

Zulat's Opposition to Proposed Abolishment of Independence of Government Legal Counsels and Conversion into Political Positions of Trust

- **Zulat for Equality and Human Rights** promotes the protection of the rule of law and democracy, and concerns itself with the strengthening of authoritarian processes in the State of Israel. These processes have accelerated since the establishment of the 37th government on 29 December 2022, as shown in Zulat's report *The Regime in Israel: Quasi-Authoritarian State En Route to Dictatorship*.¹ The report reviews the moves that have today brought Israel to the brink of full authoritarianism, after the government declared its intention to advance a legislative program aimed at subordinating the Israeli justice system to the executive branch.
- **The proposed amendment is part of a legislative package and other moves designed to carry out a regime revolution** – 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 totally controls the legislative branch as it is.² Following fierce public criticism within Israel and by its friends around the world (primarily the United States), as well as clear-cut evidence about the serious repercussions of the plan on the stability of the shekel and the Israeli economy as a whole, the advancement of the full plan was seemingly frozen and talks between opposition and coalition representatives began at the Presidential Residence in Jerusalem, which lasted until recently. In practice, however, the planned regime revolution was never shelved but rather promoted in other ways, such as the introduction of "private" bills by coalition MKs and draft government resolutions by ministers, all of them anti-democratic, whose approval will lead Israel to a full dictatorial regime.
- **The current situation** – The independent status of legal counsels derives from the work of an interministerial team set up in 2007,³ and the subsequent approval of its recommendations in Government Resolution 4528.⁴ Their independence is secured by

¹ Eitay Mack, [The Regime in Israel: Quasi-Authoritarian State En Route to Dictatorship](#), *Zulat*, 28 May 2023 (Hebrew).

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

³ [Interministerial Team Set Up to Review Questions Pertaining to Legal Counsels of Government Ministries](#), Prime Minister's Office, 18 March 2007 (Hebrew).

⁴ [Recommendations of Interministerial Team Reviewing Questions Pertaining to Legal Counsels of Government Ministries – Implementation](#), Prime Minister's Office, 1 March 2009 (Hebrew).

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 criteria for the termination of incumbent counsels remained undecided at the time the recommendations were approved).

- **The proposed amendment** – According to the latest media reports,⁵ the opinion of these legal counsels will not be binding, ministers will be free to choose different legal representation and to decide what position will be presented on their behalf, and the hiring process will be reviewed by the Knesset Constitution Committee.

Zulat's position: This is a destructive proposal, as it will eliminate the role of legal counsels as "gatekeepers," will harm the rule of law and human/civil rights, and will increase corruption. Here are the reasons why:

☒ It is a sequel to previous proposals by the Right to make legal counsels positions of trust to be filled at the ministers' discretion and an extension of the "Reign of Clerks" campaign launched in 2015 in the wake of the suspicions and criminal charges against Netanyahu and the Likud's efforts to entrench its position as the country's ruling party. According to the campaign's slogans, Israel's civil servants are subversive elements trying to run the government in an anti-democratic manner and carry out a "coup d'état." This is no matter-of-fact debate about proper administration, but a campaign of delegitimization of the professional echelons whose slogans recall the conspiratorial messages of former US President Donald Trump and his supporters about a so-called "Deep State." The campaign targeted the professional echelon in public bodies and government ministries in general, and specific "clerks" who were involved in Netanyahu's investigations and criminal prosecution in particular. Already on 26 June 2018, in response to a similar proposal introduced at a meeting of the Knesset Constitution, Law, and Justice Committee, former Attorney General Avichai Mandelblit said it constituted "an infringement, even if not intentional, of the rule of

⁵ Amit Segal and Dafna Liel, [Coalition to Promote Reduction of Reasonableness Standard, Likud MK Submits Legal Counsels Law](#), *Niz*, 18 June 2023 (Hebrew).

law." Former Supreme Court Vice President Eliakim Rubinstein called it "politicization of the subject matter, which carries an element of shaming," while former Supreme Court Judge Yitzhak Zamir termed it "a return to the dark days of political appointments in government service."⁶

An example of the connection between the proposals regarding legal counsels and the criminal charges against Netanyahu can be seen in the Right's campaign against Attorney Dana Neufeld, who was the Communications Ministry's legal counsel when indictments for bribery, fraud, and breach of trust (Case 1000 and Case 4000) were filed against Netanyahu and who confirmed the main facts in the indictments in her testimony to the police and the Jerusalem District Court. The call for her dismissal from the public service by Netanyahu's supporters was followed by a puzzling delay in her permanent appointment as the Health Ministry's legal counsel.⁷

- ☒ It does not only aim to weaken the status of legal counsels but to actually cancel their role as "gatekeepers" with the authority to prevent a minister from carrying out actions that run counter to the law, court rulings, and proper administration. In fact, it will provide a sweeping "legal" stamp of approval to corruption, conflicts of interest, unlawfulness, and mismanagement by the government and its ministries. Since government ministers will be allowed their own interpretation of the law and their own legal opinions, they will be able to violate the law and at the same time claim that they are abiding by it, owing to the fact that they are the only ones allowed to interpret it. Thus, charges of breach of trust will be meaningless, given that the ministers will have the authority to determine the limits of what is permitted and what is forbidden. 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 under the minister's direct purview, 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, hiring of staff, projects, affiliates and companies subordinate to the ministry, commitments, contracts, and budgeting of external bodies, as well as on any legal proceedings. If the proposed amendment is approved, the minister will be authorized

⁶ [Legal Counsels Law: Senior Judiciary Officials and Dozens of MKs at Stormy First Session of Constitution Committee](#), *Knesset*, 25 June 2018 (Hebrew).

⁷ Roni Linder and Nati Tucker, [Despite Obstruction Efforts: Dana Neufeld Appointed Health Ministry's Legal Counsel](#), *TheMarker*, 2 May 2023 (Hebrew).

to "legalize" corrupt contracts and tenders, hiring of cronies or unqualified persons, or take other actions that will personally benefit the minister and his associates.

For example, during Yisrael Katz's tenure as Finance Minister, legal counsel Assi Messing wrote an opinion nixing Katz's choice of director general of the ministry on the grounds that he did not meet the minimum requirements for the job.⁸ 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."⁹ David Amsalem, the minister in charge of government-Knesset liaison, also attacked Messing recently and called him a "professional saboteur," while Finance Minister Bezalel Smotrich decided that Messing would not serve on the Committee for Privatization of State Assets.¹⁰ Six months ago, Transportation Minister Miri Regev also sought to appoint a crony as director general, contrary to the opinion of the ministry's legal counsel, Attorney Yael Cohen, to the effect that there was a legal impediment to his appointment.¹¹

- ☒ It will hurt the status of the Attorney General as it will secure the "right" of ministers who wish to circumvent or defy her instructions to seek separate legal advice. Given that her instructions are supposed to be implemented by the legal counsels, this could potentially result in a serious violation of human/civil rights. At present, legal counsels report to the Attorney General and, based on tradition and practice, her guidelines and her interpretation of the law obligate all government authorities.¹² One glaring example of how ministers' failure to abide by the law and disregard for the opinions of legal counsels endangers human rights is what happened with the corona vaccinations for prisoners. Amir Ohana, then-Internal Security Minister and current Knesset Speaker, ordered the Israel Prison Service (IPS) not to vaccinate

⁸ Nati Tucker, [Blow to Yisrael Katz: Finance Ministry's Legal Counsel Nixes His Choice of Finance Ministry Director General](#), *TheMarker*, 21 January 2021 (Hebrew).

⁹ Yisrael Katz, [Facebook post](#), 12 November 2020 (Hebrew).

¹⁰ Sivan Hilai, [Amsalem Calls Finance Ministry's Legal Counsel 'Professional Saboteur', Smotrich Comes to Messing's Defense](#), *Ynet*, 23 May 2023 (Hebrew); Nati Tucker, [Smotrich Also Objects to Assi Messing: Keeps Him Out of Privatization Committee](#), *TheMarker*, 18 June 2023 (Hebrew).

¹¹ Carrie Keller-Lynn, [Amid AG Pushback, Cabinet Delays Appointment of New Transportation Ministry Chief](#), *The Times of Israel*, 8 January 2023.

¹² [Attorney General's Guidelines: Roles of the Attorney General](#), *Justice Ministry's website*, 15 August 2010 (Hebrew).

inmates pending his approval and progress in the vaccination of the general public, in total disregard of the IPS legal counsel's position, despite the danger of mass infection in prison facilities, and notwithstanding the fact that the law does in no way authorize the Internal Security Minister to order the IPS Commissioner not to provide medical treatment to a prisoner, to stop it, or to act contrary to the position of the Attorney General, which is what the Supreme Court also said in its ruling.¹³ Subsequently, Ohana promoted a consultant who had sided with his stance against vaccinating prisoners to the position of IPS legal counsel.¹⁴

This is how Attorney Yochi Gansin, then-IPS legal counsel, described her thoughts during the dispute: "Until then, I had never told an elected official that his decision was illegal and deceitful. The Prison Service Law stipulates the obligation to see to a prisoner's health, while the Corona Law stipulates that the Ganoin state's medical liability in an epidemic is set by the Health Ministry. Once the Health Ministry determines that citizens of a certain age or with certain underlying conditions must be vaccinated, there is a legal obligation to do so. It is the law, not the personal opinion of a jurist who evaluated the public's interest or examined reasonableness; it is the law. Nevertheless, the minister dug in his heels."¹⁵ Similarly, National Security Minister Itamar Ben-Gvir recently demanded to fire the Attorney General on the grounds that she is "serving as the de facto opposition leader," following her response to the Supreme Court whereby Ben-Gvir should refrain from giving operative instructions to the police, particularly with regard to enforcement at the demonstrations against the regime revolution¹⁶ (her position was accepted by the Supreme Court, in a ruling by Judge Yitzhak Amit).¹⁷ Had the police fully followed Ben-Gvir's orders and mind-set and had the Attorney General not taken steps to block his continued interference in

¹³ [Supreme Court Ruling 158/21 Physicians for Human Rights v. Internal Security Minister](#), *Nevo*, 31 January 2021 (Hebrew).

¹⁴ Josh Breiner, [Ohana Promotes Supporter of His Stance Against Vaccinating Prisoners to IPS Legal Counsel](#), *Haaretz*, 7 June 2021 (Hebrew).

¹⁵ Netael Bandel, [Former Senior Attorney Challenges Establishment: 'In Last 30 Years We Underwent Revolution From Democracy to European Liberal Democracy'](#), *Israel Hayom*, 16 February 2023 (Hebrew).

¹⁶ TOI Staff, [Ben Gvir Says Attorney General Must Be Fired, Is Acting as De Facto Opposition Chief](#), *The Times of Israel*, 17 March 2023.

¹⁷ Jeremy Sharon, [Top Court Says Police Don't Take Orders on Protests From Ben-Gvir, Who Slams 'Coup'](#), *The Times of Israel*, 19 March 2023.

enforcement as well as to stop the firing of Tel Aviv District Commander Ami Eshed,¹⁸ many more protesters would probably be injured in the demonstrations.

- ☒ **Government ministries will be able to draft bills without seeking the opinion of their legal counsels.** The legal counsels are an important "filter" in the process of drafting bills and assimilating the necessary balances, the law, and case law. The proposed amendment will allow ministers to keep the legal counsels in their offices out of the drafting process, which might increase legislative initiatives that harm the rule of law and human/civil rights.
- ☒ **There is no justification for changing the hiring process of legal counsels and the proposal to have this process reviewed by the Knesset Constitution Committee is only intended to harm their status.** The Knesset Constitution, Law, and Justice Committee is currently headed by MK Simcha Rotman, one of the leaders of the regime revolution. The bill he presented to the committee on 11 January 2023 states that "legal counsels delay and slow down processes, and prevent the government from functioning and implementing the policies for which it was elected by the public."¹⁹ In any case, there is no material justification for changing the hiring process, which derives from the work of an interministerial team set up in 2007²⁰ and subsequent approval of its recommendations in Government Resolution 4528.²¹ The independent status of legal counsels hinges on the hiring process and the criteria for their substitution: they must be selected based on their adherence to the law and commitment to the public and not according to their personal loyalty to ministers. Excessively flexible criteria will enable a minister to easily replace a legal counsel who refuses to be a rubber stamp for an illegal decision or might compel him to compromise and accede to approve any illegal whim of the minister.

The words of then-Deputy Attorney General Dina Zilber, who for several years was one of the main targets of the "Reign of Clerks" campaign, are fitting by way of conclusion. At a

¹⁸ TOI Staff, [After Nixing Ouster of Tel Aviv Top Cop, AG Says Ben-Gvir Must Make New Decision](#), *The Times of Israel*, 17 April 2023.

¹⁹ Idan Binyamin, [Move to Get Rid of Legal Counsels: Simcha Rotman Bypassed Knesset, Reprimanded for Deceiving Public](#), *Shakuf*, 12 January 2023 (Hebrew).

²⁰ [Interministerial Team Set Up to Review Questions Pertaining to Legal Counsels of Government Ministries](#), Prime Minister's Office, 18 March 2007 (Hebrew).

²¹ [Recommendations of Interministerial Team Reviewing Questions Pertaining to Legal Counsels of Government Ministries – Implementation](#), Prime Minister's Office, 1 March 2009 (Hebrew).

hearing on 6 November 2018 in the Knesset's Education, Culture, and Sports Committee, ahead of the second and third readings of the Culture in Loyalty Law, she said the bill "raises real difficulties" and added in a critical tone: "Give us obedient legal counsels, castrated artists, a restrained media, a disciplined and educated people with uniform thoughts." Further criticizing the government, she said recent times had brought along "not only new laws, but also new words: governance, loyalty, overriding clauses."²² The 37th government is trying to enforce these authoritarian concepts through legislation, and the violation of the independence of legal counsels is part of its comprehensive legislative plan to change the Israeli regime.

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²² Revital Hovel and Jonathan Lis, [Shaked Versus Deputy Attorney General Zilber: Will No Longer Represent Justice Ministry Before Knesset and Government](#), *Haaretz*, 6 November 2018 (Hebrew).