

Petitioner: **Yedidya Ephraim Meshulami**

v.

Respondents: 1. **Chief Rabbinate of Israel**
2. **Government of Israel**
3. **The Knesset**

The Supreme Court sitting as High Court of Justice

Before: Justice U. Vogelman, Justice N. Sohlberg, Justice Y. Elron

Petition for an order nisi

Judgment

Justice N. Sohlberg:

1. This is a petition for the granting of an order nisi from the “side effects” of the corona virus: Why should the Respondents – the Knesset, the Government and the Chief Rabbinate – not immediately and urgently declare a leap year, such that a second Hebrew month of Adar be established, so that the month of Nissan will be postponed for thirty days, with all the attendant implications? The Petitioner is of the view that the current state of emergency requires this, as a sort of “first aid”, in view of the fact that our brethren are in isolation and quarantine, and will not have sufficient time to prepare for celebrating Passover as required, in accordance with all its rules and laws.

2. This petition should be dismissed *in limine*. I doubt that the subject is justiciable (I addressed the issue of justiciability elsewhere: OM 6092/07 *Ornan v. Ministry of the Interior*,¹ paras. 17-18). In any case, the Petitioner recognizes that the law provides no express authority for declaring a leap year in a state of emergency. According to him, such a declaration can “*lawfully and quickly be given, at least as a ‘temporary provision’, with the consent of all the Respondents*”. I do not know what legal mechanism the Petitioner is referring to in speaking of a “temporary provision”² given “with the consent of all the Respondents”. In any case, in the absence of any legal basis for the petition, there is no cause to address.

3. Inasmuch as we are already addressing the issue of declaring a leap year when it is not its designated time, I will add some comments beyond what is necessary. The Petitioner claims that there is halakhic authority to order a leap year when there is a public need, and refers us to the Maimonides’ MISHNEH TORAH (Sanctification of the New Month, chaps. 4-5). However, it would seem that the Petitioner did not pay proper attention to what Maimonides stated there, in chap. 5:1, writing: “*All that we have said concerning the fixing of the beginning of the month on the basis of observing the new moon, and concerning intercalation of the year because of the season or*

¹ Editor’s note: See the English translation of the appeal: [CA 8573/08 *Ornan v. Ministry of the Interior*](https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior) (<https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior>).

² Editor’s note: The term “temporary provision” (Hebrew: *hora’at sha’a*) is employed both in Jewish law and in Israeli law.

In Israeli law, temporary provisions may be employed for a number of reasons, e.g., the need for an immediate response to a matter for which there is no legal arrangement, or in order to permit a temporary or one-time deviation from an existing statutory arrangement. The first instance of a temporary provision was in the [Transition \(Temporary Provision\) Law, 5709-1949](#), enacted on April 6, 1949 to address the immediate problem of who would fulfil the duties of the President when he went abroad on April 8, 1949. The matter of the President’s absence had not been addressed in the original [Transition Law](#). For an example of judicial review of a temporary provision, see, e.g.: [HCJ 7052/03 *Adalah Legal Center v. Minister of Interior*](#) [<https://versa.cardozo.yu.edu/opinions/adalah-legal-center-arab-minority-rights-israel-v-minister-interior>].

In Jewish law, the term refers to an *ad hoc* deviation from halakha to address an immediate concern (see, e.g., TB Sanhedrin 80b, and TJ Hagigah 11:2). Maimonides (MISHNEH TORAH (*Rebels*) 2:4) explains: “A court may, however, temporarily suspend the application of even such matters, even if it is of lesser stature than the original court ... and any court has the authority to abrogate the words of the Torah as a temporary measure. In what manner? If a court sees that it is necessary to strengthen the faith and create a safeguard so that the people will not violate Torah law, they may apply flogging and punishments that are not in accordance with the law. They may not, however, establish the matter for posterity and say that this is the halakha. Similarly, if they saw that it was temporarily necessary to nullify a positive commandment or violate a negative commandment in order to bring people at large back to the Jewish faith or to prevent many Jews from transgressing in other matters, they may do what is necessary at that time. ... Just like a doctor may amputate a person's hand or foot so that the person as a whole will live, so, at times, the court may instruct to violate some of the commandments temporarily so that they will later keep all of them” (and see: MISHNEH TORAH (*Foundations of the Torah*) 9(3). For a discussion of *ad hoc* intercalating of the year in order to delay Passover, see: TB Sanhedrin 12b).

because of some other necessity, is applicable only to the Sanhedrin in the Land of Israel, or to the members of the court who were ordained in the Land of Israel to whom the Sanhedrin gave permission to act ... However, when there is no Sanhedrin in the Land of Israel, the months are established and the leap years are determined only by such methods of calculation as we employ today.” In addition to the lack of authority, it is also worth noting in this regard the words of the author of the *Lekakh Tov* midrash (Tuvia ben Eliezer, 11th cent.) on *Parashat Hohodesh* [the additional Scriptural reading for the Sabbath before the beginning of the month of Nissan – ed.], according to which “*it is proper to rely upon the rules for intercalating the year, so as not to divide Israel into sects such that one violates the holy day of the other*”. Indeed, intercalating the year is no small matter. There was good reason for entrusting the halakhic authority in such a matter to the Sanhedrin or a court whose members were ordained in the Land of Israel. This Court will not trespass upon the boundaries of the Sanhedrin, but with all due caution, it would seem that even from a religious/halakhic perspective, the Petitioner’s arguments lack merit.

4. The petition is therefore dismissed.

Given this 26th day of Adar 5790 (March 22, 2020).