

Severe Injury to Equality Before the Law:

Zulat's Opinion on Subordinating Police Commissioner to National Security Minister

- Zulat for Equality and Human Rights promotes protection of 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 majority of 61 of the Knesset's 120 MKs, increasing the number of politicians in the Judicial Appointments Committee, ending the reasonableness 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 proposed amendment:** to anchor in law the Israel Police Commissioner's subordination to the Minister of National Security, as well as the latter's authority to draft policy and set general principles about the prolongation of cases (in consultation with the Attorney General, the Police Commissioner, and officers in charge of investigations).

Severe Violation of Principle of Equality Before the Law

- **The proposed amendment will legitimize and exacerbate existent problems in the Israel Police with regard to profiling and policy on the use of force and selective enforcement vis-à-vis minorities, disadvantaged groups, and demonstrators espousing certain political views.** These problems have been documented in countless governmental and non-governmental reports, but instead of dealing with them, the proposed amendment will only exacerbate and legitimize them.
- **The State of Israel is obligated to uphold equality in all stages of a criminal procedure, given that this might determine a person's fate, with all people being equal before the law and entitled to equal protection under the law without any discrimination.** This ranges from the decision to arrest or detain a person, check identification papers, launch an investigation, search or seize property, and file an indictment, all the way to prosecution and criminal trial.
- **The State of Israel is also obligated to uphold equality in all stages of a criminal procedure under international treaties to which it is a signatory.** Among others, under Articles 2, 14, and 26 of the International Covenant on Civil and Political Rights (1966), under

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.

Articles 2 and 15 of the Convention on the Elimination of All Forms of Discrimination Against Women (1991), and under Article 40 of the Convention on the Rights of the Child (1989).

- **The ban on selective enforcement is set in a Supreme Court ruling.** Judge Yitzhak Zamir wrote in a ruling that this type of enforcement severely infringes on the principle of equality before the law in the basic sense of this principle, is destructive to the rule of law, is outrageous in terms of justice, it endangers the judicial system, and may seal a person's fate.⁴

- **The ban on the intervention of elected officials in criminal proceedings is set both in court rulings⁵ and in an Attorney General's directive regarding the independence of criminal prosecution** (No. 4.1001 dated 9 November 2003).⁶ Paragraph 5 of the directive states: "In any case, any instruction from elected officials or senior colleagues in his office with regard to how the prosecutor should proceed in a particular case must be rebuffed, and under no circumstances will a prosecutor take into account the political considerations of elected officials. Attempts by elected officials to intervene in favor of a defendant in a criminal proceeding conducted by a prosecutor are absolutely unacceptable and inappropriate. Such behavior harms the independence of the criminal prosecution, which is a fundamental component of the Israeli system, and may harm the principle of equality of criminal procedures and paint it with political colors, be it in essence or in appearance, and in some cases, may even amount to a felony."

- **The proposed amendment will allow the Minister of National Security to direct the police to carry out enforcement against an individual or certain population groups based on such considerations as religion, ethnicity, nationality, sex, gender, personal hostility, or political rivalry.** The Minister of National Security is a politician, therefore inherently and permanently finds himself in a conflict of interests. Without explicitly saying so, the minister would be able to steer Israel Police's enforcement and investigation policy in a way that would serve his political and personal interests or the government's by, say, prioritizing "increased" enforcement vis-a-vis certain population groups or in certain regions of the country. For example, 36 hours before Election Day in April 2019, Itamar Ben-Gvir (then a prospective MK) exhorted Hilltop Youth and their families to vote for him, promising in exchange to secure them immunity from criminal prosecution and asserting that "State Attorney's officers who declared war on the settlements will have to find new jobs."⁷ In addition to his promise to grant immunity to far-right activists, Minister Ben-Gvir has repeatedly written on social media that the Israel Police should investigate human rights and Left activists, whom he dubs "anarchists,"⁸ and that he supports a bill submitted by his fellow party member MK Almog Cohen to jail "anarchists" who, so he alleges, do not let IDF soldiers do their job.⁹

- **The proposed amendment could have a huge impact on equality in the enforcement of criminal law in Israel, not only due to the general powers possessed by the Israel**

⁴ Paragraph 16 of Justice Yitzhak Zamir's [Supreme Court Ruling H CJ 6396/96 Zakin v. Mayor of Beersheva](#), *Nevo*, 8 June 1999 (Hebrew).

⁵ [Supreme Court Ruling H CJ 337/85 Ramat Hasharon Local Council's R.S. Faction v. Ramat Hasharon Local Council Head Moshe Werbin](#), *Nevo*, 11 August 1986 (Hebrew).

⁶ [Independence of Criminal Prosecution](#), *Attorney General's Office*, 9 November 2003 (Hebrew).

⁷ Gay Ezra, [Thirty-Six Hours to Election Day: Ben-Gvir in Emotional Appeal to Hilltop Youth](#), *Srugim*, 7 April 2019 (Hebrew).

⁸ [Itamar Ben-Gvir](#), *Twitter*, 9 December 2022 (Hebrew).

⁹ [Itamar Ben-Gvir](#), *Twitter*, 28 November 2022 (Hebrew).

Police to maintain public order, deny a person's liberty, and conduct an investigation, but also due to the existence of its prosecution unit. Israel's Police's prosecution unit is responsible for some 90% of the indictments filed in recent years and for processing tens of thousands of cases every year (investigation support, examination of evidence, decision to indict or dismiss a case).¹⁰ Thus, Minister Ben-Gvir could direct the Israel Police and its prosecution unit to practice "increased" enforcement toward anti-government protesters and to broadly interpret the vague offense of "disrupting a police officer in the performance of his duty" (Article 275 of the Penal Code-1977), whereby any person arguing with a police officer about their right to demonstrate or complaining of political enforcement would be considered a "disruptor."

- **The proposed amendment will allow the Minister of National Security and the Israel Police to selectively limit protests.** Since existent legislation in Israel dates back to the British Mandate era and was designed to limit protest activity, it would be very "easy" for the police to prevent or limit legitimate public demonstrations. On 15 December 2022, MK Zvi Fogel (Otzma Yehudit) said in an interview on Israel Radio that Ben-Gvir would make political use of the Israel Police to bar certain political protests ("He could very well decide on a policy whereby protesters outside the Prime Minister's Residence in Jerusalem's Balfour Street may be dispersed, but not so elsewhere. Why not?").¹¹ On 8 January 2023, Ben-Gvir gave a sweeping order to the police commissioner to remove Palestinian flags from all public venues.¹² The fear here is not only that demonstrations might be barred due to political rivalry, but that other protests might be prevented too, such as by consumers against tycoons close to the minister.

- **The proposed amendment will allow the Minister of National Security to order the Israel Police to use force in a selective, racist, and political fashion.** According to Article 103 of the coalition agreement between Likud and Otzma Yehudit, National Security Minister Ben-Gvir is empowered to change Israel Police's open-fire rules as he sees fit. Otzma Yehudit members and Ben-Gvir have reiterated that they would act toward changing these rules to facilitate the option of using live fire;¹³ Ben-Gvir has called on the police to toughen their conduct toward anti-government protesters in Tel Aviv to include the use of water cannons.¹⁴

- Therefore, Zulat recommends to the MKs representing the democratic public:

- ✓ **Refuse to legitimize Israel Police's politicization and selective enforcement.**
- ✓ **Although the proposal deals specifically with the Minister of National Security's powers, it is inseparable from the comprehensive move to effect a regime revolution. Its approval would complete the politicization of the Israel Police in tandem with Justice Minister Levin's plan to fully politicize the justice system.**

¹⁰ [Statistical Abstract 2020](#), *Israel Police*, May 2021 (Hebrew).

¹¹ On Azriel, [Israel Radio Interview with MK Zvi Fogel](#), *Twitter*, 15 December 2022 (Hebrew).

¹² Eli Senior, [Ben-Gvir's New Order to Police: Remove Palestinian Flags](#), *Reshet 13*, 8 January 2023 (Hebrew).

¹³ [The First Change Ben-Gvir Seeks Approval For](#), *Srugim*, 10 November 2022 (Hebrew).

¹⁴ Yoni Gabay, [Not Only Against Haredim: Ben-Gvir Urges Police to Use Water Cannons in Tel Aviv Demonstrations Too](#), *Kikar Hashabat*, 9 January 2023 (Hebrew).

- ✓ **MKs must refuse to engage in a debate before the government reveals all the "chapters" of the package of legislative amendments that it intends to promote based on the coalition agreements. The "salami method" is designed to confuse MKs and the public regarding the comprehensive move planned by the government to effect a regime revolution.**
- ✓ **MKs must refuse to discuss any proposed amendment separately. Instead, they must treat them as a single package that will transform Israel into an authoritarian regime and completely eliminate the checks and balances between the branches of government.**

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