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A tactical pause: Netanyahu halts his judicial reform

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26–27 March 2023 saw a major escalation in the political protests that have been ongoing in Israel since January in connection with the government's plan to reform the judiciary. It involved an increase in the scale of street protests (which have now become the largest in Israel's history, with up to 700,000 attendees nationwide), and, most importantly, the threat of a strike which was announced (and to some degree carried out) by institutions, organisations and companies which are crucial to the functioning of the state and the economy. These include the trade union federation, local government structures, high-tech companies, the banking sector, health care workers, the Tel Aviv airport, the port of Ashdod and others. The direct reason behind the escalation was Prime Minister Benjamin Netanyahu's dismissal of Defence Minister Yoav Gallant, who had publicly called on the head of the cabinet to halt work on the judicial reform, arguing that the tension it had triggered posed a threat to the country's security.

In response to the threat of a strike, Netanyahu announced the suspension of the legislative work for a month until the new parliamentary session begins, and declared that he is willing to negotiate. However, at the same time he stated that changes in some form will be introduced anyway. As a result of his speech, the strike was cancelled and the main opposition forces expressed their cautious readiness to enter into talks. Despite this, it is unclear whether and on what scale the street protests will continue, because they are a grassroots initiative.

Commentary

- The sixth Netanyahu government, formed at the end of December 2022, has from the outset raised objections from a large portion of the Israeli public. This was due to the extreme profile of the parties that compose it, the radicalism of its announced platform (including its plans for the judiciary, and its policy towards the occupied territories), and its controversial members. For example, the prime minister himself is facing criminal charges for corruption and abuse of office; the minister of the interior (Aryeh Deri, already dismissed) has received a legally valid sentence for corruption (2000) and tax evasion (2022); and the minister of national security Itamar Ben-Gvir has been convicted many times for inciting racial hatred and supporting terrorism. Finance minister Bezalel Smotrich, for his part, has publicly denied the right of Palestinians to exist as a nation, and supports the view that Jewish settlements in the West Bank should be developed on a mass scale.

- Despite the immense controversy surrounding its formation, from the day it was sworn in the new government took advantage of its solid (by Israeli standards) parliamentary majority (64 out of 120 seats) and fast-tracked legislative work on a number of sensitive issues. It has continued this work over the past three months despite growing public discontent; this has expressed itself in the mass-scale street protests, and the increasing number of reservists refusing to attend obligatory training as an act of protest, as well as other manifestations. The most important and most controversial changes planned by the government relate to the system of appointing judges and the scope of competence of the Supreme Court (SC). Other changes would make it more difficult to dismiss the prime minister (this amendment has been adopted); allow officials in the public administration (including the prime minister) to obtain funds from private donations to cover the costs of legal action (Netanyahu has had problems with remunerating his lawyers); limit the SC's powers to examine the decisions taken by the government and the public administration bodies in the context of their reasonableness; and make the process of nominating the legal advisors assisting the government and specific ministries dependent on political decisions (at present this process is supervised by the Attorney General).
- The reform regarding the appointment of judges (which was adopted at first reading) involves amending the law to modify the line-up of the selection committee. At present, it has nine members: three of them are SC justices (including the chairperson), two are representatives of the Israel Bar Association, two are ministers (including the minister of justice) and another two are members of the Knesset. In this form, this group includes three judges, two lawyers and four politicians. In the case of the vast majority of appointments, the committee decides by a simple majority (five votes), and in the case of appointments to the Supreme Court a qualified majority (seven votes) is needed. According to the new draft law, the committee would consist of three ministers, three members of the Knesset, the SC president and two judges (of any rank) selected by the minister of justice. This would *de facto* equate to politicians having a monopoly on appointing judges.
- The reform of the Supreme Court's competence which the government is forcing through relates to its role as a quasi-constitutional court in the Israeli system. Israel does not have a constitution in the form of a single basic law. Instead, it has 13 'basic laws' which regulate the most important aspects of the country's political life. Their higher normative status results to a great degree from the significance of the issues they deal with, and from legal custom (only in selected aspects does it derive from the letter of law). In practice, this provokes numerous doubts regarding the hierarchy of norms, the manner of interpreting the provisions of the basic laws (whether this should be extensive or literal), and most importantly, whether the Supreme Court is entitled to control the legislation adopted by the Knesset, and if so, on what conditions. So far, since 1995 the SC has overridden 22 laws in full or in part (in 1995 the SC *de facto* unilaterally assumed the role of monitor of the new legislation's compliance with the basic laws). From the perspective of Israel's right-wing parties, whose important draft laws have been cancelled in this manner, this situation bears the hallmarks of political usurpation. In this context, the Netanyahu government intends to do the following: (1) prevent the SC from assessing

the constitutionality of the basic laws, (2) introduce a new category of simple laws that will be exempt from court supervision, (3) limit the instances in which the SC can announce an extensive interpretation of a specific law, (4) introduce a requirement stating that all 15 SC justices must be present to override a law adopted by the Knesset, and their decision must made by qualified majority, i.e. by votes cast by 80% of the SC's line-up (12 justices), (5) enable the Knesset to *de facto* override a SC veto by enacting the specific law once again, this time by an absolute majority.

- The immediate causes of the mass protests include the radical nature of the planned reforms (that is, the intention to significantly boost the importance of politicians and to reduce the role of the courts), distrust of the political forces behind these changes, the pace of the legislative work, and the government's consistent intention to ignore the public discontent. There are also deeper causes: the fears among secular Israelis of a left-wing, centrist or right-centrist political orientation (who are the main organisers of the resistance initiatives) that reducing the SC's controlling powers may pave the way for political and legal transformations reflecting Israel's ongoing evolution towards ethnic nationalism and the increased influence of religious groups. One argument corroborating the legitimacy of these concerns involves the fact that in Israel the other elements of control and balance between specific branches of government are weak. The president has no right of veto, the parliament is unicameral, and the executive branch's power over the Knesset is strong.
- The conflict regarding the planned judicial reform essentially boils down to a dispute over the state's identity and its paths for development in the future. This, in turn, has released tensions, which have been mounting for decades, relating to political, cultural and religious issues. To put it very simply, it can be stated that this is a conflict on the one hand between national or national-religious particularism and the unconditional supremacy of the majority's will in shaping the country's political life, and individual rights and freedoms and the independence of institutions that guard them on the other. The stakes in this conflict are made yet higher by the fact that Israel has failed to permanently regulate many issues of key importance, such as the role of religion in public life and the scope of the state's territorial ambitions.
- Netanyahu's decision to temporarily halt work on the judicial reform can be viewed as success for the protest movement, which over the last three months has not only managed to maintain its level of mobilisation but also consistently increased its pressure on the government. However, the reason why the prime minister altered his stance was not the mass demonstrations (despite their impressive number of participants), but the spectre of a general strike that could have paralysed the country.
- This confrontation has significantly weakened Netanyahu's position. His standing at home and abroad has been seriously – and, it seems, irreversibly – damaged. The fact that he was forced to suspend the work on the amendments has also weakened his position vis-à-vis the more radical of his coalition partners. This will pose a problem to him, in particular in the context of recent polls which indicate that the level of public support for both Likud and himself has declined significantly (over 60% of the respondents have a negative opinion about them). On the other hand, however, one of the Israeli prime minister's achievements is that, despite considerable pressure, he has

managed to maintain the coalition's unity and continues to enjoy a parliamentary majority (at least in theory). In this situation, he may choose to wait until the protests die down and try to carry out the reform at a later date. Should he decide to abandon the planned judicial reform permanently, however, this would equate to dropping one of the most important issues in his government's platform; that would in turn automatically undermine the coalition, and consequently, Netanyahu's future in Israeli politics. However, no matter what tactic both sides adopt, halting the legislative work will not end the dispute over this issue, and only serves to temporarily defuse the tensions that have built up over time.

- Although the protests have illustrated the strength of Israeli society's civil activism, their course has also revealed certain limitations within the country's pro-democracy discourse. The fact that Palestinian issues were rarely raised during the demonstrations corroborates this view. Although the aggressive policy towards the West Bank (both verbally and physically) is another hallmark of the current government alongside judicial reform, the outrage and protest which this has provoked has been much smaller. During the protests, slogans supporting the Palestinians and calling on the government to improve their situation and to end the occupation were isolated (for example, they emerged in response to the attacks carried out by Israeli settlers in the Palestinian town of Huwara). Frequently, these voices were silenced to avoid provoking tension between protestors with different opinions on the Palestinian question.