

## High Court pans coalition deal, but signals no ruling until relevant laws passed

Justices highlight problematic clauses, such as freezing senior appointments and non-virus-related legislation for 6 months, Blue and White's planned expansion of 'Norwegian Law'

By [TOI staff](#) and [Jacob Magid](#) 4 May 2020



From left to right: Justice Hanan Melcer, Chief Justice Esther Hayut and Justice Neal Hendel at the High Court of Justice on May 4, 2020. (Screenshot)

The High Court of Justice indicated Monday that it could strike down some clauses of the unity deal signed by Prime Minister Benjamin Netanyahu's Likud party and Benny Gantz's Blue and White, including those that expand the so-called "Norwegian Law" and set a six-month period during which almost no legislation that isn't coronavirus-related could be advanced, and during which there would be no full-time appointments for senior roles.

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However, the justices appeared to dismiss both sides' insistence that they hand down a swift ruling regarding the legitimacy of legislation anchoring power-sharing agreements between Netanyahu and Gantz and naming the latter "alternate prime minister" — a position specially tailored to the deal. They argued that because the legislation in question hasn't yet been passed, and some of it hasn't even been submitted to the Knesset for a preliminary vote, they could not intervene.

"The court does not hand down pre-rulings even if the parties want it [to do so]. The court is not an insurance certificate," said Justice Menachem Mazuz.

"The petitioners' desire to have everything decided here and now does not apply to us," added Justice Uzi Vogelman.

The court was holding a second day of hearings on petitions against allowing Netanyahu to form a government while under indictment for corruption, as well as against the unprecedented rotational unity deal he inked with Gantz, which demands significant changes to some of Israel's quasi-constitutional Basic Laws, contradicting established law, tradition and precedent.

Since the legislation must be passed by Wednesday night — the deadline for formally notifying the president of the new coalition — those comments indicated the court will likely refrain from making a decision on those clauses of the agreement until Thursday, when a new petition may be needed.

Many other elements of the unity deal seemed set to be approved by the court. At various point during the deliberations, the justices slammed representatives for the petitioners for using "irrelevant" arguments that were political or moral in nature, not legal.

Like the first day of hearings, Monday's discussions before an expanded panel of 11 justices were broadcast live.

While Monday's deliberations concerned the controversial aspects of the three-year coalition deal negotiated by Netanyahu and Gantz, Sunday's seven-hour hearing discussed whether Netanyahu should be allowed to lead a new coalition in light of his indictment in three corruption cases — with justices hinting that they were unpersuaded by the petitioners.

The court is set to issue a ruling on both matters later in the week.

Netanyahu, in power since 2009, and ex-military chief Gantz faced off in three inconclusive elections in less than a year. With neither man able to form a viable governing coalition in Israel's deeply divided 120-seat parliament, they agreed to a power-sharing deal last month,

saying they aimed to avert a fourth vote opposed across the political spectrum.



Chief Justice Esther Hayut (right) and Justice Hanan Melcer at the High Court on May 4, 2020 (Screenshot)

But the deal faces eight petitions challenging its validity before the High Court. Five of the eight, submitted by anti-corruption watchdog groups and others, argue that members of Knesset indicted on corruption charges, such as Netanyahu, cannot be appointed prime minister.

Current law allows a prime minister to remain in power so long as he has not been convicted of criminal wrongdoing, with all avenues of appeal exhausted. However, the case of a prime minister under indictment being poised to establish a new government is seen as something of a legal blind spot.

As for the coalition deal, the main arguments against it concern specific provisions opponents say violate the law.

The lawyer representing Netanyahu, Michael Rabilo, told the court Monday that the disqualification of a single clause of the coalition deal could lead to the whole deal being annulled.

“The agreement is a fabric; it has checks and balances that we have to maintain. Disqualification of any component of the agreement can lead to the entire agreement being invalidated. In the complex reality we are in, I ask the court to act with restraint and not intervene,” he said.

Under the unity deal, the government’s first six months will be dedicated primarily to combating the novel coronavirus that has infected more than 16,000 Israelis and ravaged the economy.

But after judges repeatedly pressed Rabilo on why the coalition deal doesn't allow for most non-coronavirus-related legislation to be advanced for the first six months of the government, the lawyer backed down and said an amendment would be made to make the requirement less binding and allow other legislation to be advanced when necessary.

The judges also knocked the clause that bars the appointment of senior officials during the first six months.

“What does coronavirus have to do with the appointment of senior officials, such as the police chief, a role that for the past year and a half has been filled by an interim official?” asked Chief Justice Esther Hayut.

Justice Vogelman added that after three consecutive elections and 18 months of being ruled by an interim government that cannot make full-time senior appointments, such appointments cannot wait any longer.

Another objection to the six-month emergency period came from Justice George Kara, who asked: “What if the virus period extends past six months?”

Likud attorney Avi Halevy responded that if that indeed happens, the government would be forced to extend the emergency period.

The coalition agreement would see Netanyahu serving as prime minister for 18 months, with Gantz as his “alternate,” a new title in Israeli governance. They would swap roles midway through the deal, with Netanyahu becoming the “alternate” to premier Gantz, likely taking voters back to the polls in 36 months.

But Israeli law traditionally endows governments with four-year mandates, an issue pounced on by the deal's opponents.



Blue and White leader Benny Gantz (left) and Prime Minister Benjamin Netanyahu sign their unity government agreement on April 20, 2020. (GPO)

Knesset legal representative Avital Sompolinsky and Attorney General's Office representative Aner Helman both told the High Court that they agreed with the opinion stated by several justices that the court cannot rule on the legality of legislation sanctioned by the unity deal before it has even been passed.

Questions have also been raised about the legal status of the new "alternate prime minister" title. Netanyahu, under indictment, is forbidden by law from serving as a minister, and judges must rule whether the new title is acceptable for a man in his situation.

Another issue reviewed was the effort to legislate a so-called "skipping Norwegian law," that will allow some of the eventually envisaged 52 ministers and deputy ministers of the new government to temporarily resign their Knesset posts to let new MKs into the parliament in their stead — but not according to their slate's original order as current law dictates. This aims to allow Gantz to bring in new members of his faction into parliament while skipping members of the Yesh Atid and Telem factions, his former allies in Blue and White.

Asked during the hearing whether the new coalition still plans to advance an expanded version of the Norwegian Law, which has not yet been submitted for a Knesset vote along with other unity deal related legislation, Blue and White attorney Shimon Bar-On told the court that this was still its intention.

Judges subsequently pressed Bar-On on how such legislation would be legal as it violates the will of the voters who cast their ballots for the list in the order it was seen on the day of elections.

He provided what they considered to be political arguments as opposed to legal ones.

As a result, Chief Justice Hayut ordered Bar-On to provide a legal justification for the law within the next 24 hours. Bar-On agreed. Hebrew-language media reported that subsequently, Likud and Blue and White were considering altering that law.



High Court justices at a court session on petitions filed against the proposed government in Jerusalem on May 3, 2020. (Yossi Zamir/POOL)

After a recess, the court heard arguments by the petitioners, dismissing many of them as “irrelevant” to the hearing at hand.

In response to attorney Daphna Holtz-Lechne on behalf of the petitioners, Justice Mazuz said: “They are political, moral, public arguments... speeches that don’t have nothing to do with the legal level... and are irrelevant here.”

Also under contention was the provision that canceling the new legislation will require a special majority of 75 MKs — a clause demanded by Gantz to prevent Netanyahu from later overturning the legislation with a regular majority of 61 in the 120-member parliament and preventing him from serving as prime minister after 18 months. Following criticism from the judges, Blue and White and Likud agreed Monday to lower the threshold to 70 MKs, the Walla news site reported.

Attorney General Avichai Mandelblit last week handed the court his own legal opinion, saying that while “certain arrangements in the coalition agreement raise major difficulties... at this time there are no grounds to disqualify [it].”

He advised that problematic provisions be reviewed “at the implementation stage.”

If the judges deem the coalition deal invalid, Israel may be forced to hold its fourth election in less than two years.

Mandelblit, who indicted Netanyahu, also argued there was no legal basis to prohibit him from leading a government.

Thousands of Israelis have participated in a series of mass protests against the deal, while observing social distancing rules imposed due to the coronavirus pandemic.

From Tuesday to Thursday, focus will shift to the Knesset, where the new legislation is being pushed forward. It must become law by Thursday, as that’s the deadline for the Knesset to name a prime minister from among its ranks or call new elections. The Knesset is unlikely to approve the new government if the legislation ensuring the rotation deal between Netanyahu and Gantz hasn’t become law by then.

*Agencies contributed to this report.*