

## The political crisis in Israel: the end of the beginning

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Since January 2023, Israel has seen the biggest street protests in its history. The demonstrators are opposed to the judicial reforms which the government has announced, in particular to the intention to limit the competences of the Supreme Court (SC). The total number of protestors has reached 6–7 million.<sup>1</sup> The rallies are organised as grassroots initiatives, they are independent of the political opposition and attract groups which are characterised by diverse (sometimes contrary) outlooks on life. Nevertheless, despite the mass-scale nature of the protests, their attendees represent an active minority of Israeli society and public opinion polls on the assessment of the protests have shown considerably varied results as regards this issue.<sup>2</sup>

An escalation was caused by the decision of the Knesset at the end of July to enact the first (and thus far the only) law from the proposed package of laws. Following this escalation, however, the number of protest attendees decreased (including due to a series of holidays). However, the rallies may continue at an equally large scale, once work on the proposed legislative changes is resumed (which is likely). This means that the political crisis in Israel is far from over because it would appear that its nature is profound and systemic.

### The chronology of the crisis and its assessment so far

The government formed in December 2022 by Prime Minister Benjamin Netanyahu, who had returned to this office after a hiatus of a year and a half, announced its intention to introduce far-reaching changes in how the Israeli judiciary is organised. Despite gradually mounting protests, in the first months of 2023 it carried out accelerated legislative work on implementing these changes. However, the prime minister halted this work at the end of March due to a rapid increase in the number of protestors and the threat of a general strike. He emphasised at that time that this decision did not mean the reforms had been abandoned.

Between March and June, under the auspices of President Yitzhak Herzog, talks were held between the ruling coalition and the parliamentary opposition on a compromise solution regarding the planned

<sup>1</sup> Y. Freidson, 'Seven Million Israelis Have Participated in Protests Against Netanyahu's Judicial Coup, Police Chief Says', Haaretz, 4 September 2023, [haaretz.com](https://www.haaretz.com).

<sup>2</sup> In the Jewish majority of Israeli society, 48% of the respondents support the protests and 41% are opposed to them. See T. Hermann, O. Anabi, 'Israelis are deeply divided on the upcoming Supreme Court hearings. Israeli Voice Index August 2023', The Israel Democracy Institute, 11 September 2023, [en.idi.org.il](https://en.idi.org.il).



legal changes, but failed to produce agreement. When the talks failed, the government resumed work on selected bills. Despite mass-scale protests, on 24 July the Knesset passed the first proposed amended law by votes cast by the coalition members (64 out of 120 votes) and with opposition MPs absent because they boycotted the vote (see below). However, the SC acceded to the petition filed by non-governmental organisations demanding that the constitutionality of this law be checked. The first SC meeting devoted to this issue was held on 12 September. It is unclear when the final verdict will be announced.

Here is a list of some of the most important proposed reforms.<sup>3</sup>

- a) A change to the method for forming the committee which appoints judges. At present, SC justices and representatives of the Israel Bar Association hold a majority in this committee. If the proposed amendments are introduced, politicians (members of the Knesset and ministers) would dominate it.
- b) A change to the status of legal opinions issued by the Attorney General (who *ex officio* also acts as an advisor to the government and issues opinions regarding the legality of the government's decisions). At present, these legal opinions are binding. If the amendments were introduced, they would no longer be binding.
- c) A change in how legal advisors at line ministries are appointed. At present, they are appointed in a tender process. If the amendments were introduced, they would *de facto* be political appointees.<sup>4</sup>
- d) Limiting the SC's prerogatives, and, as a consequence, its constitutional role. At present, the SC acts as a quasi-constitutional court (although Israel does not have a single, uniformed basic law) and is authorised to carry out a judicial review of legal acts passed by the Knesset and to challenge them whenever it finds that they are unconstitutional. Its decisions are final. However, should the amendments be introduced, certain legal acts would be exempt from the SC's review and parliament would be authorised to *de facto* override the SC's veto by re-enacting a specific law by an absolute majority. In addition, the SC would be stripped of its ability to review the government's administrative decisions to check their 'reasonableness' (this is the only change which has been introduced so far).<sup>5</sup>

The assessment of the crisis so far is ambivalent. On the one hand, the mass scale and the prolonged nature of the demonstrations and the fact that their attendees hail from various social backgrounds

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have come as a surprise to the government and have blocked (most likely permanently) the prospect of the adoption of the entire announced package of laws. This should definitely be viewed as a success for the protestors. In addition, the crisis has caused a major decline in support for the ruling parties,<sup>6</sup> triggered tensions within the coalition and has had a negative impact on the government's image (and the image of the prime minister) abroad, including in the United States which is Israel's key partner.

<sup>3</sup> For more see M. Matusiak, 'A tactical pause: Netanyahu halts his judicial reform', OSW, 28 March 2023, [osw.waw.pl](https://osw.waw.pl).

<sup>4</sup> See G. Lurie, D. Benvenisty, 'The Role of Legal Advisors – Explainer. From Professional to Political: The Appointment of Legal Advisors', The Israel Democracy Institute, 4 April 2023, [en.idi.org.il](https://en.idi.org.il).

<sup>5</sup> When assessing the 'rationality' of a specific decision, the SC for example checks whether it was within the government's competences to make it, whether it was made in line with the valid procedures, in good faith, taking into account the principles of equality and proportionality, and with respect for human rights. See S. Navot, 'The Reasonableness Issue Requires Serious, Informed, and Consensual Discussion', The Israel Democracy Institute, 14 July 2023, [en.idi.org.il](https://en.idi.org.il).

<sup>6</sup> 'Gantz maintains lead over Netanyahu in latest poll; coalition falls to 52 seats', The Times of Israel, 10 September 2023, [timesofisrael.com](https://www.timesofisrael.com).

On the other hand, despite the unprecedented scale of the protests, Netanyahu's government continues to exist, it has a majority in parliament and enjoys public support (even though its level has fallen)<sup>7</sup> and has retained control of the legislative process in the Knesset. This latter aspect enables it to work on the planned changes at a pace and in a scope which is most favourable to the prime minister from the political point of view. Moreover, with the formal end of the current term of the Knesset more three years away and the parliamentary majority characterised by minimal cohesion (despite the tensions), the fact that opinion polls show a lower level of support for the coalition parties does not necessarily form an obstacle to forcing through further reforms.

One of the noticeable effects of the crisis involves the fact that the political fight is affecting an increasing number of state institutions. This is most evident concerning the SC which, in connection with the above-mentioned petition, will *de facto* issue a verdict in its own cause, and also the armed forces, which enjoy a huge level of support among the public. The fact that the protests are attended by a large group of reservists<sup>8</sup> and that around 10,000 of them (out of more than 460,000) have signed a declaration saying that they would suspend their (voluntary) service should the authorities resume work on the planned legal amendments,<sup>9</sup> results in the army being indirectly politicised, even though the demonstrations are not attended by soldiers and officers on active duty. Gali Baharav-Miara, Attorney General of Israel, has declined to cooperate with the government in matters relating to the reform.

## The causes of the protests

The Israeli legal order is in many aspects insufficiently defined (the clearest example of this is the fact that the country has no constitution, although the Israeli Declaration of Independence of 1948 does envisage one). Similarly, the SC's strong constitutional position as a *de facto* constitutional court which is authorised to verify the 'reasonableness' of administrative decisions in many instances does not arise directly from the letter of the law, but rather it is an effect of a series of its precedent-forming verdicts and of the legal and political culture which has been shaped over decades. In this situation, the fact that the issue of judiciary reforms has been raised can hardly be viewed as illegitimate and the government, which has a parliamentary majority, formally does have the necessary mandate to implement them.

However, the mass-scale street protests have been triggered by the radical nature of the planned changes, the accelerated pace of work on them (which involves instances of the violation or at least

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bending of parliamentary procedures), by the fact that criticism and resistance on the part of the citizens was ignored, and most importantly by the protestors' extreme distrust of the initiators of these changes and of their intentions.

In this context, the fact that in the Israeli political system the checks and balances between the specific governing bodies are relatively weak is of key importance. The government, which has a stable majority in the Knesset, *de facto* controls parliament's work and the president is not authorised to veto the laws passed by it. In this situation, the SC is the strongest and *de facto* the only fully

<sup>7</sup> *Ibid.* According to polls conducted in the first half of September 2023, if a new election was announced, the coalition parties would win a total of 52 seats in the Knesset, while at present they hold 64 seats (out of 120). The opposition parties would win 58 seats and the two Arab parties five seats each.

<sup>8</sup> For example those gathered in the Brothers and Sisters in Arms initiative, [brothersandsistersinarms.org](https://brothersandsistersinarms.org).

<sup>9</sup> E. Fabian, 'This is where we draw the line': 10,000 more reservists to stop volunteering', *The Times of Israel*, 22 July 2023, [timesofisrael.com](https://www.timesofisrael.com).

independent body to effectively curb the executive power. This is why the protestors view the attempts to radically weaken its competences as an attack on Israel's political system and as an initiative which undermines its identity as a "Jewish and democratic" state. Society's distrust of the authors of the reforms stems from the fact that the present Netanyahu government (the sixth in his career) was formed in an atmosphere of huge controversy due to its line-up, political orientation and the platform of the coalition partners.

Since 2020, a criminal case has been opened against Netanyahu regarding instances of corruption and abuse of power. Aryeh Deri, the leader of one of the coalition

” **The cause of the crisis involves the protestors' extreme distrust of the government, which is combined with attempts to challenge its legitimacy to interfere in such a sensitive issue as the judiciary.**

parties (and deputy prime minister during the first month of the government's existence) was tried on criminal charges twice: for corruption (in 2000, when he was sentenced) and tax fraud (in 2022, when a plea bargain was reached). Itamar Ben-Gvir, minister of national security, for his part, has a past conviction for inciting racial hatred and supporting Jewish terrorism targeting the Palestinians.

As regards moral issues and outlook on life, the present government is viewed as "the most right-wing government in Israel's history". Aside from Likud (a secular nationalist party which has for years evolved towards national populism), it is made up of two parties representing the ultra-religious community (United Torah Judaism and Shas) and three small parties which represent the so-called religious Zionism and combine religious orthodoxy with extreme, openly racist ethnic nationalism.

As a consequence, the protestors do not believe that the fact that the government has a parliamentary majority which it has gained in a democratic election grants it a sufficient political and moral legitimacy to interfere in the fundamental principles of the state's political system. Moreover, they believe it is particularly unfit to do so.

In addition, from the point of view of the protestors, most of whom are secular or moderately religious individuals with centre or left-wing views, the coalition parties, except for Likud, represent communities which not only position themselves outside of the mainstream of Israeli social life (that is, they live in cultural enclaves made up of ultra-Orthodox individuals or fanatic West Bank settlers), but also do not shoulder their portion of the financial burden linked with the state's functioning and defence,<sup>10</sup> as a result of which they are not authorised to interfere in its fundamental principles.

In addition, the protestors frequently openly express their fear that the weakening of the SC may be a prelude to a far-reaching redefinition of the state's identity. Israel has always experienced tension between its ethnically Jewish nature and its democratic (that is, universalist) political system and also between the principle of the state's secularism and the privileged status of Judaism (in its Orthodox version). Although at different stages of the country's history the balance between these opposites was varied, at present the protestors are worried that without a strong SC the state could quickly shift towards ethnic nationalism and, most importantly, towards excessive religiousness. This is also why the protestors believe that the current events may be a turning point in Israel's history.

In practice, curbing the SC's ability to exert judicial control of the legislation passed by the Knesset could for example result in:

- the legalisation of full exemption for ultra-Orthodox men from both compulsory military service and substitute service (political parties which represent this group have been attempting to achieve this for years),

<sup>10</sup> Ultra-Orthodox men *de facto* do not serve in the military (although formally they are obliged to do so) and participate in the Israeli job market only to a minor degree.

- religious norms and imperatives permeating into secular legislation,
- Israel's Arab citizens being subject to open legal discrimination, including them being *de facto* stripped of their right to have their own political representation,
- a rapid acceleration of Jewish colonisation activity in the West Bank.

From the point of view of the opponents of the judiciary reform, their resistance goes beyond a principled defence of abstract norms and is an expression of their concern about very specific dangers which could materialise should the reforms be implemented.

## Two dimensions of the crisis

The Israeli political crisis can be analysed on two levels. On the one hand, it could be stated that it was triggered by controversial legislative initiatives inspired by specific political figures and forces which are temporarily able to influence the state's policy due to them holding a small majority (of just four seats) gained in last year's election. In this view, the source of the crisis involved the volatile political situation which did not necessarily have to result in the present situation and will undoubtedly have a different effect following the next election. In this interpretation of the events, the crisis is viewed as a dangerous, although merely anomalous occurrence as it was triggered by the unusually radical line-up of the present government which is very unlikely to be repeated in the future (especially in the context of opinion poll results which are not favourable to the current coalition members). The mass-scale protests, for their part, should be interpreted in this context as proof of the strength of the defence mechanisms of Israel's democracy. In this interpretation, the crisis is relatively easy to overcome – to achieve this it would be sufficient for the government to abandon the planned changes, propose a compromise solution or step down.

On the other hand, there are many indications that the crisis is a manifestation of structural tensions linked with long-term demographic and socio-political processes. These involve, for example: a permanent increase in the number and the political significance of highly ideologically motivated minority groups (ultra-Orthodox Jews and settlers); the empowerment of Jewish citizens of non-European origin, which has been ongoing for decades (these individuals tend to vote for right-wing parties); and a gradual shift of the political spectrum and the public discourse to the right.

This latter trend is seen in the increasingly positive electoral results gained over the last 20 years by the right-wing parties. At present they account for a total of more than

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60% of the seats in the Knesset; if the Arab parties are excluded, this figure is almost 70%. The trend is also seen in the fact that many traditional left-wing and liberal slogans, such as seeking peace with the Palestinians, human rights and the equal status of all citizens, are *de facto* challenged and abandoned.

In this interpretation, any attempt to alter the organisation of the judiciary can be viewed as an effort to transplant this evolution to the political system. Its purpose is to politically neutralise an institution which poses an obstacle to the state's transformation in line with a national, national-religious and/or religious-conservative agenda (although there are numerous differences between these camps, they *de facto* form a tactical alliance), and consequently, to redefine what is currently seen as a norm and as the political mainstream.

From this point of view, it was not certain that the crisis would erupt at this particular moment and with such intensity nor that it would assume its present form. However, it should not be viewed as

a one-time anomaly. It should be noted that over the last three decades Likud held power for around 20 years, Netanyahu served as prime minister for 16 years (with two pauses), and the ultra-Orthodox parties co-formed the ruling coalitions for 20 years (Shas) and 15 years (United Torah Judaism). Even one of the most controversial figures in the present government, finance minister Bezalel Smotrich, who represents a radical religious-nationalist ideology, has been a member of the Knesset since 2015 and has held ministerial jobs before. Generally speaking, out of the six parties which support the government, only the two smallest (and most extreme) ones can be viewed as brand new political actors at the parliamentary-governmental level. They are represented by a total of seven members of the Knesset out of the 64 members in the coalition.

In this context, arguments suggesting that it is the (corrupt and radicalised) prime minister and the unprecedented coalition line-up which are to blame for the crisis should be viewed as only partially correct because most political forces making up this coalition have been permanent elements of Israel's political landscape for decades, in line with voters' electoral decisions.

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Obviously, it cannot be ruled out that the crisis will be extinguished abruptly, for example as a result of the collapse of the government, the emergence of an extraordinary situation in the context of national security or another even more important event (see below). However, even in this scenario, the individuals who are currently holding power will remain on the political stage and will continue to have a strong impact on Israeli public life, especially as, taking into account the power of the right-wing electorate, any future coalition will need to include parties which have similar profiles and compete for similar voters. Therefore, even if the present government is ousted, and even if Netanyahu ultimately steps down, it is unlikely that it will be possible to pursue politics in a manner which is contrary to the ethno-nationalist and conservative agenda.

This will be all the more difficult because at present the Jewish parties offer no attractive ideological alternative to these views (for example a left-wing or a consistently liberal party) which would go beyond slogans focused on defending the status quo. As regards the Arab parties, Israeli society *de facto* declines to recognise them as fully credible and legitimate political actors.<sup>11</sup> In this situation, the ideologically amorphous political centre, which forms the main counterbalance to the political right, will need to take the right-wing views into account and, as a consequence, will increasingly shift to the right.

These factors indicate that the crisis is profound, systemic and chronic, and the state and society have drifted into unknown waters with no port in sight to which they could safely return, even if the present coalition fully abandons the planned changes.<sup>12</sup>

## Outlook

The crisis over the judiciary reforms seems far from over and it is difficult to predict how the situation will unfold in the future. The protestors have consistently demonstrated their immense determination to stop the reforms. Although the government was forced to modify its initial intentions, it retains sufficient strength to continue them, all the more so because its potential decision to abandon the reforms could trigger a break-up of the coalition as some of the parties and selected politicians view

<sup>11</sup> See 'Most Israelis Don't Want an Arab Party in Future Government, Election Poll Shows', Haaretz, 13 June 2022, [haaretz.com](https://www.haaretz.com).

<sup>12</sup> See A. Magen, 'Israel's Summer of Discontent', *Israel Journal of Foreign Affairs*, 13 September 2023, after: [tandfonline.com](https://www.tandfonline.com).

this issue as their ideological priority. For prime minister Netanyahu, this would equate to him losing power and potentially also lead to the end of his political career. This is why he cannot abandon the reform plans completely, even if at present he believes that raising these issues was a mistake, which he suggested in public statements.

A possible compromise between specific parliamentary forces, which is what President Herzog has called for, would not resolve the crisis either. This is because reaching such a compromise would require adopting at least some of the proposals put forward by the coalition, which in turn would most likely trigger resistance from those protestors who do not support any opposition party and are critical of all of them. In this context, one probable risk could involve the prolonged and emotionally dynamic demonstrations losing their peaceful nature.

The crisis could be resolved if significant progress is achieved in the Israeli-Saudi talks held under the auspices of the United States regarding the normalisation of bilateral relations and the formal decision to establish diplomatic relations. Israel officially recognising the largest Arab monarchy in the Persian Gulf would be an unprecedented success which in turn could win wide-ranging support for the prime minister even among his most fervent critics. This could potentially enable Netanyahu to halt the work on the reform (or to implement it in a very limited scope), replace his coalition partners with less controversial ones and regain the status of a central figure in domestic politics, able to form alliances with almost any actor on the Israeli political stage.