H.C. 4676/94 Meatrael v. *The Knesset of Israel*, 50(5) P.D. 16 (1997)

THE PRESIDENT A. BARAK:

Basic-Law: Freedom of Occupation includes an "override clause" (section 8). According to it, an Act that infringes on Freedom of Occupation, that was accepted by a majority of the Knesset members and that stated explicitly that it is valid notwithstanding what is said in *Basic-Law: Freedom of Occupation* (a "deviating act" in the language of the title of the override clause) is valid, despite the fact that it is not in accordance with the limitation clause (section 4) in *Basic-Law: Freedom of Occupation*. Against this background, two questions present themselves. First: does the override clause protect a deviating act that infringes the fundamental principles that are mentioned in the principles clause (section 1) and the purposes clause (section 2) in *Basic-Law: Freedom of Occupation*? Second: what is the legal position if a deviating act infringes on human rights that are protected in *Basic-Law: Human Liberty and Dignity*? Is the constitutionality of such a deviating act subject to examination in light of *Basic-Law Human Liberty and Dignity*, in light of the fact that there is no override clause in *Basic-Law Human Liberty and Dignity*? The examination of these two questions arises in the petition before us.

THE FACTS

1. Importation of frozen meat has been carried out since the establishment of the State of Israel by the state itself, i.e., by the board of governmental commerce. At some point in time, Israel's government officially decided to terminate government importation (decision 132 from 8. 9. 92). The decision prescribed that such importation would be carried out by private and commercial agents only, without quotas and without need of an import license. According to the government's decision, a general managers' committee was established. Its duty was to develop ways to implement the decision. The committee submitted its recommendations (on 11.3.93). The government started to discuss the recommendations, but postponed their implementation indefinitely. Petitioner number 1 – whose business is the importation of meat into Israel - and others submitted petitions in this matter (HC 2015/91, 1775/93). The Supreme Court ruled (on 24.5.93) that subject to the power of the government to make another decision, "the state must apply its aforementioned decisions within a reasonable time, which we proscribe as a period of four months".

2. After this judgment, the matter was discussed several times in the government. It made (on 8.8.93) an additional decision. According to it, the privatization of meat importation would be regulated by way of legislation. Until then, the situation would stay as is, that is, the state would be the exclusive importer of meat. The basis for the change in the government's position was its apprehension that, absent legislation that forbids it, there was a potential for extensive importation of non-kosher meat. In order to prevent any affront to the feelings of the religious public and in order to fulfil a coalitional commitment in this matter made to one of the [political] parties in the government's coalition, the aforementioned decision was taken by the government. Arguing against the legality of this decision - maintaining the status quo until the regulation of the issue by way of legislation - petitioner number 1 submitted a (second) petition to this court. The court turned the decree nisi to a decree absolute. It decided that the government's considerations were irrelevant to the power to grant import licenses by virtue of the *Import and*

Export Ordinance. It ordered the issuance of import licenses to the petitioner as requested (HC 3872/93 *Meatrael v. The Government of Israel*, PD 47(5) 485). As to the legislation by which the government sought to regulate the issue, Judge Or commented, in passing, that such legislation must be accepted by a qualified majority of 61 Knesset members.

3. After delivering the judgment in the second petition, the petitioner appealed to the Ministry of Commerce and Industry. It asked permission to import frozen beef in the range of 37,000 tons. The Ministry advised the representative of the petitioner that, in a license regime, it is impossible to authorize one applicant [to import] a quantity identical to the [total] annual import of the State of Israel. Against this position of the government, the petitioner applied for the third time to this court (HC 7198/93 *Meatrael v. The Minister of Commerce and Industry*, PD 48(2) 844). It asked that the court order the government, *inter alia*, to enable private agents to import meat in any quantity that they want and without import licenses. It also asked, alternatively, that licenses to import frozen beef in any amount desired be granted to it immediately. In the course of the trial (on 8.3.94) it was stated, on behalf of the state, that the license regime would be canceled within six months. In light of this statement, the first ground of the petition was rejected (by the majority opinions). As to the second ground of the petition, it was submitted to the court that the petitioner received licenses to import close to 5,000 tons of meat. The court did not find any fault with the government's decision not to permit the petitioner to import the meat quota it asked for. The petition was rejected, therefore, on its two grounds.

4. As we saw, the government committed itself to cancel the licensing regime within six months. Indeed, on 3.8.94 the *Free Import Order (Amendment)*, 5754-1994 was promulgated. The requirement of a license for frozen meat [import] was indeed canceled by this amendment. From this time forward, every importer was allowed to import frozen beef meat according to its circumstances, without need of import licenses, as long as it satisfied the required veterinary conditions.

FROZEN MEAT IMPORT ACT, 5754-1994

5. On account of the judgment in the second petition of the petitioner, a bill entitled *Frozen Beef Meat Import Act*, 5754-1993 (HH 2228, 5754, at 132) was tabled in the Knesset (on 13.12.93). The bill stipulated that "notwithstanding any law, licenses for the import of frozen beef meat will not be issued; the import of such meat will be carried out by the government only, as was the practice until 9 of Elul 5752 (September 7, 1992)". After less than two months, (on 31.1.94) the government submitted a new bill, the *Frozen Beef Meat Import Act*, 5754-1994 (Second Bill). The bill was accepted with some changes. The *Frozen Beef Meat Import Act*, 5754-1994 (hereinafter - *Frozen Meat Import Act*) stipulated, *inter alia:*

> 2. Notwithstanding any law, and subject to section 3, a person shall not import meat unless possessed of a kashrut* certificate. (* - In Hebrew: "koshernes"; the requirement that food is kosher, i.e., permissible for consumption by Jews according to laws relating to the type of animal and the method of slaughter.)
>
> 3. The Minister of Commerce and Industry may approve meat import licenses, with regard to which a kashrut certificate was not provided, in the same format

> and in the same cases as it was accustomed to do until 12 of Tamuz 5752 (July 13, 1992).
>
> 4. Nothing in this Act detracts from the right of the government to import frozen meat itself or by others on its behalf including [importation] for the purpose of emergency stockpiling, providing that a kashrut certificate is provided.
>
> 5. The provisions of this Act do not detract from any license to import meat that was given before the passage of this act.

By virtue of this legislation, the licenses of the petitioner to import 5,000 tons of frozen beef meat were preserved. The Act's provisions were applied only to the importation of frozen meat (it was stipulated in section 1 to the Act that "'meat' means frozen meat"). The required kashrut certificate is a certificate authorized by the Counsel of the Chief Rabbinate. It is the legality of this Act that the petition before us challenges. To complete the picture, it was noted that after the submission of the petition, the *Frozen Meat Import Act (Amendment)*, 5755 - 1995 was enacted. In this Act, among other things, the definition of "meat" was amended. It was extended to "all kinds of meat and its products for human consumption, including meat and poultry". The name of the Act was changed and it was now called *Meat and Meat Products Act*, 5754-1994.

Basic-Law: Freedom of Occupation

6. As we saw, in the second petition of petitioner number 1, the court stated (through Judge Or) in an obiter passage of the judgment, that legislation that requires that only kosher meat be imported limits the freedom of occupation and does not conform to the limitation clause. Such legislation must be accepted by a majority of 61 Knesset members. The question raised is this: how is it possible to enact the *Frozen Meat Import Act* without encountering the claim that it unlawfully infringes *Basic-Law: Freedom of Occupation*? Several responses were proposed. Eventually it was determined that *Basic-Law: Freedom of Occupation* would be amended in a manner to permit enactment, under certain conditions, of an act that infringes on freedom of occupation and that does satisfy the requirements of the limitation clause. This amendment was combined in the framework of additional changes to the *Basic-Law: Freedom of Occupation* that were needed without connection to the enactment of the *Frozen Meat Import Act* (see the explanatory notes to the Bill of *Basic-Law: Freedom of Occupation (Amendment)* HH 2227, 5754, at 128). Some of these changes responded to the need to match the formulation of *Basic-Law: Freedom of Occupation* to that of *Basic-Law: Human Liberty and Dignity*. Other changes were directed to extending for an additional two years the provisionary section (section 6 to the original *Basic-Law: Freedom of Occupation*), which provided constitutional shelter to the previous law and which was about to expire. Thus the Knesset accepted a change that enabled it to override the non-constitutionality of an Act that infringed freedom of occupation and did not satisfy the requirements of the limitation clause. In effect, an "override clause" (section 8) was inserted into the new *Basic-Law: Freedom of Occupation* (in force 10.3.94) such that a provision in an Act that infringed on freedom of occupation and did not satisfy the requirements of the limitation clause — a deviating Act in the language of the title of the override clause — would be valid if included in an Act that was accepted by the majority of Knesset members, in which it

was stated expressly that it was valid notwithstanding *Basic-Law: Freedom of Occupation*. The override clause further stipulated that the validity of an Act that included a "notwithstanding" clause would expire after four years from its coming into operation, unless an earlier time was stipulated. A parallel provision does not exist in *Basic-Law: Human Liberty and Dignity*.

Back To *Frozen Meat Import Act*, 5754-1994

7. *The Frozen Meat Import Act* was enacted about two weeks after the new *Basic-Law: Freedom of Occupation* came into operation. To endow constitutional protection to the *Frozen Meat Import Act*, the Act had to satisfy the stipulations of the override clause. Accordingly, the *Frozen Meat Import Act* was accepted by a majority of Knesset members. A provision of the Act stipulated:

"this Act operates notwithstanding Basic-Law: Freedom of Occupation"

According to the override clause, the *Frozen Meat Import Act* will expire four years from its coming into operation. As stated, the *Frozen Meat Import Act* was amended by the *Frozen Meat Import Act (amendment)* 5755-1995. This amendment was also accepted by a majority of Knesset members. It also included a provision (section 5) stating that "This Act operates notwithstanding Basic-Law: Freedom of Occupation".

THE PETITION

8. On the eve of the enactment of the *Frozen Meat Import Act* the petitioners dealt with the import of all kinds of frozen meat. Their main occupation was importation of non-kosher meat. According to the petitioners' claim, with the enactment of the *Frozen Meat Import Act*, the value of the shares of petitioner number 1 drastically decreased. On account of the Act, a foreign firm withdrew from an agreement signed (on 18.10.93) with petitioner number 1 and petitioner number 2 and, as a consequence, a steep decrease in the share value occurred. Moreover, following the privatization decision of the government, and due to the extension of the non-kosher meat import business, petitioners number 3 and 4 expanded their business. They replaced old offices with new ones. They hired workers, acquired vehicles and rented a special refrigeration house for four years. This investment and others are destined to fail. According to the claim of the petitioners number 3 and 4, because of the *Frozen Meat Import Act* their activity will decrease in the future by 50 percent.

9. In their petition, the petitioners raised two main claims. First: the nullification of the *Frozen Meat Import Act* due to defects in the process of its enactment. Second: the nullification of the *Frozen Meat Import Act* as contrary to constitutional principles anchored in *Basic-Law: Freedom of Occupation* and in *Basic-Law: Human Liberty and Dignity*. Responding to our recommendation, the petitioners withdrew the first claim. Thus the whole petition revolves around the questions that are connected to the *Basic-Laws*. Regarding this matter, we permitted amendment of the petition so as to deal both with the constitutionality of the *Frozen Meat Import Act* and the constitutionality of the amendment that extended the provisions of this Act to all kinds of meat and its products (*Meat and Its Products Act*, 5754-1994). Henceforth any reference to the *Frozen Meat Import Act*, is a reference to the original Act, as amended.

10. The petitioners submit two claims with regard to the relation between the *Frozen Meat Import Act* and the constitutional principles that are anchored in *Basic-Law: Freedom of Occupation* and *Basic-Law: Human Dignity and Liberty*. The first claim is this: the override clause protects the *Frozen Meat Import Act* from constitutional review under the limitation clause. The override clause does not protect the act from constitutional review, under the fundamental principles of section 1 of *Basic-Law: Freedom of Occupation*. According to the petitioners' claim, "the override clause was aimed and can indeed help the legislature to deviate, out of immediate necessity, from a certain provision in the constitution (that is, section 4 of *Basic-Law: Freedom of Occupation*), but it does not enable it to totally break the framework". The second claim is this: *The Frozen Meat Import Act* infringes not only on freedom of occupation. This Act infringes on several liberties that are anchored in *Basic-Law: Human Dignity and Liberty*, without satisfying the requirement of the limitation clause that is prescribed in *Basic-Law: Human Dignity and Liberty*. According to the petitioners' claim, the *Frozen Meat Import Act* infringes on the freedom of religion and conscience. This freedom constitutes, according to the petitioners' claim, a part of the constitutional protection of *Human Dignity and Liberty* (sections 2 and 4). These rights are infringed by the *Frozen Meat Import Act* in that it precludes any individual choice to purchase non-kosher meat and it coerces individuals, for religious reasons, to only consume kosher meat. Thus, it infringes on the freedom of religion and conscience of all individuals (whether Jews or non-Jews). This infringement is not according to a proper purpose and it is beyond what is required. Moreover, according to the petitioners' claim, the *Frozen Meat Import Act* infringes on the equality principle. Equality is protected, according to the petitioners' claim, as part of the protection of human dignity (sections 2 and 4). The infringement on equality is illustrated by the fact that a Jewish consumer would only be able to buy imported frozen meat with a kashrut certificate from the Rabbinate. In contrast, a Muslim consumer would be able to buy imported frozen meat without any certificate. Similarly, non-kosher imported meat is cheaper than imported kosher meat or fresh, non-imported meat. Preventing the importation of non-kosher meat effects discrimination between the rich and the poor. This infringement of the equality principle is not for a proper purpose and it is beyond what is required and therefore, it does not satisfy the requirements of the limitation clause in *Basic-Law: Human Dignity and Liberty*. Finally, the *Frozen Meat Import Act* infringes on the property of the petitioners. The property is protected in *Basic-Law: Human Dignity and Liberty* (section 3). The property right of the petitioners is infringed by the *Frozen Meat Import Act*, in that the value of the shares [of the company of] petitioner number 1, a part of which are owned by petitioner number 2 -- drastically decreased. Likewise, the property [right] of petitioners number 3 and 4 was infringed in that their [commercial] activity is forecast to fall by 50% because of the ban against non-kosher meat importation. It is also expected that the investment in their business undertaken in the expectation of full privatization of the importation of all kinds of frozen meat will be lost. This infringement on property is not for a proper purpose and is beyond what is required. It does not satisfy, therefore, the stipulations of the limitation clause in *Basic-Law: Human Dignity and Liberty*. In this context, the petitioners point out that the *Frozen Meat Import Act* does not include any provision concerning monetary compensation for the monetary damage that was incurred.

11. The respondents rely on the override clause. As to the first claim of the petitioners, the respondents' view is that the limitation clause constitutes a barrier for judicial review as far as

the *Basic-Law: Freedom of Occupation* is concerned. As to the fundamental principles clause, it is not an independent source of rights in Israel. Its duty is only interpretive. It contributes to the understanding of the human rights that are acknowledged in the *Basic-Law*. It is not a source of rights. Moreover, even if the fundamental principles clause does constitute an independent source of human rights, that does not matter because the claim before us is a claim of infringement of freedom of occupation and it is at this infringement that the override clause is aimed. As to the second claim of the petitioners, the respondents' view is twofold: first, they seek to show that freedom of conscience and religion was not infringed, and in any case, it does not amount to an infringement on the aspect of freedom of conscience and religion that is derived from human dignity. Similarly, the *Frozen Meat Import Act* does not infringe on equality. Every person is free to consume non-kosher meat, as it is available in the market, and the Act does not create any distinction between consumers. Thus, there is no need to decide the question whether the equality principle is included in *Basic-Law: Human Dignity and Liberty*. Anyway, the lack of economic equality cannot be considered to infringe on human dignity. Finally, the *Frozen Meat Import Act* does not infringe the property of the petitioners. Their property was not confiscated. The economic potential that is open to them increased, in light of the permissibility of meat import without a license. The second answer of the State -- and it is an alternative to its first answer -- assumes that the human rights that are anchored in *Basic-Law: Human Dignity and Liberty* are infringed by the *Frozen Meat Import Act*. This answer also assumes that the infringement of the human rights that are anchored in *Basic-Law: Human Dignity and Liberty* does not satisfy the requirements of the limitation clause in this *Basic-Law*. The State's claim is that the infringement on the human rights that are anchored in *Basic-Law: Human Dignity and Liberty* is totally and solely derived from the limits on freedom of occupation. This is a specific and special arrangement that exists within *Basic-Law: Freedom of Occupation*, and that was entrenched by the override clause. In these circumstances, the arrangement is not any more open to additional constitutional review within *Basic-Law: Human Dignity and Liberty*. According to the respondent's claim, any other interpretation will empty the override clause of any meaning, since any limit on occupation encompasses an infringement on property also. Indeed, the State points out in its answer that "we do not seek to claim that generally the 'override' clause that endows entrenchment from constitutional review by virtue of *Basic-Law: Freedom of Occupation* entrenches the Act from the point of view of *Basic-Law: Human Dignity and Liberty*. However, the claim of the State is that in the present situation, where all that is involved is limiting a sphere of occupation, infringements on other rights have to receive constitutional protection."

THE OVERRIDE CLAUSE

12. At the core of this petition stands the override clause. This is the language of the clause (section 8):

> **The validity of a deviating Law**
> A provision of a Law that infringes on freedom of occupation shall be valid, even though not in accordance with section 4, if it has been included in a Law passed by a majority of the Knesset members, which expressly states that it shall be valid notwithstanding this

> Basic-Law; the validity of such a Law shall expire four years from the day of its commencement, unless an earlier date has been stated therein.

A similar provision is not included in *Basic-Law: Human Dignity and Liberty*. The inspiration for this provision came from a parallel provision that exists in the *Canadian Charter of Rights and Freedoms* (see DK 133, 5754, at 5412). The Canadian provision is named the override, and it exists in section 33 of the Canadian *Charter*. This is its language.

> 33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.
>
> (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.
>
> (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.
>
> (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).
>
> (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Comparing the two provisions indicates that in some matters there is a considerable similarity between the two clauses, and in other matters there is a substantial difference between them. We talked about the similarities and differences elsewhere (see A. Barak, Interpretation in Law, 63 (3rd part, 1994)).

13. The purpose of the limitation clause is to enable the legislature to fulfil its social and political goals, even if they infringe on freedom of occupation and the infringement does not satisfy the requirements of the limitation clause (section 4), that stipulates:

> There shall be no infringement on freedom of occupation except by a Law befitting the values of the State of Israel enacted for a proper purpose and to an extent no greater than is required, or according to such a law by virtue of express authorization by it.

Indeed, the override clause enables the legislature to fulfil political and social goals through legislation without any apprehension that this legislation, if challenged, will be found unconstitutional and therefore void (see HC 796/94 *Klal Insurance Co. Ltd. v. The Minister of Treasury*, PD 48(5) 441, 482). By means of the override clause, the status of *Basic-Law: Freedom of Occupation* as a constitutional super-legislative provision is preserved, and yet the power of the legislature to infringe on freedom of occupation without satisfying the provisions of the limitation clause is acknowledged, and all that without any need to change the *Basic-Law* itself. The Canadian arrangement won praise from one side and poignant [harsh] criticism from the other (see Weinrib, "Learning to Live with the Override", 35 McGill L. J. 541 (1990);

Russell, "Standing Up for Notwithstanding", 29 Alta. Law Rev. 293 (1991); White, "On Not Standing for Notwithstanding", 28 Alta. Law Rev. 347 (1990); Macklem, "Engaging the Override", 1 N. J. Con. Law, 27 (1991); Weiler, "Rights and Judges in Democracy: A New Canadian Version", 18 J. of Law Reform 51 (1994)). The Knesset found it appropriate to adopt this arrangement while deviating in some matters from the Canadian model, [and] while limiting its application only to freedom of occupation.

The Override Clause, Deviating Act, and Basic-Law: Freedom of Occupation

14. An Act that includes a clause that this Act is valid notwithstanding *Basic-Law: Freedom of Occupation* -- a "deviating Act" in the formulation of the Basic-Law -- does not change the *Basic-Law: Freedom of Occupation*. It was prescribed in the *Basic-Law* that "this Basic-Law shall not be changed except by a Basic-Law that was accepted by the majority of the Knesset members". Therefore, there was no change in freedom of occupation, as a constitutional super-legislative right, because of the existence of a provision in an Act that it is valid "notwithstanding" the *Basic-Law*. The effect of a deviating Act is that this Act entrenches itself from judicial review by virtue of *Basic-Law: Freedom of Occupation*. What is the range of this entrenchment? The petitioners before us are claiming that this entrenchment is limited only to the examination of the question whether this deviating Act satisfies the requirements of the limitation clause (that is prescribed in section 4). In their petition, the infringement does not apply to the examination of the question whether this Act satisfies the requirements of the fundamental principles clause (section 1), that stipulates:

> Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of his life and his freedom, and they shall be respected in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

According to the claim of the petitioners, *Basic-Law: Freedom of Occupation* does not entrench any deviating Act. The deviating Act is valid -- despite the fact that it does not satisfy the requirements of the limitation clause -- only if it satisfies the requirements of the fundamental principles clause. The petitioners stress that their claim has a linguistic basis, since it was stipulated in the override clause that "a provision in an Act that infringes on freedom of occupation shall be valid even though it is not in accordance with section 4" -- it was not said in the override clause that this provision will be valid even though it is not in accordance with section 1. A similar claim was raised in Canada. It was claimed there that an Act that made use of the override is not immune from review as to whether the Act does contradicts the fundamental principles of a democratic state (see Slattery, "Override Clauses Under Section 33", 61 Can. Bar Rev. 391 (1983); Arbess, "Limitations on Legislative Override", 21 Osgoode Hall L. J. 113 (1983)).

15. The override clause stipulates the conditions of its exercise. Part of this stipulation is of a "formal" character: the Act has to include in it an explicit provision according to which it is valid notwithstanding *Basic-Law: Freedom of Occupation*; the Act has to be accepted by the majority of the Knesset members. Another part of the stipulation is of substantial character; the provision in the Act "infringes" on freedom of occupation. The override clause cannot be used -- and the

same case applies with regard to the limitation clause -- to give force to an Act that negates or totally abolishes freedom of occupation as a constitutional right in Israel. The negation of freedom of occupation as a constitutional right can be done only by means of changing the *Basic-Law* itself, i.e., "in a Basic-Law that was accepted by the majority of the Knesset members" (section 7). This consequence cannot be achieved by the override clause. Indeed, the override clause acts within the framework of *Basic-Law: Freedom of Occupation* and legislation that changes the *Basic-Law* cannot be enabled by virtue of it.

16. As we saw, the override clause endows constitutional force to a deviating Act, even if this Act is not in accordance with the limitation clause. An Act might not be in accordance with the limitation clause, *inter alia*, if it does not befit the values of the State of Israel. These values we take, *inter alia*, from provisions with regard to fundamental principles (section 1) and the purposes of the *Basic-Law* (section 2). Therefore, by virtue of the override clause, a deviating Act is valid in spite of the fact that it does not befit the values of the State of Israel as a Jewish and democratic state (values that are mentioned in section 2) and in spite of the fact that it infringes as a result on the fundamental principles (that are mentioned in section 1). The question is -- and it is the one mentioned in the basis of the claims of the petitioners -- whether there is identity between "the values of the State of Israel" that are mentioned in the limitation clause (section 4) and the fundamental principles and the values that are mentioned in the fundamental principles clause (section 1) and the purpose clause (section 2). This is a nice question. Yet we come to the conclusion that we need not decide it. Even if we assume - without deciding - that there are fundamental principles and purposes that a deviating law cannot infringe, these are certainly fundamental principles and purposes upon which our whole constitutional structure, including the *Basic-Laws* themselves, is built, and that their infringement is substantive and harsh (compare: *...Yardor v. The Elections Committee of the Sixth Knesset*... ; *Tnuat Laor v. The Knesset's Speaker*) otherwise the override clause is emptied of its main content. This is not the case before us. The infringement on freedom of occupation is of a limited nature since it remains open to the petitioners to import kosher meat, and to do so is in contrast to the situation before the change in government policy [the decision to privatize the meat market] with no need of import licenses. The infringement on property, freedom of occupation and equality - as much as it is hidden among the folds of the law - does not amount to infringement on the fundamentals of our constitutional regime. For these reasons, the first claim of the petitioners is to be rejected.

The Override Clause, Deviating Act, and Basic-Law: Human Dignity and Liberty

17. An override clause exists in *Basic-Law: Freedom of Occupation*. It provides that a deviating Act, i.e., an act that infringes on the Freedom of Occupation by a majority of the Knesset members and explicitly states that it is valid notwithstanding *Basic-Law: Freedom of Occupation* -- is valid although not in accordance with the limitation clause in *Basic-Law: Freedom of Occupation*. As we know, the *Basic-Law: Human Dignity and Liberty* does not include an override clause. What is the legal status of a deviating Act that infringes on a human right that is anchored in *Basic-Law: Human Dignity and Liberty*, and that does not satisfy the requirements of the limitation clause (section 8) in this *Basic-Law*? The petitioners' claim is that the constitutional protection that the deviating Act acquires is limited only to the "four Amas"* of *Basic-Law: Freedom of Occupation* [("Ama"* is talmudic measuring unit – approx. 60 cm. The expression means "within the immediate ambit of")], whereas to the matter of *Basic-Law:*

Human Dignity and Liberty the force of the deviating Act will be proscribed according to the stipulations of its limitation clause. Therefore, if the deviating Act does not satisfy its stipulations, it is not valid for this reason. According to the petitioners' claim, this is the fate of the *Frozen Meat Import Act*. This Act is a deviating Act. It secures constitutional protection within *Basic-Law: Freedom of Occupation* by virtue of the override clause in this *Basic-Law*. The *Frozen Meat Import Act* infringes, according to their claim, not only on freedom of occupation, but also on the freedom of conscience, equality and property that are protected in *Basic-Law: Human Dignity and Liberty*. It does not satisfy the requirements of the limitation clause in *Basic-Law: Human Dignity and Liberty*. Therefore it is not valid. What is the validity of this claim? To examine this claim we will make all the assumptions that are subsumed in the petitioners' view: we will do this, of course, without expressing agreement with these claims and without ruling on them. We will, therefore, make these three assumptions: first, that the *Frozen Meat Import Act* infringes on freedom of conscience, equality and property; second, that *Basic-Law: Human Dignity and Liberty* protects not only property (section 3) but also freedom of conscience and equality as part of the general protection on human dignity (sections 2 and 4); third, that the *Frozen Meat Import Act* does not satisfy the requirements of the limitation clause in *Basic-Law: Human Dignity and Liberty*. With the background of these three assumptions -- which we assume, without ruling on them -- what is the validity of the petitioners' claim?

18. The interpretive question that stands before us is this: in what circumstances, if any, does the constitutional protection that *Basic-Law: Freedom of Occupation* endows a deviating Act with apply against infringing on freedom of occupation but also against infringement on human rights that are anchored in Basic-Law: Human Dignity and Liberty? In the solution to this interpretive problem one should set forth, on the one hand, on the basis of principle -- and in this matter there is complete agreement between the representatives of the petitioners and the representatives of the respondents -- that a deviating Act gains constitutional protection within *Basic-Law: Freedom of Occupation*. For that reason alone, it does not acquire constitutional protection within *Basic-Law: Human Dignity and Liberty* too. Therefore, situations can arise where a deviating Act, that is valid with regard to the matter of *Basic-Law: Freedom of Occupation* -- will be found not valid with regard to *Basic-Law: Human Dignity and Liberty*. On this basis, it should be stipulated that absence of an override clause in *Basic-Law: Human Dignity and Liberty* has constitutional meaning. *Basic-Law: Human Dignity and Liberty* should not be interpreted as if it includes an override clause. This *Basic Law* should be endowed with its constitutional meaning while considering the constitutional fact that this *Basic-Law* does not include an override clause.

19. On the other hand, it should not be forgotten that *Basic-Law: Freedom of Occupation* -- and its override clause -- is a part of the *Basic-Law* structure of the state. It constitutes a central component of the constitutional arrangement with regard to human rights in Israel. An appropriate interpretive conception of constitutional arrangements -- even if they exist in separate documents -- should aspire to constitutional harmony. The constitutional norm does not stand alone. It is a part of the constitutional system. It is one component in an overall constitutional structure (see HC 428/86 *Barzilay v. The Government of Israel* - PD 40(3) 505, 595). Every constitutional provision has influence on its constitutional environment. One who interprets one constitutional provision, interprets the totality of constitutional provisions. The

specific constitutional provision influences the understanding of the constitutional totality, and the constitutional totality influences the interpretation of the specific provision that is combined in it. Judge Lamer pointed this out in one Canadian case that interpreted the Canadian Charter of Rights and Freedoms:

> our constitutional Charter must be construed as a system where every component contributes to the meaning as a whole, and the whole gives meaning to its parts ... The courts must interpret each section of the Charter in relation to the others. (Dubois v. R. [1985] 2 S.C.R. 350, 356).

In a similar spirit the German Constitutional Courts wrote in one case:

> The specific constitutional provision cannot be interpreted as a singular and unconnected provision. The constitution has internal unity, and the meaning of each part is connected to the meaning of the other parts. As a unity, the constitution reflects super principles and basic decisions, that every provision in it is bound to them. (in the case of 1 Bverf. GE 14,32).

Indeed, constitutional interpretation should aspire to integrate different constitutional provisions -- whether they are in one document or they are in different documents -- into each other and advance constitutional unity and harmony. We made this point in one of our cases, stating:

> Constitutional interpretation must be based on constitutional unity and not on constitutional disharmony. It looks on the role of the constitutional text in the structure of the regime and the society. It endows it with meaning that enables it to sustain its role in the present and in the future in the most proper form" (CA 6821/93 *Bank Hamizrahi Hame'uchad v. Migdal Kfar Shitufi* (yet to be published, paragraph 86 to my judgment)).[hereinafter the Gal judgment].

It is found, then, that the constitutional existence of the override clause in *Basic-Law: Freedom of Occupation* has an interpretive inference, not only within this *Basic-Law*, but also within the constitutional arrangement generally, and the *Basic-Laws* with regard to human rights particularly.

20. Indeed, appropriate constitutional interpretation has on the one hand to consider that the override clause exists in *Basic-Law: Freedom of Occupation* and does not exist in *Basic-Law: Human Dignity and Liberty*. On the other hand, it has to consider that the existence of the override clause in *Basic-Law: Freedom of Occupation* -- has implications on *Basic-Law: Human Dignity and Liberty* as part of the totality of the constitutional norms. We are dealing, therefore, with the need to adopt an interpretive approach that balances properly these interpretive facts and that blazes a proper trail through this interpretive tension. What is this interpretive approach? In what circumstances would constitutional protection be given to a deviating Act that infringes not only on freedom of occupation but also on the rights that are anchored in *Basic-Law: Human Dignity and Liberty*?

21. It seemed to us that proper interpretation should endow constitutional protection to a deviating Act that infringes not only on freedom of occupation but also on rights that are anchored in *Basic-Law: Human Dignity and Liberty*, if these three cumulative conditions are satisfied: first, the infringement on the other human rights is a natural consequence that follows from the infringement on freedom of occupation; second, the infringement on freedom of occupation is the main infringement, whereas the infringement on the other human rights is secondary. Third, the infringement on the other human rights, of itself, does not produce a serious effect. In satisfying these three conditions, the interpretation that views the constitutional provisions as a unity and that seeks to ensure constitutional harmony, that endows the deviating act with constitutional force beyond *Basic-Law: Freedom of Occupation*, is compelled. Any other interpretive approach would empty the override clause of its contents and sidestep its effective use. A proper interpretation must prevent this consequence. The proposed interpretation nonetheless sustains the proper boundaries of *Basic-Law: Human Dignity and Liberty*. It acknowledges the fact that it does not include an override clause, while preserving the human rights that are anchored in it from a primary infringement that arises incidentally with the enactment of the deviating Act.

22. The first condition prescribes that constitutional immunity is given to a deviating Act that infringes on a human right, which is anchored in *Basic-Law: Human Dignity and Liberty*, if such an infringement is only a natural consequence that follows from the infringement on freedom of occupation. Indeed, infringement on freedom of occupation often intertwines with it infringement on equality or property as a natural adjunct consequence. A ban on people of kind X from carrying on an occupation that is allowed to people of kind Y is often, by its nature and kind, connected to infringement on the property and equality rights of the people that belong to kind X. In this state of affairs, the constitutional protection of the freedom of occupation that is given in the override clause compels also constitutional protection of the infringement on property and equality, otherwise the override clause will be empty of its normative power. The second condition prescribes that the main infringement has to focus on freedom of occupation, whereas the infringement on the other human rights has to be secondary. The main should not be confused with the secondary. Indeed, if the consequence of the deviating Act is that its main infringement is not on freedom of occupation but rather on human rights that are anchored in *Basic-Law: Human Dignity and Liberty*, this infringement should not be given constitutional protection. The existence of an override clause in *Basic-Law: Freedom of Occupation* is not enough to endow constitutional protection in the case, where the main infringement of the deviating Act is beyond the scope of *Basic-Law: Freedom of Occupation*. The third condition prescribes that the infringement on the other rights -- when it is examined for itself, without a comparison to the infringement of freedom of occupation -- has to be of marginal power. A substantial and harsh infringement on a human right that is anchored in *Basic-Law: Human Dignity and Liberty* should not be permitted incidentally by an infringement of freedom of occupation. The "indirect" implications of the override clause in *Basic-Law: Freedom of Occupation* can "cover" infringements that are not substantial or primary encroachments on the human rights that are in *Basic-Law: Human Dignity and Liberty*.

23. Exercising these interpretive standards on the matter before us, according to the assumptions that we assumed in our discussion, we think that the three conditions that are

required to give an effect to the override clause beyond the scope of *Basic-Law: Freedom of Occupation*, are satisfied. The infringements on freedom of conscience, equality, and property of the petitioners -- assuming that these rights are indeed infringed -- are natural adjunct consequences of the infringement on their freedom of occupation. These are not independent consequences that stand on their own. These are derivative consequences that naturally follow from the very infringement of freedom of occupation. The main infringement is on freedom of occupation. The infringement on the other rights are adjunct and are not substantial. As to the possible infringement on freedom of conscience, it should be remembered that anyone who wants to is able to purchase non-kosher meat in Israel. There is no coercion to eat only kosher meat. There is no doubt that the main infringement is on freedom of occupation. As to the possible infringement on equality, the claim of the petitioners is that equality is infringed by the fact that a "Kashrut" certificate of the Rabbinate is required and a "Kashrut" certificate of a Muslim authority is not required, and thereby there is an infringement on equality between Jews and Muslims. Even if we see this as an infringement on equality, it is certainly secondary to the infringement on freedom of occupation, and it is not of substantial importance. As to the possible infringement on freedom of property, it is secondary to the infringement on freedom of occupation, and is not of itself of substantial importance. Given the satisfaction of these three conditions, the necessary interpretive conclusion is that the *Frozen Meat Import Act* should be given constitutional protection, not only within the scope of *Basic-Law: Freedom of Occupation*, but also within the scope of *Basic-Law: Human Dignity and Liberty*.

24. We have arrived at the conclusion that even if the legal assumptions of the petitioners with regard to the infringement of the *Frozen Meat Import Act*, on rights that are anchored in *Basic-Law: Human Dignity and Liberty* are correct, it does not suffice to undermine the constitutional protection the *Frozen Meat Import Act* deserves from the override clause. In light of this conclusion, we need not decide the correctness of the petitioners' assumptions. Therefore, as said, we need not resolve in this petition the question of whether the *Frozen Meat Import Act* infringes on freedom of conscience, equality and property. Likewise, we do not resolve in this petition the question whether freedom of conscience and equality are constitutional rights that are anchored in *Basic-Law: Human Dignity and Liberty*. Finally, we do not decide in this petition whether or not the *Frozen Meat Import Act* satisfies the requirement of the limitation clause in *Basic-Law: Human Dignity and Liberty*. These questions are important. Some of them were discussed in *obiter dicta* in the rulings of this court in the past. Deciding them is not necessary to the solution of the conflict before us. We will therefore not pronounce upon them incidentally in rejecting the petition.

THE PRESIDENT

The Vice President S' Levin: I agree.
Judge T' Or: I agree.
Judge E' Goldberg: I agree.
Judge M' Hashin: I agree.
Judge Y' Zamir: I agree.
Judge T' Shtrasberg-Cohen: I agree.
Judge D' Dorner: I agree.

Decided as said in the judgment of the president. Delivered today 14 of Kislev 5757 (25.11.96).