



Beyond Reasonableness: From Judicial Decisions to Executive Actions What happens next?

On 24 July 2023, Israel's coalition government passed a law amending Basic Law: The Judiciary, which removed the courts' power to review the reasonableness of decisions made by the executive branch (the Prime Minister, government, and ministers) in all spheres and on all issues. This created a normative "black hole" in which the executive branch can make extremely unreasonable administrative decisions. On September 12, 2023, the Supreme Court will conduct a hearing on the constitutionality of this amendment, and an unprecedented panel of 15 Justices will review the petitions opposing it.

Is the Supreme Court Authorized to Review Basic Laws?

Israel has thirteen Basic Laws, serving as its quasi-constitution. Although Basic Laws hold special status, both Basic Laws and regular laws require only a simple majority to be enacted or amended. The title "Basic Law" was never intended to be used as a "magic shield" that automatically precludes any judicial review, otherwise, a simple majority of the Knesset could enable any "Basic Law" to obtain unchecked powers. The Supreme Court conducts judicial review of Basic Laws in very rare instances:

1. **"Unconstitutional constitutional amendment"**: no matter how large the majority, the Knesset is never authorized to pass any regular or Basic law that contravenes Israel's foundation and core characteristics and essence as a democratic and Jewish state as laid out in the Declaration of Independence.
2. **"Misuse of constituent authority"**: the Knesset is not authorized to define a law as a "Basic Law" if it does not fulfill constitutional standards – if, for example, the bill concerns non-constitutional matters or is intended to produce immediate, short-term political benefit (temporary laws), or personal advantage to the legislating politicians.
3. **"Fundamentally flawed legislative procedure"**: if the legislative process of regular laws or Basic Law was enacted in contravention of Knesset Rules of Procedure, in an urgent or disorderly manner, and without allowing Members of Knesset to participate actively and effectively and exert their proper influence, the law could be returned to the Knesset for reexamination.

What is the danger to Israel now that the Reasonableness Doctrine has been abolished?

Absolute power corrupts absolutely. With the abolishment of the Reasonableness Doctrine, the government can appoint cronies who are unqualified who have criminal records to senior positions and sideline professional public servants who stand in their way. It will be easier for ministers to make decisions based on flawed or biased data or illegitimate considerations and to allocate or withhold funds and resources capriciously, arbitrarily, and corruptly. The effects will be felt in all spheres of life, including the upcoming municipal elections (to be held nation-wide in October 2023) and during national elections.

But it's just one law – how bad can it be?

This law, aimed at weakening the judiciary, was passed by a narrow majority coalition, despite overwhelming expert objections and unprecedented massive protests. It significantly affects Israelis impacted by hundreds of daily administrative decisions by the government and its ministers, who can now make decisions without the mandate to act reasonably.

This legislation undermines democratic norms and removes a key check on the executive branch; it is nothing short of a governmental cataclysm that gravely endangers democracy.

"Not to worry, we'll have elections again in four years..."

By the time the elections occur, tens of thousands of administrative decisions will be made by the government and ministers, which will not be individually presented to the public for approval; moreover, their influence on the public will be immediate, adversely affecting mainly weak and vulner-

able populations. Some of these decisions will cause irreparable damage. The professional and apolitical public services may disintegrate, and corruption will spread to every sphere of life.

What's to be done now?

In September, the Supreme Court will review the constitutionality of the law abolishing the Reasonableness Doctrine. The Attorney General's position submitted ahead of the hearing states this law should be declared void; it severely violates Israeli democracy, undermines the separation of powers, disrupts the checks and balances between the branches, erodes the rule of law, compromises human rights and affects fair and equal elections. Despite statements from government officials suggesting they may not adhere to the Court's decision, it is imperative to remember that the Supreme Court's rulings bind citizens and the government alike. Any failure by the government to respect the Supreme Court's authority could spiral Israel into an unprecedented constitutional crisis. Therefore, we must support the Supreme Court, the Attorney General, and the rule of law and vigorously oppose the judicial coup.

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