

Prohibition of Judicial Review of Ministers' Eligibility Harms Rule of Law and Equality and Encourages Corruption

Zulat's Position on Amendment No. 16 to Basic Law: The Government (Eligibility of Ministers and Deputy Ministers)

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 which warned of the authoritarian processes that have taken place in the State of Israel over the years and which have accelerated since the establishment of the 37th Government on 29 December 2022.

The proposed amendment is an integral part of a body of anti-democratic legislation that will abolish the independence and professionalism of the judiciary, the civil service, and the media, as well as grant unlimited power to the government and the prime minister heading it. Immediately upon its establishment, the 37th Government began the accelerated advancement of these bills,² which are currently at various stages of legislation and continue to advance at full speed.³ Retired Supreme Court President Aharon Barak has termed the reform pursued by the government a collection of "all the bad proposals made over the years," equivalent to a "revolution with tanks."⁴

The Proposed Amendment: Article 6 of Basic Law: The Government on the eligibility of ministers is to be amended to bar judicial review of the reasonableness or any other aspect of their appointment, except for compliance with the limited provisions of the article.

In addition to the serious violation of the rule of law, the appointment of corrupt ministers might lead to a serious violation of human rights, in particular equality.

Zulat's Position

- It is a personalized bill to amend a Basic Law. The proposed amendment is intended to allow the appointment of MK Aryeh Deri, which was invalidated by the Supreme Court

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 Chen Maanit and Noa Shpigel, [How Far Has Regime Revolution Reached? Update on Legislation Blitz](#), *Haaretz*, 14 March 2023 (Hebrew).

⁴ TOI Staff, [Ex-Chief Justice Barak: Government's Judicial Reform Plan 'Will Strangle Democracy'](#), *The Times of Israel*, 6 January 2023.

due to his criminal record. Therefore, it emasculates the court's judgment, seriously harms the rule of law, and violates the principles of integrity and incorruptibility that oblige elected officials.

- ☒ It is a permanent amendment to a Basic Law, which will encourage and legitimize corruption. While the government misrepresents the bill as a one-stop solution to the Deri "problem," in reality it is a permanent amendment to a Basic Law that will allow the appointment of corrupt politicians, who will be free to pursue their deeds during their term in office.
- ☒ Corruption harms democracy and human rights. According to studies and publications by the OECD, the European Union, and the US State Department, corruption fuels crime, wastes public resources, destabilizes the economy, scares away international cooperation and investors, prevents due diligence, and interferes with proper governance. Authoritarian and would-be authoritarian countries increasingly use corruption to solidify their rule. Corruption at the top echelon of a government trickles down to the judicial system, the parliament, the media, and society at large. The "social contract" between the state and its citizens, whereby the citizen accepts a series of obligations in exchange for the state's recognition and protection of basic human and civil rights, is replaced by a "corruption contract." In other words, an individual who wants to subsist, obtain rights, and prosper in such a country will be forced to join the circle of corruption and pay a bribe at every encounter with state institutions.
- ☒ Corruption harms equality in resource distribution and appointments. Every minister determines the priorities of his ministry's activities and is responsible for the direct and indirect allocation of its budget (contracts or collaborations with external parties). Corruption precludes the proper distribution of public resources based on transparent and equitable criteria. A corrupt minister misuses public resources for his own and his associates' personal gain, as well as to buy the loyalty of voters and donors to his party and to him personally. A corrupt minister chooses "flunkies" to fill in jobs, instead of appointing suitable professionals and abiding by the rules of adequate representation, in particular of women and minorities. Furthermore, only someone who is "connected" to the minister or has the wherewithal to pay him or his associates a bribe will receive service from the ministry.

- ☒ **Corruption encourages selective administrative enforcement.** Some government ministries have the power to enforce administrative measures and sanctions, such as to enter and search buildings, demand information and documents, impose fines, and confiscate property. A corrupt minister may abuse the powers of his office for selective enforcement, say, in order to harass political and business rivals of his associates, to blackmail, or to demand a bribe.

Author and legal adviser: Adv. Eitay Mack