An Open Letter to the Speaker and the Legal Advisor of the Knesset

52 Public Law Scholars from Israel

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Following the March 2 election, Prime Minister Netanyahu has the support of 58 Knesset-Members – three short of a majority in the 120-seat Knesset. In contrast, 61 Knesset-Members have come out in support of Benny Gantz, the leader of Blue and White party. In light of this majority, earlier this week Gantz was tasked by Israel's President the mandate to try and form a government.

Against this political and Coronavirus-related restrictions on public gatherings backdrop, on Wednesday, Parliament Speaker Yuli Edelstein, a member of Likud party, unexpectedly suspended the recently elected Knesset, and by that delaying the plans of Blue and White party to appoint a new speaker, new committees and advance legislation that could limit Netanyahu's time in office.

Accordingly, on March 18, 2020 over fifty public law scholars from various law schools in Israel have sent a letter to the Speaker of the Knesset, MK Yuli Edelstein and Legal Advisor of the Knesset, Adv. Eyal Yinon, calling the immediate assembling of the Knesset.

Here is the full letter translated to English by Dr. Eliav Lieblich:

Decision of the Speaker to Close the Knesset - Unconstitutional

The undersigned, faculty members in law schools and faculties who teach and study public and constitutional law, are writing to you with regards to the refusal to immediately open the Knesset. We warn that the closure of the Knesset is unconstitutional, and implore that the Knesset be convened without further delay.

The State of Israel is in a health related state of emergency, which has quickly transformed into an extreme constitutional crisis. The Speaker of the Knesset has postponed the establishment of Knesset Committees, notwithstanding an explicit request to do so by 61 Members of Knesset – which constitute the absolute majority.

Granted, the Knesset Law of 1968 provides that the "Speaker of the Knesset is authorized to give any instruction and take any measure necessary for the maintenance of order and security" in the Knesset. However, all administrative authority must be exercised with discretion and without irrelevant considerations. In light of the Coronavirus crisis, the related economic crisis, the emergency regulations that permit surveillance of citizens, and the restrictions placed on the judiciary, there is **utmost importance in the activity of the Knesset and its committees.** These are essential to oversee a government which – it should be recalled – is a transitional government, in place only on the basis of the principle of continuity, and not on the basis of the voters' trust.

There is no prohibition on the Knesset to convene, and it is in fact exempted from the instructions of the Ministry of Health – as it should be, as the Knesset is a vital service. To the extent that there would be health related restrictions on the Knesset, it would be required to establish alternative methods, in order to allow the Knesset to fully operate. Just as the Speaker is authorized, in special circumstances, to convene the Knesset in a place other than in its building, it is possible to find ways to convene it under the current circumstances, while taking the necessary medical precautions, or using technological means of remote communication.

It should be emphasized that even during an emergency, the independent, lawfully elected legislature does not cease to represent the sovereign – the people – and therefore continues to operate. There is

no, indeed cannot be, a vacuum in parliamentary oversight. The Speaker of the Knesset is not authorized to prevent the elected majority from exercising its rights within the Knesset. The Knesset, pursuant to Basic Law: The Knesset is the state's house of representatives and even emergency regulations cannot suspend the Basic Law or to subject its application to any conditions. As part of its role, the Knesset is the branch that oversees the government. In circumstances such as those prevailing today, where much power is concentrated in the hands of the executive branch, this role of the Knesset is at its most pertinent.

Under the thick veil of smoke emanating from the fight against the Coronavirus – which is undoubtedly important and vital – in the fog of this battle, the Israeli democracy is facing a grave danger. We call for the immediate convening of the Knesset and for acting without delay to establish its various committees. Especially in this time of emergency, it is necessary to stand on guard in order to prevent the erosion of the basic principles of democratic rule.

Signees:

1. Einat Albin, Hebrew University
2. Ori Aronson, Bar Ilan University
3. Ronen Avraham, Tel Aviv University
4. Ittai Bar-Siman-Tov, Bar Ilan University
5. Netta Barak-Corren, Hebrew University
6. Gad Barzilai, Haifa University
7. Orna Ben-Naftali, College of Management
8. Eyal Benvenisti, Hebrew University
9. Michael Birnhack, Tel Aviv University
10. Yishai Blank, Tel Aviv University
11. Ziv Bohrer, Bar Ilan University
12. Hanoch Dagan, Tel Aviv University
13. Natalie Davidson, Tel Aviv University
14. Yoav Dotan, Hebrew University
15. Yosef Edrei, Haifa University
16. Aeyal Gross, Tel Aviv University
17. Ala Haidar, Zefat Academic College
18. Alon Harel, Hebrew University
19. Tamar Hostovsky Brandes, Ono Academic College
20. Alexander (Sandy) Kedar, Haifa University
21. Roy Kreitner, Tel Aviv University
22. David Kretzmer, Hebrew University
23. Eliav Lieblich, Tel Aviv University
24. Assaf Likhovski, Tel Aviv University
25. Ruthy Lowenstein-Lazar, College of Management
26. Doreen Lustig, Tel Aviv University
27. Itamar Mann, Haifa University
28. Kenneth Mann, Tel Aviv University
29. Menny Mautner, Tel Aviv University
30. Guy Mundlak, Tel Aviv University
31. Shirley Naveh, Sapir Academic College
32. Suzie Navot, College of Management
33. Lotem Perry-Hazan, Haifa University
34. Meital Pinto, Zefat Academic College, Ono Academic College
35. Frances Raday, Hebrew University
36. Shiri Regev-Messalem (Bar Ilan University)
37. Amnon Reichman, Haifa University
38. Issi Rosen-Zvi, Tel Aviv University
39. Yaniv Roznai, IDC Herzliya
40. Ilan Saban, Haifa University
41. Yair Sagi, Haifa University
42. Michal Saliternik, Netanya Academic College
43. Ayelet Sela, Bar Ilan University
44. Hila Shamir, Tel Aviv University
45. Shimon Shetreet, Hebrew University
46. Adam Shinar, IDC Herzliya
47. Hillel Sommer, IDC Herzliya
48. Gila Stopler, College of Law & Business
49. Yofi Tirosh, Tel Aviv University, Sapir Academic College
50. Zvi Triger, College of Management
51. Mohammad Wattad, Zefat Academic College
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