

## **Deciding not to Decide**

### ***The Israeli Supreme Court's new policy has already spared the justices from making several difficult decisions this year***

#### **New Knesset gets Supreme Court out of decisions in tough constitutional cases**

On 13 February 2013, the Israeli Supreme Court [dismissed](#) a petition brought by Adalah on behalf of MK Haneen Zoabi in 2010. The court reasoned that because a new Knesset was coming into power, the former Knesset's revocation of her parliamentary privileges had expired with the closure of its 18<sup>th</sup> session. The seven presiding justices emphasized that as a Supreme Court, there was no cause for it to "allocate its limited resources to consideration of a theoretical issue." This extraordinary decision followed numerous hearings on the case over two years before an expanded panel of justices, following which the case was pending for decision. Had it issued a timely decision, the court could have prevented the Knesset's illegal and undemocratic action. However, by deciding not to decide, the Court removed itself from ruling on the scope of the Knesset's authority in such cases. As a result, the new Knesset may be encouraged to repeat its punishment of minority members.

Earlier in the month, on 4 February 2013, the Supreme Court used the same justification in an [equally brief ruling](#) to dismiss another [petition](#) brought by Adalah, this time on behalf of MK Dr. Ahmad Tibi, against a decision by the Presidency of the outgoing Knesset to bar a bill drafted by Tibi from even being brought to the floor for debate. Although the court had been considering the petition since July 2011 and a hearing was scheduled for February 2013, it chose to wait until after the election of the new Knesset to issue its ruling, in which it declared MK Tibi's petition moot. The Court suggested that MK Tibi should try re-proposing the bill, which would sanction entities that denied the Palestinian Nakba, before the new Knesset.

On 6 February 2013, the Supreme Court dismissed a [petition](#) filed by Adalah together with NGO partners in 2002 against a law that exempts the police and General Security Services (GSS) from audio or video recording their interrogations of suspects accused of committing "security offenses". In this ruling, the court accepted the Justice Ministry's commitment to examine alternatives to the exemption by 2015 as the basis for rejecting the petition. Thus, according to the court, there was no need to continue hearing the petition. This extraordinary ruling is also unprecedented, and with it the court has permitted a most dangerous violation of detainees' rights – one that also [violates Israel's obligations under international law](#) – to continue for years. One day before the court's ruling, the Turkel Committee issued its report, which recommends that all GSS interrogations should be fully videotaped, in total contradiction to the Supreme Court's decision. Former GSS head Yuval Diskin also testified to the Turkel Committee that he considered video recording GSS interrogations "proper".

#### **Justice delayed is justice denied**

In each of these cases, the Supreme Court, led by Chief Justice Asher Grunis for exactly one year, has used the election of the new Knesset or a promise made by the state to re-examine

a law in the future to implement a new policy of “deciding not to decide”. This non-interventionist policy has enabled it to avoid ruling on the merits in challenging or contentious cases that raise serious issues of constitutional rights.

Thus Chief Justice Grunis' Supreme Court has taken a new strategy on the tough decisions that a constitutional court should confront: it delays and avoids them completely. The Supreme Courts of Aharon Barak and Dorit Beinisch used time differently. They used time to allow for changes in the surrounding political circumstances to take place in order to give positive decisions at a later date. These cases show, that Grunis' court, however, uses time to gain the power not to decide.