



פורום המרצות והמרצים למשפטים למען הדמוקרטיה

The Israeli Law Professors' Forum For Democracy

Summary of Position Paper No 52: Critique of the legislative process concerning the doctrine of reasonableness

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Summary

- This paper cautions that the Knesset's Constitution, Law and Justice Committee has not provided a serious forum for deliberating the proposed amendment concerning the doctrine of reasonableness. The committee's sessions lack sincere discussion, negotiation,

* The Israeli Law Professors' Forum for Democracy is an ad hoc and voluntary group of experts on Israeli law working to protect and promote liberal democracy in Israel. The forum engages in research and analysis of legislative bills, writes policy papers, and provides information and explanation for the public as well as for professional audiences. The forum actively opposes initiatives and actions aimed at abolishing the independence of the judiciary and subordinating it to the government and to partisan political considerations of the executive branch, as well as initiatives aimed at harming democratic institutions, equal and free elections, the right to equality, free speech, freedom of religion and other human rights.

The 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. Therefore the position papers and other professional materials produced by us reflect the prevailing position of the members, even if it is not held unanimously. We are, however, united in the opinion that the host of the government's proposals - which are an unprecedented and severe attack on the independence of the judiciary, the Attorney General and other government legal advisors, the police, the military, and public broadcasting - will seriously damage the rule of law and undermine Israel's democratic character. Accordingly, we joined this forum to make our professional opinion available to the public at this fateful time.

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persuasion, learning, or contending with arguments, with professional knowledge, and with relevant information, and are therefore not conducive to proper legislation. It is our impression that the discussions that have taken place in the Committee, along with the enormous amount of professional background materials, preparatory documents, position papers and expert testimony submitted, have had no effect whatsoever on the bill, and that the Chairperson of the Committee has demonstrated no willingness to allow anything said in the debates to affect the formulation or content of the bill.

- In view of the low quality of its legislative process, it is no wonder that the version of the bill concerning the doctrine of reasonableness that was approved by the Committee and that passed a first reading in the Knesset, relying mechanically on the mere votes of the coalition, is in no way fit for its purported aim, and that it promises no legal certainty, no improvement in the quality of the public administration, and no contribution to Israeli democracy and its constituent commitment “to foster the development of the country for the benefit of all its inhabitants”.
- The updated version distributed by the Chairperson of the Committee on July 7, 2023, which explicitly excludes from the purview of the doctrine of reasonableness decisions “in matters of appointments” and decisions “to refrain from exercising a power”, reveals the true purpose of the bill and makes it even less plausible that the bill rests on a reasoned and principled position with respect to reasonableness in administrative law or with respect to the relations between the different branches of government. It is plainly an attempt to wrest immediate political advantage from constitutional legislation – which is a patent abuse of the constituent power.