



ZU-LAT
Equality and Human Rights

JOURNALISTS UNDER ATTACK

Protecting Media Professionals

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SUMMARY

In this policy paper we seek to change the basic paradigm of Israeli law with regard to a free media in the country: instead of legal restrictions on freedom of the press, we seek to create protections for journalists and media professionals.

The paper elaborates on how the ongoing incitement against a free media by the government and Netanyahu has led to violence on the part of extremist activists and police against journalists performing their duties.

In this paper we propose the following two operative steps:

1. Amending the Penal Code to define an attack on journalists performing their duty as a criminal offense. The bill presents examples of what would be considered an aggravated assault on a journalist, including police violence.
2. Amending the Threatening Harassment Act to allow the Attorney General to take a hard line when probing journalists' complaints about threatening harassment. In addition, the law proposes a mechanism of compensation without proof of damage in the event of violation of an order concerning a journalist.

BACKGROUND

The free press in Israel has been under severe attack by the various Netanyahu governments over the last decade. As detailed in the following, the starting point of Israeli law regarding a free media has been problematic from the start due to the many restrictions that have been imposed on the work of reporters and media personnel. **In the past decade, under Netanyahu's governments, began an orchestrated, long-lasting, and well-funded delegitimization process against the media. This process was directed by Netanyahu himself, together with senior ministers and right-wing NGOs, and it wielded a lethal blow to the freedom of the media.**

Prime Minister Netanyahu uses authoritarian practices that resemble those in Poland and Hungary in order to incite against the media. Netanyahu and the right attribute all investigative reporting to be “extreme left” and an attempt to overthrow his government and the rightist camp. For example, Netanyahu's office came out with a statement in 2016 against the senior reporter Ilana Dayan in response to an investigative report that she conducted on him: “The time has come to withdraw the mask from the face of Ilana Dayan, that has proved time and again that she lacks even a drop of professional integrity. Ilana Dayan is one of the leaders of the harsh and unjustified criticism orchestrated against Prime Minister Benjamin Netanyahu, intended to overthrow the government of the right and bring about a leftist government.”

Similarly, under his leadership the Likud party initiated a massive poster campaign during the first round of elections in 2019 where photos of senior media journalists wave on signs with the slogan “They won't decide”. The campaign was intended to send the message according to which media exposure may influence the elections – rather than the citizens themselves. In so doing, the Likud wished to create a double effect: on one hand to use this incitement to encourage voters to come out and vote, and on the other hand to intimidate the press from covering the prime minister in a critical way during the election campaign.

In recent weeks, against the background of the intensifying struggle against the Prime Minister's leadership and the ongoing demonstrations in front of his residence, Netanyahu decided to attack channels 12 and 13 head-on regarding the way they covered the demonstrations. An announcement that Netanyahu's office spread to the media said: "Channels 12 and 13 continue to serve as a propaganda arm for the anarchist left's demonstrations. They make a desperate effort to brainwash the public with the goal of overthrowing a strong rightist Prime Minister."

In addition to the statements and campaigns carried out by the Likud and rightist NGOs against the media, Netanyahu tried to advance an array of draconian measures against the media in attempt to subject it to his personal and political needs. These measures included taking the Ministry of Communication in the 34th government to his own hands, appointing people loyal to him to the most senior roles in the Communication Ministry, political appointments of journalists in various bodies, and a failed attempt to enact a reform in public broadcasting that would expand the government's influence on its content.

If those measures would go as Netanyahu planned, Israel today would be in line with the most dictatorial, authoritarian countries in terms of freedom of the press. However, as will be demonstrated later, even today after some of Netanyahu's attempts failed, Israel's standing on preservation of a free press is very poor.

It's important to note that all of Netanyahu's corruption scandals for which he is currently standing trial are connected to the ongoing obsession of him and his family regarding the media and the way it covers them. Case "2000" stands out in particular in which a bribe was allegedly offered to Netanyahu by the publisher of *Yediot Ahronot* Noni Moses, whereby the Prime Minister would advance a law to limit the activity of the competing *Israel Hayom* in exchange for positive coverage in *Yediot*. Same goes for Case "4000" where Netanyahu allegedly advanced his personal interests in the kind of coverage he and his family receive in *Walla!* Website In exchange for government favors for the holders of controlling interest in the company of Shaul Alovitz. The events detailed in these charges strengthen the assumption that the shadow of Netanyahu hovers as a

serious threat above the main media channels in Israel who are simply trying to do their job.

This attack on the free media in Israel set off a continuing decline of Israel in International measures in terms of the extent of freedom of the press. In the international measure of “journalists without limitations” (RSF) from 2020, Israel reached the low standing of 88th in a tie with Hungary, another country where the media is going through a shake-up with authoritarian characteristics as the result of an attack by Prime Minister Victor Orben that opposes free press.¹ In the category of global free press Israel received a rating of “semi-free” following Prime Minister Netanyahu’s takeover of the Communications ministry, the multiple statements made by him and other senior officials against the press and media personnel, the indictments that touch on his relationships with the largest communication entities in the country, and the restrictions placed on foreign and Palestinian reporters on the West Bank.²

In recent years against the backdrop of this delegitimization process, we were witness to a number of grave incidents in which reporters were attacked while fulfilling their job in the field. Starting in 2015, a long list of reporters have experienced such violence, but it seems like this has reached its peak recently with the current surge of protests against Netanyahu in Jerusalem and counter-demonstrations organized by Netanyahu’s supporters. During the demonstrations of the past two weeks not only were reporters attacked by demonstrators, mainly from the rightist camp, but also the police used excessive force to prevent media personnel from doing their work as the law permits them to do.

¹ [Reporters Without Borders](#)

² [Freedom House](#)

THE VIOLATED RIGHTS

The violent events of recent weeks violate a number of basic rights in Israel's constitutional system. First, even though it may look obvious, it's important to emphasize that any injury to a person, particularly to a journalist fulfilling his duties, undermines the Right to Life and Security. **The Right to Life and Security is one of the most basic rights that the state must defend, and that is why the state has a security system and law enforcement system.**

An additional right which is violated in this context is the Right of Employment. **The ongoing pursuit of reporters by government officials, especially those identified in one way or another with a certain political side, could cause a chilling effect that would deter citizens from pursuing the media field.** The right of Freedom of Employment has been constitutionally defended in Israel from the outset in the High Court case of Bijaerno in 1949. In 1992, it received constitutional status within the specific Basic Law. As such, this chilling effect violates one of the most protected values in the Israeli democratic system.

The main group of rights that we are called to examine in this policy paper is the freedom of press and freedom of reporters as derivatives of the high constitutional right – Freedom of Expression. The inherent relationship between freedom of expression and freedom of the press came to the fore in the legendary law *Voice of the Nation* where judge (his title at that time) Agranat determined that freedom of expression is “the soul of the democracy.” The court ruling touched on the attempt of the Mapai government, led by Ben Gurion, to close the paper of the Communist party following a number of publications. Over the years the High Court has stressed in extensive rulings the importance of protecting the freedom of press expression as part of the hard core of freedom of expression.

Despite the ruling on this subject, it's important to note that the absence of a bill of rights and written constitution has resulted in a lack of broad constitutional and legal protection for the press, which does exist in other democratic countries. Not only is there not

sufficient protection by law, but there also is a line of draconian laws, some of which originate from the period of the British Mandate in Palestine, which significantly limit the work of reporters: the Press Ordinance from 1933, emergency regulations allowing the prohibition of publications, and limitation of the press in the territories of the West Bank. **In other words: In Israel today, freedom of the press is not guarded by law, but rather limited by it.**

Therefore, in large part, the protection of freedom of the press is dependent de facto on the considerations of security agencies and law enforcement officials - whether if it is to allow a particular journalistic activity in the field or during a demonstration, or to allow the publication of a particular item according to the decision of the Military Censor. This tension between security agencies and reporters is largely influenced by the delegitimization process mentioned above, as during complex events it can – and often does – affect the way the media is treated by bodies such as the police. Proof of this was given only yesterday (August 3, 2020), when the police arrested an independent journalist while trying to confiscate his own professional materials in such a way that might even reveal his sources.

The decade of Netanyahu's reign and the rampant incitement against the media that increased in the aftermath of the 2015 elections, strengthen the need to put protections in place. The incitement by Netanyahu and leaders of the right against the media, and labeling it as "extreme left" has worked its way down to the streets and has brought about an increase in the violent incidences against journalists, both on the part of civilians and on the part of law enforcement officials.

OPERATIVE RECOMMENDATIONS FOR PROTECTING THE PRESS AND MEDIA PROFESSIONALS

In light of the above, as well as the violent attacks on the press by extreme citizen and policemen, we at Zulat put forward two operative recommendations for legislation:

1. **A correction to the Penal Code which will determine an assault on journalists in the line of duty as an explicit offense.** Moreover, the law suggests setting a line of incidents in which an assault will be considered an aggravated assault. For example, if the assault is committed by a police officer, or on nationalist, gender, or political background or if the attacker had a gun of any kind in his possession.

The protection offered in the law has a number of benefits. First of all, the deterrent effect of committing a felony in the Penal Code should be significant particularly in this context and in a way which would prevent the recurrence of attacks on reporters in the future. Secondly, it would lead to sharper and more precise police regulations regarding the way to handle an event where the press and media are present in order to prevent the police from making an offense. Thirdly, this bill is part of a paradigmatic change that the Israeli book of laws needs to undergo in terms of freedom of the press: protecting journalists instead of restricting them.

2. **An amendment to the Law of Aggressive Harassment which would require the need for strict discretion when reviewing a complaint of aggressive harassment experienced by the reporters.** In addition, the law would offer a mechanism of damage compensation without providing a proof of damage, in the event of such order being violated in the case of a journalist. The proposed sharpening of the Law of Threatening Harassment provides an upgrade of the existing mechanism in the law in the two ways mentioned described above. In this way it will be possible to create more significant deterrence against attempts to

harass journalists, as well as to provide them with tools to ensure that their right to security is protected.



In May 2020, we launched Zulat for Equality and Human Rights, a unique institute that combines research and analysis via social media networks and conventional media, and acts as a bridge between the political arena and civil society. Zulat's studies portray the political and public reality, but our work only begins there. As an activist think tank, we fight back by working to set an alternative agenda, change the public discourse, and advance policy and legislation to uphold democracy and human rights. We represent a broad perspective on human rights, that looks at universal rights, civil rights - private as well as collective, and social rights – as a whole. We believe all different types of rights depend and relay on one another.

[Read more about our mission on Zulat website](#)

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