



The Supreme Court sitting as a High Court of Justice

**HCJ 2144/20
HCJ 2145/20
HCJ 2169/20
HCJ 2171/20
HCJ 2175/20
HCJ 2252/20**

Before:

The Honorable President E. Hayut
The Honorable Deputy President H. Melcer
The Honorable Justice N. Hendel
The Honorable Justice U. Vogelman
The Honorable Justice I. Amit

The Petitioner in HCJ 2144/20
and in HCJ 2252/20:

The Movement for Quality Government in Israel

The Petitioner in HCJ 2145/20:

Chozeh Chadash Non-Profit Organization

The Petitioners in HCJ 2169/20:

The Organization for Progressive Democracy

The Petitioners in HCJ 2171/20

1. *Kachol Lavan* Faction
 2. MK Avraham Nissenkorn
 3. *Ha'avoda-Meretz* Faction

The Petitioners in HCJ 2175/20

1. *Yisrael Beiteinu*
 2. MK Oded Forer

versus

The Respondents in HCJ 2144/20:

1. The Speaker of the Knesset
 2. The Knesset
 3. The Legal Advisor to the Knesset
 4. The *Likud* Faction in the Knesset

The Respondents in HCJ 2145/20:

1. The Speaker of the Knesset
 2. The Legal Advisor to the Knesset
 3. The Attorney General
 4. The 34th Government of Israel
 5. The *Likud* Faction

The Respondents in HCJ 2169/20:

1. The Speaker of the Knesset
 2. The *Likud* Faction

The Respondents in HCJ 2171/20:

1. The Speaker of the Knesset
 2. The Knesset
 3. The *Likud* Faction

The Respondents in HCJ 2175/20:	1. The Speaker of the Knesset 2. The Knesset 3. The Legal Advisor to the Knesset 4. The <i>Likud</i> Faction
Motion pursuant to the Contempt of Court Ordinance in HCJ 2145/20 and a Petition to grant an order <i>nisi</i> in HCJ 2252/20	
Date of Sessions:	29 th of Adar, 5780 (March 25, 2020)
On behalf of the Petitioner in HCJ 2144/20 and in HCJ 2252/20:	Adv. Eliad Shraga; Adv. Tomer Naor; Adv. Hidie Negev
On behalf of the Petitioner in HCJ 2145/20:	Adv. Yuval Yoaz; Adv. Doron Barkat
On behalf of the Petitioner in HCJ 2169/20:	Adv. Yifat Solel
On behalf of the Petitioners in HCJ 2171/20:	Adv. Shimon Baron; Adv. Eran Marienberg; Adv. Omri Segev
On behalf of the Petitioners in HCJ 2175/20:	Adv. Eitan Haberman; Adv. Michele Nagar
On behalf of Respondents 1-3 in HCJ 2144/20:	Adv. Eyal Yinon
On behalf of Respondents 3-4 in HCJ 2145/20:	Adv. Nachi Ben-Or

Judgment and Decision

President E. Hayut:

1. In the partial judgment that we delivered on March 23, 2020, in five of the above-referenced petitions, we decided to issue an absolute order instructing Respondent 1, the acting Speaker of the Knesset, “to convene the Knesset as soon as possible in order to elect a permanent speaker of the 23rd Knesset, no later than Wednesday, March 25, 2020.”
2. Today – March 25, 2020, at 11:00, at the opening of the Knesset plenum’s session, Respondent 1 announced his resignation from his position and then adjourned the meeting. Following this act, the Legal Advisor to the Knesset informed us that he informed Respondent 1 that pursuant to Section 5(a)(2) of the Knesset’s Rules of Procedure, his term of office shall terminate following the lapse of 48 hours after the

letter of resignation was laid on the Knesset table or was delivered to the Secretary of the Knesset. The Legal Advisor to the Knesset further stated in his notice to the Speaker of the Knesset, that “his resignation at this time does not impact the obligation to comply with the court order...”, and that “the Speaker of the Knesset informed the Legal Advisor to the Knesset that he does not intend to raise the matter of electing a permanent Speaker of the 23rd Knesset on the agenda of the Knesset plenum today”.

By conducting himself in this manner, the Speaker of the Knesset violated the absolute order as stated in the judgment.

3. The Petitioner in HCJ 2145/20 filed a motion pursuant to the Contempt of Court Ordinance, in which it petitioned to enforce compliance with the partial judgment, and to such end, to order any relief that the Court will deem appropriate (hereinafter: the **Motion for Contempt**). The Petitioners in HCJ 2171/20 and in HCJ 2169/20 joined this motion, and the Petitioner in HCJ 2144/20 filed a new petition (HCJ 2252/20 – hereinafter: the **New Petition**) to grant a declaratory relief prescribing that in light of the Speaker of the Knesset’s conduct and his violation of the order, his office expired immediately and that in the state of affairs that has been created, Section 5(a)(2) of the Knesset’s Rules of Procedure do not apply. The Court was additionally requested to declare that the most senior Member of the Knesset be appointed as the Speaker of the Knesset until the election of a permanent Speaker, and that the Knesset plenum be convened today in order to discuss the election of a permanent Speaker. In the decisions that were delivered following the filing of the Motion for Contempt and the New Petition, the parties to all of the petitions were requested to file their response to these proceedings, and after the responses that were received were gathered (excluding the *Likud* faction, Respondent 4 in HJC 2144/20, which chose not to respond), we scheduled an urgent hearing on the Motion for Contempt and the New Petition, and it was held this evening at 20:00. All of the parties appeared at the hearing except for Respondent 1, who informed, by means of the Legal Advisor to the Knesset, that he requests to suffice with the written response that was submitted by him, and except for the *Likud* faction, whose attorney, Adv. Halevy, informed that he received telephone notice of the hearing at around 18:30, and that in the time schedule that was set and considering where he was at the time he received the notice, he will not be able to arrive at the hearing. The Respondents to the New Petition agreed that the hearing thereon would be held as though an order *nisi* had been issued.

4. Respect for the rule of law is the foundation of any democratic regime and it is tested, *inter alia*, by compliance with judicial orders and decisions. This duty to comply is imposed upon the entire public and the governing authorities too are not exempt thereof. Moreover, these authorities have an *a fortiori* obligation to comply with judicial orders and decisions, and Israeli law, with all of the arrangements that are prescribed therein in this context, has adopted the accepted approach in Common Law, that attributes a presumption of decency to the governing authorities. The assumption that underlies this presumption is that a judgment that is delivered against the State will be properly complied with (Ori Aronson “Enforcing High Court Decisions on State Actors – An Institutional Framework” *Mishpat Veasakim* 19 1271, 1985 (2016)). This Court has already elaborated on the dangers *embedded* in not complying with judicial orders by the governing authorities, stating:

“A state in which a governing authority takes the law

into its own hands – complying with a judicial order against it if it wishes to, and ignoring it if it does not, is a state in which the seeds of anarchy and mayhem are being sown, and which is developing a dangerous culture of the rule of force and arbitrariness. A governing authority is a fiduciary of the public and “has nothing of its own” (HCJ 142/70 *Shapira v. The District Council of the Israel Bar Association* [1971] IsrSC 25(1), 325, 331). As such, it should serve as a beacon for respect of the law and the rule of law. The eyes of the public are raised to the governing authorities and holders of office therein. Respect for the values of law and justice, and development of a tradition of protection of the values of the rule of law are influenced by their conduct. Disobedience of the law and non-compliance with judgments by a governing authority involve a deep ideological violation not only of the formal infrastructure of the foundations of the law and the regime, but also of the core of the tradition and the of the proper culture of governing, which serve as an example of appropriate conduct of the individual in society” (HCJ 4805/07 *The Center for Jewish Pluralism-The Movement for Progressive Judaism in Israel v. Ministry of Education* [2008] IsrSC 62(4) 571, 602-603).

Indeed, we have known cases in the past in which the governing authorities “dragged their feet” in complying with court orders, and cases in which they did not comply with such orders while alleging difficulty in implementing them or enforcing them or due to the necessary preparations. But never in the history of the State, until today, did a governing authority publicly and defiantly refuse to comply with a judicial order while stating that his conscience does not allow him to comply with the judgment. This is how Respondent 1, who is one of the symbols of the government (although at this time he holds office by virtue of the rule of continuity and without having been elected to his position) chose to act, and the severity of the damage that he has caused by his conduct to the public interest in guaranteeing the rule of law and compliance with judicial orders and judgments – is immeasurable. If this is how a person of power acts, why should a common citizen act differently? (see and cf. HCJ 4742/97 *Meretz Faction in the Jerusalem Municipality v. The Minister for Religious Affairs*, paragraph 6 (December 15, 1998)). And this question echoes most powerfully especially in these difficult days when we are facing the outbreak of the Coronavirus pandemic, and the citizens are required to comply with unprecedented restrictions and instructions that are imposed upon them, *inter alia*, by virtue of State of Emergency Regulations.

5. This is a state of affairs that cannot be accepted and when at issue is an unprecedented infringement of the rule of law, unprecedented reliefs are necessary. During the hearing that was held before us today, the Legal Advisor to the Knesset stated that the legislator and the promulgators of the Knesset’s Rules of Procedure did not envision or foresee a state of affairs such as the one that was created following Respondent 1’s resignation, particularly in the absence of a deputy to take his place. He

presented a possible outline pursuant to which the existing lacuna in this context in Section 20A(c) of the Basic Law: The Knesset, and in the Knesset's Rules of Procedure, shall be completed by way of this Court using the power granted to it in Section 15 of the Basic Law: The Judiciary, and instructing that in order to guarantee compliance with the judgment dated March 23, 2020, the most senior Member of the Knesset be granted a defined and delineated authority as follows:

- (1) To approach the Arrangements Committee, pursuant to Section 19 of the Knesset's Rules of Procedure, in order to convene the Knesset plenum, tomorrow, Thursday, March 26, 2020, even though this day is not among the days when it convenes according to the Rules of Procedure;
- (2) To determine the agenda of such meeting pursuant to Section 25 of the Knesset's Rules of Procedure and to include the proposal to elect a permanent Speaker of the Knesset therein;
- (3) To conduct such a meeting.

All the parties to the hearing consented to the proposed outline.

6. The Legal Advisor to the Knesset further added that in preparation to the hearing that was held before us, he discussed the matter with the most senior MK, Amir Peretz, who gave his consent to act in accordance with the said outline, if and to the extent it shall be determined, and Adv. Segev, who represents the *Ha'avodah-Meretz* faction in HCJ 2171/20, confirmed this to us.

7. Now, therefore, an order as stated in Section 5 above is hereby given by us, and lest there by any doubt we emphasize that this order remains valid even if Respondent 1 shall decide to retract his resignation.

Delivered today, the 29th of Adar, 5780 (March 25, 2020).

THE PRESIDENT

THE DEPUTY PRESIDENT

JUSTICE

JUSTICE

JUSTICE