

Unrestrained Ministers: Abolishment and Demotion of Independent Legal Counsels

• Zulat for Equality and Human Rights promotes defending the rule of law and democracy. On 20 June 2022, we published a report titled *Pseudo Democracy: State of the Regime in Israel*,¹ warning of the authoritarian processes that have been accelerated since the establishment of the new government.

• **The proposed amendment is part of a body of legislation aimed at regime change:** On 4 January 2023, Justice Minister Yariv Levin revealed his plan to change the regime in the State of Israel by crushing the independence of the judiciary and fully subordinating it to the executive branch, which already fully controls the legislative branch.² In order to implement this revolution, Levin announced a package of legislative amendments including a clause to override Supreme Court decisions by a slim majority of 61 MKs, increasing the number of politicians in the Judicial Appointments Committee, ending the standard invoked by the Supreme Court to overrule government decisions deemed unreasonable, and making legal counsels of government ministries positions of trust. Retired Supreme Court President Aharon Barak called Minister Levin's plan a collection of "all the bad proposals made over the years" equivalent to a "revolution with tanks."³

• **The existing situation:** The independent status of legal counsels derives from the work of an interministerial team set up in 2007⁴ and the subsequent approval of its recommendations in Government Resolution 4528.⁵ Their independence is secured by a) the hiring process: through a Civil Service tender for employment; b) their split subordination: they report to the ministry's top brass administratively and to the Attorney General professionally in their day-to-day work, and their opinion obligates the ministry; c) the criteria for their substitution: they are appointed to seven-year terms and their termination requires the Attorney General's approval (the termination of incumbent counsels remained undecided at the time the recommendations were approved).

• **The proposed amendment:** Minister Levin's proposal resembles previous suggestions by the Right to make legal counsels positions of trust to be filled at a minister's discretion, thereby facilitating their firing in the event of disagreement. However, Levin's proposal goes even further, as it does not content itself with changing the hiring and firing method but, by default, explicitly turns a minister into his own/the ministry's legal counsel, given that neither would be obligated by the counsel's advice, nor would it in any way change the legal situation. Ministers would be entitled to reject a counsel's advice, act in contravention to it, and decide themselves the ministry's position to be presented to any judicial authority.

¹ Eitay Mack, [Pseudo Democracy: State of the Regime in Israel](#), *Zulat*, 20 June 2022.

² Yael Freidson and Noa Shpigel, [Netanyahu's Justice Minister Presents Plans for Radical Judicial Overhaul](#), *Haaretz*, 4 January 2023.

³ TOI Staff, [Ex-Chief Justice Barak: Government's Judicial Reform Plan 'Will Strangle Democracy'](#), *The Times of Israel*, 6 January 2023.

⁴ [Interministerial Team Set Up To Review Questions Pertaining to Legal Counsels of Government Ministries](#), *Prime Minister's Office*, 18 March 2007 (Hebrew).

⁵ [Recommendations of Interministerial Team Reviewing Questions Pertaining to Legal Counsels of Government Ministries – Implementation](#), *Prime Minister's Office*, 1 March 2009 (Hebrew).

• **The devastating consequences of the proposed amendment:**

1. It will destroy the independence of legal counsels and eliminate their role as "gatekeepers" with the authority to prevent the ministry/minister from carrying out actions that run contrary to the law, court rulings, and proper management.
2. It will severely damage the status of the Attorney General, given that his/her guidelines will be ignored and contravened as a result of the operation of a separate legal counseling system in every government ministry.
3. It will expand corruption, conflicts of interest, lawlessness, and mismanagement in the operation of government ministries.
4. It will turn legal counseling into political and elastic appointments, given that counsels who fail "to deliver the goods" will be summarily replaced and will have to live with the constant threat of impending firing. Indeed, we saw this happening in the Finance Ministry under Yisrael Katz's tenure. Legal counsel Assi Messing wrote an opinion nixing Katz's choice of director general on the grounds that he did not meet the minimum requirements for the job.⁶ In response, Katz refrained from consulting Messing on relevant issues and refused to let him attend work meetings. On 12 November 2020, Katz published the following post on his Facebook page: "As I have made clear in the past, civil servants who seek to sabotage the policy I am leading in the Finance Ministry, in accordance with the mandate we received from the electorate, the door is open for them to leave. There are many worthy replacements who will only be too happy to fill their place."⁷
5. It will thoroughly damage the functioning of ministries: Hiring legal counsels without a tender will lead not only to the selection of non-independent staff, but also to the employment of unsuitable legal counsels lacking the minimum requirements stipulated by the Civil Service Commission in terms of professional and managerial experience.⁸ In this context, it should be emphasized that the role of legal counsel is not only to give advice to the ministry's top brass regarding reforms and matters of interest and under the minister's direct jurisdiction, but also to manage the legal bureau's staff and to provide guidance on the legality and proper management of the ministry's daily work, projects, and affiliate bodies and companies with regard to commitments, contracts, and budgets, as well as on any legal proceedings.
6. Hiring legal counsels will squander public funds, given that a minister will be his ministry's supreme legal authority. In other words, legal counsels will not even have a role as "rubber stamps."

• **The proposed amendment encountered sweeping opposition from senior members of the judiciary even before:** As far back as 2018, at a hearing of the Knesset Constitution, Law and Justice Committee, former Attorney General Avihai Mandelblit said the proposed amendment would constitute "an infringement, even if not intentional, of the rule of law;" retired Supreme Court Vice President Eliakim Rubinstein called it a "politicization of the issue that contains an element of shaming"; and retired Supreme Court Judge Yitzhak Zamir termed it "a return to the dark days of political appointments in government service."⁹

⁶ Nati Tucker, [Blow to Yisrael Katz: Finance Ministry's Legal Counsel Nixes His Choice of Finance Ministry Director General](#), *The Marker*, 21 January 2021 (Hebrew).

⁷ Yisrael Katz, [Facebook post](#), 12 November 2020 (Hebrew).

⁸ [Legal Counsels of Government Ministries and Auxiliary Units: Operating Guidelines](#), *Civil Service Commission*, 14 July 2010 (Hebrew).

⁹ Knesset News, [Legal Counsels Law: Senior Judiciary Members in Stormy First Meeting of Constitution Committee](#), 25 June 2018 (Hebrew).