



פורום המרצות והמרצים למשפטים למען הדמוקרטיה

The Israeli Law Professors' Forum For Democracy

Summary of Position Paper No 50: The proposal to revoke the standard of reasonableness with respect to decisions made by the government, government ministers and other elected officials

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* The Israeli Law Professors' Forum for Democracy, 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, in 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, subordinating it to the government and to the partisan political considerations of the executive branch, and 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 or other professional materials produced by us reflect the prevailing position among the members, even if they are not unanimous. 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 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 list of Forum's members and all position papers on our behalf are available at <https://lawprofsforum.org>, where you can also find all our position papers. Follow us on Twitter: <https://twitter.com/lawprofsforum>. Contact us: lawprofsforum@gmail.com.

Summary

In this position paper we analyse the proposal of the chair of the constitution, law and justice committee to revoke the standard of reasonableness with respect to decisions made by the government, government ministers and other elected officials

- The proposal currently being advanced by the Chair of the Constitution, Law and Justice Committee, to revoke the standard of reasonableness, is identical to that which he presented six months ago.
- The position of the Forum is that this proposal is illegitimate, and its legislation should be strenuously opposed. Implementing this proposal is liable to cause severe damage to the quality of governmental acts and to the ability to prevent personal and institutional corruption. It will undermine the principle of separation of powers, the public interest, and the guarantee of trust in public authorities.
- Despite the various controversies in case law and in academic literature over the way in which the Court applies the standard of reasonableness, they provide no basis for the proposal to eliminate, by law, the entire standard of reasonableness as applied to decisions by public bodies (such as the government, ministers and elected officials), making no distinction between different kinds of decisions, and insulating all such decisions – far-fetched and arbitrary though they might be – from any kind of judicial review as to their reasonableness. This is an extreme proposal. No similar model has been proposed or adopted in the literature or in case law.
- The proposal exempts these public bodies from all judicial review on the basis of the standard of reasonableness, even when their decisions do not establish broad value-laden policies, and even when they are far-fetched and arbitrary. This both deviates from well-accepted doctrine and is diametrically opposed to the rule of law.
- Codification of administrative law should be achieved through legislation of norms governing the administration, not by setting limits to the authority of the Court. All such discussions must be clearly distinct from the narrow interests of the current government and the current coalition, and therefore implementation of any such law must be delayed until the next Knesset is elected, or must be approved by an especially large majority.

- The attempt to adopt this law solely with the support of the coalition, in the face of tremendous public controversy, and with no appropriate professional procedures to investigate the need for such legislation and the ways in which administrative discretion and its judicial review should be regulated, raises serious concern that the entire process is intended to exempt the current government from judicial review and to allow it to make decisions that ignore the public interest and promote narrow interests.

The full position paper is available on our website in Hebrew.