

ISRAEL

In unprecedented decision, Israel's Supreme Court strikes down law limiting its power

BY BEN SALES JANUARY 1, 2024



Israeli Prime Minister Benjamin Netanyahu, seated, consults with Justice Minister Yair Levin during discussion and a vote in the assembly hall of the Knesset, the Israeli parliament in Jerusalem, Feb. 22, 2023. (Yonatan Sindel/Flash90)

(JTA) — The Israeli Supreme Court has struck down a law that limited its power, an unprecedented decision nixing the one piece of legislation passed under the right-wing government's effort to weaken the judiciary.

The 8-7 decision published on Monday returns the fight over Israel's court system to the fore after a months-long pause due to Israel's war with Hamas in Gaza. Prior to Hamas' Oct. 7 invasion of Israel, debate over the government's judicial overhaul had riven the country, leading to massive protests and civil disobedience over what opponents said was a bid to undermine Israeli democracy.

Amid that civil strife, the government passed a law in July removing the Supreme Court's ability to strike down government decisions it deems "unreasonable," a power used in the past as a check on executive power. The law was an amendment to one of Israel's quasi-constitutional Basic Laws, and it passed without any votes from the opposition. The court heard challenges to it later in the year.

Monday's decision marks the first time for the court ever to strike down a Basic Law. While the specific law was struck down by a narrow majority, 13 of 15 justices wrote that the court does possess the authority to strike down Basic Laws. In the decision, former Chief Justice Esther Hayut wrote that the law was "extreme and irregular" and said it "departs from the foundational authorities of the Knesset, and therefore it must be struck down."

The decision moves Israel closer to a potential constitutional crisis, a scenario in which a country experiences an unsolvable dispute between two branches of government, at a delicate moment. Ahead of the court decision, Prime Minister Benjamin Netanyahu had not said explicitly that his government would obey a court ruling striking down the law.

Ministers in his government immediately criticized the decision, as well as the court's decision to publish it during wartime. Netanyahu's Likud Party called the decision "unfortunate" and said the court should not have ruled on an issue "at the heart of the societal disagreement in Israel when IDF soldiers from right and left are fighting and endangering their lives," according to the Times of Israel.

"The decision of the Supreme Court judges to publish the court decision during wartime is the opposite of the spirit of unity needed these days for the success of our soldiers on the front," wrote Justice Minister Yariv Levin, an architect of the judicial overhaul effort, on Facebook. "In practice, the judges have taken all of the authorities, which in a democratic regime are split in a balanced way between three branches of government."

Israeli politicians on the center and left celebrated the decision. Yair Lapid, the leader of Israel's parliamentary opposition, wrote on X, "The source of the state of Israel's strength, the basis of Israeli power, is the fact that we are a Jewish, democratic, liberal, law-abiding state. The Supreme Court faithfully performed its duty today to protect Israel's citizens."

On X, Benny Gantz, the leader of the centrist National Unity Party and a member of an emergency war cabinet, wrote that "the court decision must be respected."