



פורום המרצות | מנדי מחאזרות
המרצים למשפטים | ומחאזרי القانون
למען הדמוקרטיה | من أجل الديمقراطية
The Israeli Law Professors' Forum
for Democracy

The Israeli Law Professors' Forum For Democracy

Position Paper No 46: Comments on the Government's Decision Concerning the Establishment of a National Guard in light of the Principles of Exercising Police Powers in a Democratic Society

Published May 7th, 2023*

The Israeli Law Professors' Forum for Democracy, an ad hoc and voluntary group of experts on Israeli law and specifically Israeli public law, expresses its grave concern over the apparent intention to abolish the independence of the judiciary, to subordinate it to the government and to the partisan political considerations of the executive branch, to undermine the independent status of the attorney general and civil service legal counsels, and to violate human rights. **In this paper we comment on the Government's decision of 2.4.2023 concerning the establishment of a National Guard, in light of the principles concerning the implementation of police powers in a democratic society.**

We find that:

*We, members of the Israeli Law Professors' Forum for Democracy, hold different academic views regarding the details of the various reforms proposed by Israel's 37th Government to change Israel's democratic regime. However, we are united in the opinion that the host of the government's proposals - which are an unprecedentedly severe attack on the independence of the judiciary, the Attorney General and government legal advisors, the police, the military, and public broadcasting - will seriously damage the rule of law and Israel's democratic character. Therefore, we joined this forum to make our professional opinion available to the public at this fateful time. The position papers or other professional materials produced by us reflect the prevailing position among the members, even if they are not unanimous. The list of Forum's members and all position papers on our behalf are available at <https://lawprofsforum.org>. Follow us on Twitter: <https://twitter.com/lawprofsforum>. Contact us: lawprofessorsforum@gmail.com.

- The Government has decided to set up a commission to examine the issues surrounding the establishment of a National Guard. If the commission should recommend establishing a policing force that is separate from the Israel Police and the Israel Defense Forces, this new force must be established and implemented according to the principles laid out in this document.
- The following are principles for the exercise of police powers in a democratic society:
 - The exercise of police powers must be subject to the exclusive independent and professional judgment of the Police Commissioner. The proposed framework for a National Guard, and in particular its quasi-military character, raises grave concern that the proposed force will be politicised and thus not legitimate.
 - Police power must always be subject to internal and external control mechanisms (including the Police Investigation Unit and the State Comptroller).
 - Police power must derive from explicit authority and must always be exercised subject to constitutional principles including the principle of legitimate purpose and the principle of proportionality.

The political process leading up to the Government's decision to promote the establishment of a National Guard raises grave concerns that these principles will be undermined.