards.; A. L. Bendor, *The Constitutional Significance of the Jewishness of Israel*, (in:) F. Oz-Salzberger, Y. Stern (eds.), *The Israeli Nation-State: Political, Constitutional and Cultural Challenges*, Boston 2014, p. 118 onwards.

8 The first national representative body of Israel was the Constitutional Assembly, whose membership (120 Members) was decided through general and direct elections in January 1949. The task of this body was to prepare and pass the Constitution for the newly established State of Israel. During the first session on 16 February 1949, the Constitutional Assembly passed a Temporary Act, regulating, for the time being, the structure of the highest state bodies. Under the provisions of this legislative Act, the Constitutional Assembly was re-named Knesset (the name of the chief religious council in the old Jewish State 5-2 BC), which name is still retained by Israel's highest representative body. Compare S. Bożyk, *System konstytucyjny Izraela*, Warszawa 2002, p. 19 onwards.

9 Apart from the representative form of exercising the highest authority in the state, the Israeli fundamental acts do not provide for other means of the sovereign (the nation) participation in the process of making decisions of special significance for the state or the citizens. It would seem, however, that this does not preclude the possibility of deploying other institutions of direct democracy as the Knesset could decide, as part of the legislative function exercised by the Parliament, to settle a particular matter through a national referendum.

10 Israel has decided first and foremost not to hold direct presidential elections and therefore the President has from the very beginning been chosen by the Parliament. Until 2000 the president

In general elections, the active electoral right was given to Israeli citizens over 18, the passive over 21 years of age<sup>11</sup>. The active electoral right was denied only to those whose rights were suspended by the courts as well as those convicted of offences against state security and given more than a five years custodial sentence. A notable measure was a formula for limiting the passive electoral right for those members of the Knesset only who during their time as elected members decided to leave their parliamentary faction. In such cases they are not permitted to stand in the next elections on the mandate of those parties which had formed parliamentary factions during the previous term<sup>12</sup>.

Art 4. of the *Basic Law: the Knesset* establishes the principle that the membership of the Knesset is to be decided through general elections. This means that during parliamentary elections the territories of the whole country form one constituency and therefore all 120 members are elected from a national ballot paper. That the country is not divided into individual constituencies has been from the outset one of the most intriguing features of Israel's electoral system.

In Israel candidates can only stand with a mandate from a political party, with each party submitting one list of candidates for the whole country<sup>13</sup>. However, certain limits had to be introduced here, aiming to disqualify (from standing for parliamentary election) those political groupings targeting the principles of democracy or constituting a serious threat to the security of the state and its citizens. *The Basic Law: the Knesset*, amended in 1985 adopted a rule (under Art. 7A) that the lists of candidates for general elections from parties that: 1) negate the existence of the State of Israel as a Jewish state, 2) deny the democratic character of the country, 3) encourage racism, will not be permitted<sup>14</sup>.

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was chosen for the period of five years and the same person could serve as president for two consecutive terms. Basic Law: The President of the State of 1964 amended at that time has established the rule that the president is elected by the Knesset for the period of seven years, for a single term, without the possibility of being re-elected.

11 The principles of the electoral law governing the parliamentary elections are defined under the Basic Law: the Knesset, and the detailed procedures for carrying out elections are provided by the 1969 Knesset Elections Act.

12 See more in: A. Diskin, *Elections and Voters in Israel*, New York 1991, p. 43 onwards.; G. Rahat, R.Y. Hazan, *Israel: The Politics of an Extreme Electoral System*, (in:) M. Gallagher, P. Mitchell (eds.), *The Politics of Electoral Systems*, Oxford 2005, p. 333 onwards.

13 Those parties represented in the Knesset in the intervening term may register their lists of candidates without meeting any additional requirements, the lists of other political parties must be supported by at least 2500 voters' signatures. Candidates are placed on the lists in order determined each time by the parties' governing bodies. The top places on the lists, which would generally translate to parliamentary seats, are reserved for the leading politicians of each political party.

14 Compare S. Navot, *The Constitution of Israel. A Contextual Analysis*, Oxford 2014, p. 101 onwards.

The electoral system to the Knesset is also characterised by the fact that during the act of voting each elector votes for one of the submitted lists of candidates, therefore is unable to vote for individual candidates on the list. The number of votes given to each list is the basis for dividing the number of seats each party will hold, with only the parties that have received the minimum of 1.5% of valid votes nationally able to participate in the division. The low limit clause, together with proportional representation using the Sainte-Laguë method, has turned out to be advantageous in practice for smaller political parties as it has enabled them a continuous presence in the parliament<sup>15</sup>. The method for dividing the seats used in Israel has resulted in the percentage of seats in the Knesset occupied by each political party equating roughly to the scale of support shown to each party by the voters voting for their list of candidates.

### 3. The distribution of political forces in the Knesset and forming the government

The results of general elections in Israel have, been influenced by the country's political party system from the very beginning<sup>16</sup>. Despite deep divisions between the individual for many years there have been no problems with achieving a stable governmental majority. After the establishment of Israel the left wing Workers' Party of Israel (*Mapai*) maintained for a long time the status of the strongest political grouping<sup>17</sup>. In 1968, after joining by several small political groupings, it adopted the name the Labour Party (*Mifletet HaAvoda*). This party has never, however, managed to assemble more than half the votes in general elections required to ensure the absolute majority of seats in the Knesset. Therefore each time it was forced to form a coalition government with much smaller political parties<sup>18</sup>. The Labour Party (*Mapai* until 1968) had continued to be part of each government coalition in the years 1949-1977, where it always played a dominant role.

Such significant successes of the social democrats were the result of the fragmentation of the Israeli right wing lasting many years. Only in 1973 all significant right wing groupings formed a common bloc *Likud* (Unity), which from the outset

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15 See. D. Peretz, *The Government and Politics of Israel*, Boulder 1979, p. 166 onwards.; A. Diskin, *Elections...*, *op. cit.*, p. 177 onwards.

16 At the same time the proportional representation system adopted in the Knesset elections continuously shaped the Israeli political party system which did not evolve, unlike in classic two-party systems – two dominant political groupings. Compare. G. Sheffer, *Political Change and Party System Transformation*, (in:) R. Y. Hazan, M. Maor (eds.), *Parties, Elections and Cleavages: Israel in Comparative and Theoretical Perspective*, London 2000, p. 149 onwards.

17 This party was formed in the 1930s, headed by David Ben Gurion, later the first Israeli Prime Minister (1948-1954 and 1955-1963).

18 Generally these were centre-left coalitions, sometimes with the participation of religious parties.

became an alternative to the cabinets dominated by the social democratic party. *Likud* won the general elections for the first time in 1977, creating a right wing coalition government. This coalition clung to power in 1977-1984, with at the time only a slim majority in the Knesset over the opposition's political groupings<sup>19</sup>.

Particular difficulties with establishing a majority government surfaced in Israel after the general elections of 1984. The elections resulted in the success of the Labour Party which won 44 seats, with *Likud* coming a close second, (41 seats). Apart from these two, 12 other groupings had their members in the Knesset, but none were able to get more than 4 seats<sup>20</sup>. The result was a far-reaching decomposition of the political make-up of the parliament, which made it practically impossible to form a governing coalition. The most sensible way out was for the two main parties to form a coalition government<sup>21</sup>. The governments of the so called "great coalition", also called the government of national unity have existed since 1990 in Israel<sup>22</sup>.

The main reason of the serious political fragmentation of the parliament was thought to be the proportional representation system, favouring small political parties<sup>23</sup>. It was therefore no accident that the voices indicating a need for change to the existing electoral system surfaced during the 'great coalition' government. The need to reform election legislation became obvious in the face of disintegration of the government of national unity in March 1990. A new government coalition was formed with great difficulty and comprised the *Likud* and some small religious parties. Inside the coalition there was room for serious disagreements and divisions which led to a breakup in its ranks in January 1992. The Yitzhak Shamir government thus became a minority cabinet unable to continue to function<sup>24</sup>, which resulted in early general elections to the Knesset being ordered.

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19 I the 1977 general elections *Likud* won 43 seats in the Knesset, the Labour Party – 32. The next elections in 1981 returned almost an identical result for both leading political parties: *Likud* won 48 seats, the Labour Party 47. Compare S. Bożyk, *System konstytucyjny...*, *op. cit.*, p. 79.

20 Such significant fragmentation of the Israeli Parliament, which only has 120 seats, had not occurred since 1948. Multi-party fragmentation was to become a constant on Israel's political scene. See G. Sheffer, *Political Change...*, *op. cit.*, p. 161 onwards.

21 On the circumstances of establishing and running this coalition see N. Lochery, *The Israeli Labour Party: in the shadow of the Likud*, London 1997, p. 195 onwards.

22 Both the leading parties also won almost an identical number of seats in the 1988 general elections.: *Likud* – 40, the Labour Party– 39. 14 small political parties also had their representatives in the Knesset, that is more than four years previously.

23 See more in G. Doron, M. Harris, *Public Policy and Electoral Reform: The Case of Israel*, Boston 2000, p. 82 onwards.

24 See more in G. Goldberg, *HaBocher HaYisraeli*, 1992 (*The Israeli Voter*, 1992), Jerusalem 1994 (Hebr.).

#### 4. The introduction of direct Prime Minister elections

The debate over the need for electoral reform flared up again, before the parliamentary term was shortened in 1992. There were several proposals for changes to the Israel's proportional representation electoral system<sup>25</sup>, but it was the proposal for the formula for direct general elections of the Prime Minister that received the most interest. The proponents of this idea indicated that its introduction into Israeli political system would alleviate the negative consequences of the principle of proportional representation in parliamentary elections, by limiting the political fragmentation of the Knesset, and would make the process of forming the government more efficient. The direct elections of the head of the government would further legitimise their authority and their position within the political system as well as raising the rank of the cabinet in the structures of the main state bodies<sup>26</sup>. As it shortly transpired, the reform of the Israeli electoral law was to be limited solely to the shaping of the system for direct and general elections of the Prime Minister.

This does not necessarily mean, of course, that all political groupings in Israel were included to support this reform of the political system. From the very beginning the system for direct elections of the Prime Minister was opposed by *Likud*, including its political leader Yitzhak Shamir, at the head of government at the time. In the course of parliamentary works on the change in legislation the Prime Minister insisted on imposing strict party discipline and whipping all the MPs to vote against the proposals. At the last moment, Yitzhak Shamir changed his mind, just before the vote was taken in the Knesset and agreed that *Likud* MPs could vote according to their conscience, and not be driven by decisions taken previously by the party leadership<sup>27</sup>.

The introduction of direct elections of the Prime Minister required changes to the contents of the 1968 Basic Law: the Government in Force, as its provisions determined the procedure of forming the government. The Israeli parliament decided, however, to pass a new Basic Law on The Government, which was adopted by the Knesset on 18th March 1992<sup>28</sup>. In reality, the large portion of the provisions of the previous basic law was transferred to the text of the new act without any changes. Wholly new provisions concerned the running of the direct general elections of the Prime Minister. The provisions determining the procedures for forming the government, the principles of governmental responsibility and the relationship between the executive and other Israeli state bodies have also been amended. It is worth adding that the adoption of the elections of the Prime Minister directly by

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25 Comp. G. Rahat, R. Y. Hazan, Israel: The Politics..., *op. cit.*, p. 342 onwards.

26 More on the objectives of this reform of the electoral system in Israel in. H. Diskin, A. Diskin, The Politics of Electoral Reform in Israel, "International Political Science Review" 1995, vol. 16, No. 1, p. 31 onwards.

27 Comp. G. S. Mahler, Kneset. Parlament w systemie politycznym Izraela, Warszawa 1996, p. 189.

28 The passing of the basic law required the whole of the previous 1968 basic law to be repealed.

the citizens necessitated amendments to other fundamental acts, especially the *Basic Law: the Knesset*.

The new procedure for electing the Prime Minister through direct general elections under the provisions of the new Basic Law: the Government was to be deployed together with the elections to the Knesset for the new term. The earliest parliamentary elections in June 1992 were not yet linked with direct elections of the head of government at the same time. The result of these elections to the Knesset seem to confirm that the reform of the electoral system was the right thing to do, with the effects anticipated with the next parliamentary elections<sup>29</sup>. The elections were won by the Labour Party (44 seats) but in order to form a government it needed to sign a coalition agreement with two other groupings: *Merec* (formed before the 1992 elections coalition of the secular left) and *Shas* (a party of the Orthodox Sefardi Jews). In this way a government majority (of 62 seats) was achieved in the Knesset, with the cabinet headed by the Labour leader Yitzhak Rabin<sup>30</sup>. This was a relatively stable majority as it remained during the whole parliamentary term (1992-1996)<sup>31</sup>, however, the Knesset continued to experience deep political divisions<sup>32</sup>.

## 5. Direct elections of the Prime Minister and the system of government

It needs to be highlighted that the procedures for forming the Israeli government as well as its organisation and functioning had, until 1968, been practically largely based on custom and traditions originating clearly from British constitutional conventions, deployed in the administration of the British Mandate of Palestine. Some of these traditions, for example the practice of selecting the Prime Minister exclusively from among the MPs, were later regulated through the provisions of subsequent basic laws<sup>33</sup>. For the first time the legal norms for the selection of the Israeli government, its position within the political system, its structure and the extent of powers were determined under the provisions of the 1968 *Basic Law: the Government*.

As for the procedure of forming the government, the 1968 Basic Law adopted the principle that this starts with the president designating the Prime Ministerial candidate. The Prime Minister appointed by the head of state would then form the government.

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29 Comp. G. Doron, B. Kay, Reforming Israel's Voting Schemes, (in:) A. Arian, M. Shamir (eds.), *The Elections in Israel – 1992*, Albany 1995, p. 299 onwards.

30 The Prime Minister Y. Rabin could also count on the support of the few Arab MPs, on condition that his government would continue the peace process in the Middle East.

31 The Prime Minister Y. Rabin in 1995 was murdered by a Jewish religious fanatic and Simon Perez became the head of government.

32 In the 1992 elections apart from the coalition partners 10 other political parties got seats in the Knesset, including Likud (32 seats), which for the previous 15 years had been the leading government coalition partner.

33 See: D. Peretz, *The Government...*, *op. cit.*, p. 144 onwards.

After forming the cabinet the Prime Minister presented to the Knesset the make-up of the cabinet and its works programme together with a bill for a vote of confidence. Only after a vote of confidence was passed in the parliament the government would take up its constitutional duties as an executive authority<sup>34</sup>.

By introducing in 1992 the principle of direct general election of the Prime Minister into the Israeli constitutional system, the legislator has at the same time attempted to prop up the parliamentary government system which thus far functioned in the country. As the consequence, such significant reform of the legal political system has not led to radical transformation in the relationship between the legislative authority and executive bodies. It is noteworthy that the relationship between the government and parliament had been formed from 1949 in accordance with the principle assuming that “establishing” a government able to effectively exercise executive powers is a particular responsibility of the Knesset<sup>35</sup>. As a rule, the make-up of the government was to be called up by the president, but it had to refer to the balance of political power in the parliament. The government was to bear political responsibility before the parliament, which meant that the Knesset could at any time pass the vote of no confidence and force the government to resign.

The principle of political responsibility of the Prime Minister and as a consequence of the whole cabinet was maintained after the 1992 changes to the mode of selecting the head of the government, but the form and consequences of discharging this responsibility had changed. The new *Basic Law: the Government* under Art. 19, stated that “The Knesset may by means of a majority of its members adopt an expression of no confidence in the Prime Minister”. The same provisions moreover stated that: “An expression of no confidence in the Prime Minister will be deemed to be a Knesset decision to dissolve prior to the completion of its period of service”. The adoption of such provisions meant that the passing of a vote of no confidence in the Prime Minister and their government by the Knesset would necessarily lead to the dissolution of parliament and trigger out of term elections of the parliament and the Prime Minister<sup>36</sup>.

## 6. The principles of direct elections of the Prime Minister

The principle of direct elections of the Prime Minister by the body of the citizens<sup>37</sup> is defined under Art. 3 of the 1992 Basic Law: the Government, which states: “The

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34 Comp. E. Likhovski, *Israel's Parliament*, Oxford 1971, p. 125 onwards.

35 See e.g.: S. Navot, *Constitutional Law...*, *op. cit.*, p. 128 onwards.

36 The same consequences were foreseen (in Art. 20 of the Basic Law: the Government) in the case where the parliament fails to pass a new budget act in the prescribed period of three months from the beginning of the financial year.

37 The issue of the legal and political regulation of the procedures of electing the Prime Minister of Israel is subject to many detailed studies, both in Israel and in western countries. See e.g.

Prime Minister serves by virtue of his being elected in the national general elections, to be conducted on a direct, equal, and secret basis in compliance with the Election Law”. In order to refine these general principles of electing the head of government the provisions of Art. 3 refer to other normative acts, especially to the *Basic Law: the Knesset*<sup>38</sup>.

In defining the framework for the active electoral rights, Art. 6 of the *Basic Law: the Government* provided that all “persons entitled to vote in the elections to the Knesset shall be entitled to vote in the elections for the Prime Minister”. According to Art. 4 of the *Basic Law: the Knesset* this right was given to all citizens of Israel over 18 years of age on condition that they have not had this right removed through a court order.

The scope of the passive electoral right has been defined under Art. 8 of the *Basic Law: the Government*. Based on its provisions, the office of the Prime Ministers is open only to those people who meet the following conditions: 1) have passive electoral right to the Knesset and were over 30 at the time of standing for office<sup>39</sup> 2) were placed in a primary position on the list of candidates for a seat in the Knesset, if the elections of the Prime Minister ran concurrently with parliamentary elections, 3) they were members of the Knesset when the elections of the Prime Minister were running separately. Art. 8 also provided that a politician who occupied the post of a Prime Minister for seven consecutive years could not stand for office in the next elections.

Art. 4 of the of the *Basic Law: the Government* adopted the principle that the Prime Minister of Israel will be elected together with the elections to the Knesset, outside of exceptional circumstances. This meant that the institution of managing the elections could be deployed only sporadically (e.g. where the elections had to be repeated, for example due to electoral protests), as in Israel parliamentary elections are conducted in periods governed by the provisions of basic laws. When a parliamentary term is at an end, the elections always take place on the third Tuesday of the month of *cheshwan*<sup>40</sup>, which falls in the year when the Knesset term ends. However, when the year of the elections falls after the leap year<sup>41</sup>, the elections

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A. Brichta, *Political Reform in Israel: The Quest for Stable and Effective Government*, Brighton 2001; G. Doron (ed.), *HaMahapecha HaElectoralit* (The Electoral Revolution), Tel Aviv 1996 (Hebr.).

38 A number of measures concerning electoral laws in parliamentary elections, under the provisions of the basic Law: the Knesset and ordinary acts, were also deployed in elections of the Prime Minister.

39 The passive electoral right in Knesset elections belongs to citizens of Israel over 21 years of age

40 In the Hebrew calendar this is the eighth month of the lunar year Jesh which usually starts at the end of October

41 Because a lunar year, having 354 days in the Hebrew calendar, is 11 days shorter than the solar year, a leap year containing an additional month is introduced 7 times in 19 years.

take place on the first Tuesday of the month of *cheshwan*. So that as many voters as possible may be able to participate in elections and to guarantee therefore the general principle of the elections the Basic Law: the Knesset introduced the rule (Art. 10), that the day of the election is to be a non-working day. In turn Art. 11 of the Basic Law: the Government, states that if the day of the elections to the Knesset and the elections of the Prime Minister fell on a bank holiday, a day before a bank holiday of a day after bank holiday, the elections are to take place on the first following Tuesday, which becomes a bank holiday for all workers.

Independently of joint elections to the Knesset and the head of government, separate elections of the Prime Minister were also envisaged. The system of election through separate elections could be deployed if: 1) none of the candidates were elected in the joint elections with the elections to the Knesset, 2) the attempt to form a government by the Prime Minister chosen in joint elections was unsuccessful, 3) the number of ministers in the current government fell below eight<sup>42</sup>, 4) the office of the Prime Minister is vacant due to death, resignation or impeachment through the decision of the parliament. Only members of the Knesset could stand in these separate elections.

The *Basic Law: the Government* in Art. 9 gave a right to register candidates to the post of the Prime Minister to: 1) political parties and their coalitions, who submitted lists of candidates to the Knesset and are represented in the outgoing by political factions with at least ten MPs 2) other political parties which submitted lists of candidates to the Knesset supported by the signatures of at least 50 000 voters. In separate elections it is possible to submit candidates for: 1) political groupings represented in the Knesset and having political factions with at least ten MPs, 2) party coalitions represented in the Knesset by factions that have at least ten MPs.

The condition for the selection for the office of the Prime Minister, under Art. 13 of the *Basic Law: the Government*, was for one of the candidates to receive more than half of valid votes. One more condition was envisaged: that the Prime Ministerial candidate had to be elected to the Knesset at the same time. If none of the candidates met these requirements, there was to be a second round of voting with just the two candidates who have amassed the most votes in the first round<sup>43</sup>. The round was won by the candidate with the largest number of valid votes. Elected in this way, the Prime Minister elect would then appoint ministers and apply to the Knesset for a vote of confidence in his government. If the Prime Minister elect failed

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42 According to art 33 the 1992 Basic Law the Government the members of the government could not be less than 8 or more than 18.

43 If there was only one candidate remaining in the first or second round of the elections, the condition of being elected to the office of the Prime Minister was having more votes for than against that candidate.

to accomplish this within the framework envisaged in the basic law<sup>44</sup> it would be necessary for the president to call another election of the Prime Minister<sup>45</sup>. In turn, in the situation where the Knesset would refuse to pass a vote of confidence in the Prime Minister and his cabinet, the parliament would be dissolved, triggering new parliamentary elections and the election of the head of the government.

The provisions of the Basic Law: the Government envisage circumstances where a Prime Ministerial election may be necessary before the end of term. This would become the case, for example, if the Knesset passed the vote of no confidence in the Prime Minister and his cabinet, as discussed above, or if it failed to pass the budget act on time, which would be equated to the Knesset's decision to dissolve before the end of parliamentary term. Out of term elections for a Prime Minister would also be triggered by:

1) death of the Prime Minister, 2) resignation of the Prime Minister, 3) the Prime Minister being regarded as unable to perform his function for the period longer than 100 days 4) impeachment by the Knesset<sup>46</sup>. It is worth highlighting one additional circumstance which resulted in the necessity of carrying out pre-term elections, namely, the possibility of dissolving the Knesset by the Prime Minister in office, envisaged under Art 22 of the Basic Law: the Government. This power could only be used in special circumstances and with the president's agreement. Under the provisions of the basic law, the Prime Minister had the authority to order the dissolution of the Knesset only if he was absolutely convinced that the majority of MPs are now in opposition to the government, which therefore cannot effectively function<sup>47</sup>.

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44 Under the provisions of Art. 14 of the Basic Law: the Government it was envisaged that Prime Minister elect would have 45 days to establish a government and apply to the Knesset for the vote of confidence.

45 Prime Ministerial elections were then to be repeated within 60 days of being ordered by the president.

46 This eventuality was considered under two provisions of the Basic Law: the Government. Art. 26 stated: "Should the Prime Minister be convicted of an offence involving moral turpitude, the Knesset may remove him from office, pursuant to a decision of a majority of the Knesset members." In turn, under Art 27a principle was adopted that "The Knesset may, pursuant to a vote of 80 of its members, remove the Prime Minister from office" if the motion is submitted by at least 40 members.

47 In 2000 Prime Minister Ehud Barak did not take the step of dissolving the Knesset, despite the existence of legal indications for such decision. Instead he resigned himself, which prevented the pre-term parliamentary elections. Therefore in 2001 only separate elections to the Prime Minister's office were held.

## 7. Direct elections of the Prime Minister in practice under the Israeli political system

The system of appointing the Prime Minister to office through direct general elections, introduced by the 1992 *Basic Law: the Government* was only used three times in Israel. In 1996 and 1999 prime ministerial elections were concurrent with parliamentary elections to the Knesset, and in 2001 there were no parliamentary elections held, only separate elections of the chief executive<sup>48</sup>. In short, this was a short lived but interesting experiment in relation to choosing a chief executive.

The first general elections of an Israeli Prime Minister took place on 29th May 1996. It was without a doubt a historic event, as never before had this form of election for the head of the government been used in any political system<sup>49</sup>. The contest for the position of the Prime Minister was between two candidates, the then current Prime Minister Simon Perez (the Labour Party) and Benjamin Netanyahu (*Likud*). The election was won, with a tiny margin, by B. Netanyahu (50.5% of the votes), who beat the favourite S. Perez (49.5% votes)<sup>50</sup> the victory of the *Likud* leader was probably helped by his election stance on putting a stop to excessive concessions towards the Palestinians, which was ascribed to his opponent and outgoing Prime Minister.

In the parallel elections to the Knesset most votes and seats went, for a change to the party of S. Perez. The Labour Party won 34 seats in the 1996 elections, and *Likud* 32 seats. As it turned out, a significant proportion of voters were voting for smaller parties fighting for seats in the parliament. As the result, the most seats in the Knesset were won by: Sefaradi Guardians of the Torah (*Shas*) – 10, National Religious Party (*Mafdal*) – 9 and *Merec* – 9. Significant gains (7 seats) were made by a nationalist right group Israel Our Home (*Yisrael be-Alija*), representing the many Jewish emigrants who during 1991-1995 came to Israel from the former Soviet countries<sup>51</sup>. After the elections B. Netanyahu created a majority government coalition involving: *Likud*, *Shas*, *Mafdal* and *Yisrael be-Alija*.

The following elections of the Israel's prime minister took place on 17th May 1999. Once again, only two candidates ran for office: the outgoing Prime Minister

48 Detailed analysis of the three consecutive elections of the Israeli Prime Minister are found in A. Diskin, *The Last Days in Israel: Understanding the New Israeli Democracy*, Portland-Oregon 2003.

49 Cf. R.Y. Hazan, G. Rahat, Representation, Electoral Reform, and Democracy. Theoretical and Empirical Lessons From the 1996 Elections in Israel, "Comparative Political Studies" 2000, vol. 33 No. 10, p. 1310 onwards.

50 See e.g.: A. Arian, The Israeli Election for Prime Minister and the Knesset, 1996, "Electoral Studies" 1996, vol. 15 No. 4, p. 570 onwards; R. Y. Hazan, Presidential Parliamentarism: Direct Popular Election of the Prime Minister, Israel's New Electoral and Political System, "Electoral Studies" 1996, vol. 15, No. 1, p. 21 onwards.

51 It is estimated that during just a few years, at least 800 000 immigrants from the former Soviet Union came to Israel, which in 1990 had the population of less than 5 million.

Benjamin Netanyahu (*Likud*) and the leader of the opposition Labour Party Ehud Barak. In the 1999 elections the head of government was soundly defeated (43.9% of votes), by E. Barak, who won 56.1% of the votes<sup>52</sup>. The result of the elections was unsurprising as B. Netanyahu's political errors (especially in the Palestinian question) resulted in a marked fall in popularity of his cabinet.

The Prime Minister elections were accompanied by early parliamentary elections<sup>53</sup>. These elections resulted in the greatest yet fragmentation of the Knesset since the Israeli state was born, as 15 political groupings won seats. The largest number of seats went to: Labour – 26, *Likud* – 19, *Shas* – 17, *Merec* – 10 and *Ysrael be-Alija* – 6. Such political diversity in the parliament made it difficult to form a new government, consequently the government of E. Barak had representatives of six political parties.

The third time the direct and general election system for choosing the chief executive was used was during the elections on 6th February 2001. However this time, due to unexpected resignation of E. Barak from the post of the head of government in December the previous year<sup>54</sup>, only elections to the office of Prime Minister were held. These were won with overwhelming majority by *Likud* representative Ariel Sharon (62.4% of the votes), the outgoing Prime Minister E. Barak won only 37.6% of the electorate votes<sup>55</sup>. After the 2001 elections a “government of national unity” was formed with the two main Israeli political parties<sup>56</sup>. The coalition of *Likud* and the Labour Party, initiated by the Prime Minister elect Ariel Sharon, held until 2005, although not without difficulties<sup>57</sup>.

## 8. Consequences

There is no doubt that the principle of direct general elections of the Prime Minister introduced in Israel in 1992 was an innovative and interesting political

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52 See. R.Y. Hazan, A. Diskin, The 1999 Knesset and Prime Ministerial Elections in Israel, “Electoral Studies” 2000, vol. 19 No. 4, p. 628 onwards.

53 The pre-term elections in 1999 in Israel were triggered by the loss of support of the majority of the Knesset members for Prime Minister B. Netanyahu's policies.

54 Prime Minister E. Barak decided to resign due to lack of a sufficient parliamentary majority which he needed in order to guarantee the continuation of the Middle East peace process. He hoped for a greater support of the members of the Knesset following a potential decisive election success.

55 See. A. Diskin, R.Y. Hazan, The 2001 Prime Ministerial Election in Israel, “Electoral Studies” 2002, vol. 21 No. 4, p. 659 onwards.

56 The creation of the “government of national unity” by *Likud* and the Labour Party (with the participation of two other political parties) was due to the resurgence of the Palestinian uprising (the Intifada) in 2000 and an increased threat to national security.

57 In 2005 A. Sharon left *Likud* and formed his own right wing party the *Kadima* (Forward), which soon became the third political power in Israel's political party system. Cf. S. Bożyk, Izrael, (in:) S. Bożyk, M. Grzybowski (ed.), *Systemy ustrojowe państw współczesnych*, Białystok 2012, p. 256 onwards.

experiment. General elections of the chief executive did not bring the intended results in practice. This system of choosing the Prime Minister has not resulted in stabilising the Israeli political party system and has not helped overcome the fragmentation of the Knesset. It is true that the electorate voted for the two serious candidates to the Prime Minister's office but at the same time – when voting in parliamentary elections – the majority lent their support to the party lists submitted by small political parties, which then had modest representation in the Knesset. Direct elections of the Prime Minister did not have major impact on strengthening the position of the Prime Minister in the structure of Israeli leading state bodies.

It is not, therefore, a coincidence that after the general elections to the Prime Minister's office on 6th February 2001, Ariel Sharon's government (on the initiative of the two main parties in the government coalition) submitted a bill to abolish this system of selecting the chief executive. As the result on 7th March 2001 the Knesset passed a new *Basic Law: the Government* which repealed the general elections as a method for filling the office of the Prime Minister. This resulted in much-altered legislation containing legal measures which returned to the de facto methods of filling the office of the Prime Minister used in Israel prior to 1992.

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