



**The Israeli Law Professors' Forum  
For Democracy**

Summary of Position Paper No 40: How to Halt Legislation

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**Abstract:**

The Israeli Law Professors' Forum for Democracy, an ad hoc and voluntary group of experts on Israeli law and specifically Israeli public law, expresses its grave concern over the apparent intention to abolish the independence of the judiciary, to subordinate it to the government and to the partisan political considerations of the executive branch, to undermine the independent status of the attorney general and civil service legal counsels, and to violate human rights. **In this paper we consider the legal avenues available for effectively halting the legislation concerning the constitutional overhaul.**

- The Prime Minister's declaration that the second and third readings of the bill introducing changes in the judicial appointment process will be postponed has no legal effect.
- Without a binding legal guarantee for the halt in legislation, the current negotiations are overshadowed by the constant threat that the legislation will be completed with the coalition's majority promptly, and at any time.
- It is therefore essential that the halt in the legislation be legally guaranteed so that it cannot be undone suddenly and unilaterally. Such a guarantee will achieve several important goals: it will relieve the negotiations of the pressure of imminent legislation, it will ensure that the negotiations proceed in good faith on the part of the coalition, and it will foster greater trust between the parties, thus increasing the chances of reaching a broad consensus on the matters at hand.
- Any postponement that depends solely on the discretion of the Speaker of the Knesset or of the Chairperson of the Knesset's Constitution, Law and Justice Committee leaves in place the threat of sudden unilateral completion of the legislation, and thus undermines the possibility to hold proper negotiations.
- There are ways of giving legal validity to the decision to halt the legislation. One is for the Knesset to pass a decision to freeze all constitutional legislation (effectively modifying the 1950 *Harari* Decision). Another is to change the Knesset Rules of Procedure, which can

be amended by the Knesset by a simple majority, to restrict its power to legislate on these matters while negotiations are taking place.

- The most rigid, and therefore best guarantee for stopping the legislation, would be to legislate a law, or preferably a Basic Law, imposing a moratorium on legislation concerning constitutional arrangements while negotiations are taking place; or, alternatively, a law entrenching the existing Basic Laws, to shield them from amendment by the coalition's simple majority.
- This paper sets out the various mechanisms, their legal implications, the ways in which they could be implemented, and their limitations. It warns that negotiations that are not founded on a binding moratorium on completing the legislation will be constantly overshadowed by a threat that will prevent reaching the broad and free consensus required for constitutional arrangements.