



פורום המרצות | מנדי מחצרות
והמרצים למשפטים | ומחצרות القانون
למען הדמוקרטיה | من أجل الديمقراطية
The Israeli Law Professors' Forum
for Democracy

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For Democracy**

**Summary of Position Paper No 19 : The Forum's Updated Position on the Selection
of Judges and Judicial Review**

Published February 26, 2023^{1*}

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 present the Forum's position concerning the three bills that passed first reading or preliminary reading in the Knesset in the past few days, as part of the antidemocratic regime changes promoted by the coalition.**

^{1*} 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 bill grants the coalition absolute control over the Committee for Judicial Appointments – over its composition and its decisions. In other words, the bill entails the abrogation of judicial independence in all courts of law (since the selection and promotion of judges will depend entirely on the will of the government) and the adoption of a fully politicized model of the judiciary.**
- **The forum’s position is that any compromise must ensure an adequate balance between professional and political members in the Committee for Judicial Appointments. Clearly, such a compromise must prevent granting the coalition control over the judicial appointment process. The forum is of the opinion that the bills overstep the Knesset’s authority because they severely undermine the separation of powers and the independence of the judiciary. Therefore, if the legislation is completed the High Court of Justice is likely to pronounce them void (or at the very least delay their coming into effect).**
- **The coalition’s bill provides that Basic Laws will enjoy absolute immunity from judicial review. If adopted, this would grant the coalition carte blanche to exempt any legal order from judicial review by labeling it a “Basic Law”. This would facilitate tyranny by the majority, violation of rights, and legally-protected corruption.**
- **The forum’s position is that precluding judicial review of Basic Laws should be rejected, as should any arrangement that allows legislating or amending Basic Laws (existing or new) without requiring a special majority, without delaying the coming into effect of the law (so that the current government would not enjoy its benefit), and without ensuring that the Basic Law preserves foundational democratic tenets including the right to vote, the right to be elected and the right to equality. The forum is of the view that without all these safeguards, the Knesset is not authorized to legislate norms that preclude judicial review of Basic Laws. Basic Laws passed with insufficient regard for these safeguards cannot strip the Supreme Court of its authority to exercise judicial review of Basic Laws.**
- **Finally, the combination of the proposals concerning judicial review and the override power seek to eliminate judicial review of legislation in Israeli constitutional law, granting the coalition majority unlimited power to legislate any law, including laws**

that ignore the public interest, violate human rights, and undermine foundational tenets of democracy, free of effective judicial review.

- **The forum's position is that any compromise concerning the override clause that does not effectively limit the majority's power to violate human rights and undermine the foundational tenets of democracy should be rejected. The forum is of the opinion that limitations on the judiciary of the kind found in the current bills overreach the Knesset's authority and if legislated, they are likely to be declared void.**