

Democracy Washing

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On May 8, the Israeli Supreme Court – in its capacity as a High Court of Justice (HCJ) – quashed a petition submitted by Asaad Nasasra, the paramedic who survived the [March shooting](#) by the IDF on Palestinian ambulances in the Gaza Strip. The shooting resulted in the deaths of 15 Palestinians, including eight Red Crescent paramedics, six civil defense personnel, and a United Nations staff member. Nasasra, one of only two survivors of the shooting, was subsequently arrested by IDF forces and held for several weeks [without his family knowing his whereabouts](#).

The Court's rejection of Nasasra's petition stands in stark contrast to its recent handling of petitions involving the attempted dismissal of Shin Bet Director Ronen Bar. In both instances, the immediate legal issue had become moot: Nasasra had already been released, and the government had reversed its decision to dismiss Bar. Yet, in the case of the Shin Bet petitions – and contrary to its general rule of not adjudicating theoretical questions – the Court decided to issue a principled judgment because it held that the dismissal of the Shin Bet's Director was not to be regarded as merely “sea foam on the water's surface.”

This disparity reflects a deeper pattern in the Court's recent jurisprudence, one that can be described as “democracy washing”. The Court is highly active in cases in which it detects threats to the democratic institutional structure, while neglecting its role of defending the most basic guarantees against human rights violations that occur in Gaza and the Occupied Territories.

Nasasra's Habeas Corpus Petition

Following the IDF's shooting, Nasasra was detained on March 23, 2025. For several weeks thereafter, [IDF authorities refused to admit](#) that he was held captive. Only a month later, on April 23, the Center for the Defense of the Individual [petitioned](#) the Israeli Supreme Court [on his behalf](#), seeking his location and release from detention (HCJ [49233-04-25](#)).

Petitions to the HCJ challenging severe human rights violations are usually submitted within days, if not hours, of the infringement. However, in Nasasra's case, it took a month due to the IDF Judge Advocate's policies regarding Palestinians detained in Gaza. Notably, the IDF revoked its policy from previous Israeli operations in Gaza that enabled relatives to obtain information on detainees. The Court ruled that while the provision of such information had previously constituted a duty that the state had to fulfill, it is deemed in the current war as merely “a charitable act” falling within the “complete discretion” of the security forces (HCJ [7439/23](#)).

Due to this policy, Nasasra's family was unable for weeks to confirm whether he was in IDF custody. In addition, as the [petition](#) notes, the Court requires a power of attorney from the detainee's relatives to allow for the submission of a petition requesting information on his whereabouts. Considering the situation in Gaza, such a requirement creates severe difficulties. Nevertheless, the Center for the Defense of the Individual ultimately succeeded in securing a power of attorney from Nasasra's wife.

The Center's petition was a habeas corpus petition. The name of the petition literally means, in Latin, "bring the body." Since the medieval period, this type of petition has played a vital role in establishing the English courts' ability to guard the liberty of persons against executive power. After Israel's founding, the Court, which inherited the British system's administrative law principles, used habeas corpus petitions in its early days to [ensure human liberty](#) from illegal acts by the security forces.

On the same day Nasasra's petition was submitted, Judge Yael Vilner ordered the state to respond within a week. In its response, the state informed the Court that a day after the petition was submitted, it was decided to release Nasasra, and six days later, he was returned to the Gaza Strip. The state requested quashing of the petition without an oral hearing, as it has become theoretical. The Center agreed, and the Court accordingly quashed the petition.

Sea Foam and the Hollowing of Democracy

During the same period in which Nasasra's petition was progressing through the HCJ, five petitions against the Netanyahu government's decision to dismiss Ronen Bar, the Director of the Shin Bet, were also submitted to the Court ([54321-03-25](#)). These petitions were "actio popularis" petitions, i.e., they were not submitted by Bar himself, but by civil society organizations and concerned citizens.

The petitions against Bar's dismissal became moot after Bar announced that he would retire in June, citing his responsibility for the failure of the Shin Bet in the events leading to the October 7th massacre. Subsequently, the Netanyahu government informed the Court that it had decided to annul the dismissal decision and allow Bar to retire in June. The government asked that the petitions be quashed because the petitioners received the remedy they had requested once Bar's dismissal was canceled. The petitioners objected to the government's request, stressing the importance of a precedential ruling by the Court due to Netanyahu's attempt to [replace](#) all the democratic "gate-keepers" with "yes-sayers."

In a majority opinion, the Court decided to deviate from its general rule of declining to adjudicate moot petitions and opted instead to render a principled judgment in view of the "precedent in firing the Shin Bet's Director." The Court's President, Isaac Amit, explained that Bar's firing should not be considered "sea foam on the water's surface," because there is a need to protect the Shin Bet director as one of the [gatekeepers](#) who guard Israeli democracy. While Amit's judgment did not provide any remedy, it stressed the many flaws in the decision to dismiss Bar and the importance of the Shin Bet Director as a democratic gatekeeper. Judge Daphne

Barak-Erez concurred with Amit. Dissenting, Judge Noam Solberg wrote that the Court should follow its precedents and avoid deciding on a theoretical issue.

Yet, Nasasra's petition also presented a vital issue and was not merely "sea foam on the water's surface." Thousands of Palestinians from Gaza, some of whom are innocent like Nasasra, have been arrested and held in detention for lengthy periods without their families' knowledge of their arrest and whereabouts. In some of these cases, after a petition is submitted, it is revealed that [the detainees had died](#) in the detention facilities. In other cases, such as in Nasasra's case, the government waits until the petition is submitted and then releases the detainee to avoid the Court's scrutiny.

To overcome the issue of such petitions becoming moot with the release of the detainees, human rights organizations have already submitted an [actio popularis petition](#) on the issue of informing the whereabouts of Palestinian detainees (HCJ [1537/24](#)) in February 2024. Yet, the state has requested no less than [18 \(!\) extensions](#) in submitting its response, and amazingly, the Court has allowed it to use this tactic that delays the oral hearing and the resolution of this issue.

Saving Democracy's Empty Shell

The gap between how the Court has treated the issue of Palestinians detained incommunicado in comparison to its treatment of the dismissal of the Shin Bet's Director is a manifestation of a larger trend in the Court's recent adjudication. For years, the Court has exhibited a [highly activist approach](#) in seizing opportunities to fortify the structural features of democracy. Since the Netanyahu government's campaign for a "constitutional revolution," the Court has exhibited a hyper version of this tendency starting with its January 2024 judgment endowing itself with authority to strike down constitutional amendments (HCJ [5658/23](#)) through a range of judgments putting constraints on the government's attempts to appoint senior officials (for example, HCJ [37830-08-24](#)) and compelling the appointment of the Court's President (HCJ [17686-02-25](#)), and culminating in rulings on petitions challenging governmental actions against "democracy's gatekeepers," such as the judgment in the petitions against Bar's dismissal. In these judgments, the Court often speaks in very strong words on the fragility of Israeli democracy and its role as its guardian.

At the same time, the Court avoids [almost completely](#) scrutinizing the vast human rights violations that have been occurring in Gaza and in Judea and Samaria, thereby rendering its statements about guarding democracy hollow. Very few commentators are speaking about the Court's duty to follow its long-standing jurisprudence of [trying to regulate in real time](#) the way the IDF conducts its warfare (for example, [769/02](#) and [3451/02](#)). However, the Court's abandonment of its role as a defender of the most fundamental and basic human rights cannot be disregarded. This development is not limited only to habeas corpus petitions. As I have [shown recently](#), the Court also exhibits a lax approach toward motions of contempt regarding the government's failure to follow its judgments when it comes to defending the most basic property right: Palestinians' right to peacefully enjoy their

dwellings in the face of extreme settlers' violence in the villages of southern Hebron. The Court also remains silent in the face of the mounting evidence from IDF soldiers that its judgments – such as the one banning using Palestinians as human shields (HCJ [3799/02](#)) – [are constantly violated](#).

Former President of the Court Moshe [Landau](#) and Professor Ruth Gavison [predicted](#) more than twenty years ago that by closely scrutinizing “actio popularis” petitions against high-level political appointments or challenging symbolic value issues, the Court would become entangled in every political controversy, and politics would enter the Court – but the defense of basic human rights would be eroded.

Seven years ago, legal scholars Israel Zvi Gilat and Joshua Segev published an article (later translated into [English](#)) on “The Decline of Habeas Corpus in Israel.” Gilat and Segev concluded that in recent decades, the scrutiny of governmental infringements on the right to freedom from detention through habeas corpus petitions has diminished significantly while the Court has been developing alternative paths of “grandiose constitutional engineering,” preferring it “over case-by-case constitutional engineering of the space of human liberty.”

Judge Barak-Erez concluded her concurring judgment on the dismissal of the Shin-Bet's Director by referring to the Court's 1949 El-Karbutli judgment (HCJ 7/48). Handed down amid Israel's War of Independence, when Israel was fighting for its life, the judgment dealt with a habeas corpus petition on the detention of a Palestinian named Hajj Ahmad Abu Laben, who was imprisoned for suspected collaboration with enemy forces. The Court ordered his release because of the absence of a review committee that could have scrutinized his objections to the detention.

And thus, in justifying her position to adjudicate theoretical petitions on the dismissal of the Shin Bet's Director—the organization which is most involved in providing evidence for administrative detention of Palestinians —Barak-Erez refers to a precedent on a Palestinian held in administrative detention. Yet, the Court fails to apply the precedential value of the El-Karbutli judgment to similar cases that resemble the circumstances under which it was originally issued. The Court avoids adjudicating the legality of policies under which Palestinians simply disappear without the IDF providing information on their detention and whereabouts. All the while, the Court continues to drape itself in the rhetoric of being the guardian of democracy, while very few [are shouting that it is naked](#).

