



The Sabra Report

Historic High Court Hearing Held on Judicial Reform Law

Michael Starr, Jerusalem Post, September 12th, 2023

Recap:

The High Court of Justice convened to hear arguments against the government's judicial reform law.

The Context:

- ☆ Prime Minister Benjamin Netanyahu's coalition launched a campaign to reform the judiciary early this year, infuriating a broad spectrum of Israeli society and bringing hundreds of thousands into the streets for the past 36 weeks. Leading high-tech businesses have threatened to relocate and thousands of military reservists have refused to report for duty [1].
- ☆ The July 24th reasonableness standard law restricts the court from engaging in judicial review of government decisions. Critics say the reforms damage the court's independence and weakens democracy. Supporters say it will restore balance between the judiciary, legislature, and executive branches by reining in court overreach [2]. Court President Esther Hayut criticized the government for seeking to reduce the court's oversight whereas Western democracies like Canada, Australia and England have sought to do the opposite [3].
- ☆ Without a constitution in hand, several justices hold that the Knesset's authority derives from Israel's Declaration of Independence, which defines it as a Jewish and democratic state, and argue that the Knesset cannot legislate laws that erode Israel's Jewish or democratic character. Ilan Bombach, the government's attorney in the High Court, argued that it was "unthinkable" to say the declaration must "bind all future generations [4]."
- ☆ Coalition members have hinted that the government could ignore the court's decision to strike down the legislation, with legal experts warning that scenario could leave Israel's citizens and security forces left to decide whose orders to follow [5]. A decision on the reform is expected by year end.

Conversation Points:

- ☆ Can the Knesset itself guarantee that all its laws are reasonable without checks and balances?
- ☆ Why is the government's position on the Declaration of Independence problematic?
- ☆ How can the reasonableness clause be adjusted to make it less open for abuse?

Notes:

1. [Israeli Supreme Court Hears First Challenge to Netanyahu's Contentious Judicial Overhaul](#), Time, September 11th, 2023.
2. [Protests grip Israel ahead of historic Supreme Court session](#), Maayan Lubell, Reuters, September 11th, 2023
3. [Israeli Supreme Court holds first hearing challenging judicial overhaul](#), Eliyahu Freedman, Al Jazeera, September 12th, 2023
4. [Government lawyer spurns Declaration of Independence at fateful High Court hearing](#), Times of Israel, September 12th, 2023
5. [Israeli Supreme Court Hears First Challenge to Netanyahu's Contentious Judicial Overhaul](#), Time, September 11th, 2023

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