

The "Judicial Reform" and the Reasonableness Doctrine

Reasonableness or Lawlessness

Why is the Israeli government aiming to revoke the Reasonableness Doctrine now?

The government is aiming to abolish the Reasonableness Doctrine because it believes the public is relatively unaware of the grave implications of this step, and as such it expects to implement it successfully. The government hopes to rush this bill through, including first, second and third readings, by **mid-July 2023**, towards the end of the Knesset's summer session.

How have we benefited from the Reasonableness Doctrine until now?

Only with a Reasonableness Doctrine in place are national, regional, and local government authorities legally bound to make reasonable executive decisions. The very fact that this Doctrine exists makes proper administration more likely, since decision-makers are less likely to make arbitrary and capricious decisions knowing that they are subject to judicial review.

Until now, the Reasonableness Doctrine enabled courts to protect citizens. For example, it enabled missile-proofing classrooms near the Gaza Strip; the building of Jerusalem's

soccer stadium was approved when the Minister of the Interior was found to have no reasonable grounds for objection; a bylaw preventing gas stations from opening on the Sabbath was canceled; a *mikveh* for Orthodox women was allowed to be built in the predominantly secular community of Kfar Vradim; and an IDF officer guilty of sexually harassing a young subordinate was denied promotion.

What will happen if the Reasonableness Doctrine is abolished?

Absolute power corrupts absolutely. As soon as the Reasonableness Doctrine is abolished, there will be politicians who will give in to the considerable temptation and pressure to exploit this; they will be able to hand out or hold back funds and resources in an arbitrary, biased, baseless and uncontrolled manner, appoint cronies without relevant skills or with a criminal record to senior government positions, and remove regulators and legal counselors who stand in their way.

Abolishment of the Reasonableness Doctrine would be a triumph for cronyism and for corrupt dealmakers, with "every minister a monarch" – and the Prime Minister, currently under criminal trial for corruption, will be able to dismiss the Attorney General.

Does the Reasonableness Doctrine mean judges can do whatever they want?

Absolutely not. A judge's opinion does not replace the judgment of the executive decision-makers. A judge does not dictate to those in authority what to choose among the range of reasonable options available. The Reasonableness Doctrine does ensure that executives make their decisions based on fair and reliable data and criteria, that professionals have been consulted, and that all relevant factors have been weighed. Only in cases of **extreme unreasonableness** do courts intervene.

Why should judges be the ones to decide whether a decision is reasonable or not?

In the Israeli legal system, judges are tasked with determining what reasonable doubt is in criminal cases, or whether a skilled professional (a doctor, an engineer) deviated from reasonable behavior in torts or in other civil cases. In the case of publicly elected officials, no other body can guard against decisions that are arbitrary, biased or corrupt in the extreme, since in our coalitional system the government also rules the Knesset.

What about the alleged judicial activism by the Supreme Court?

Despite fake news to the contrary, the Supreme Court has rarely intervened in government decisions on the basis of unreasonableness – on average about once a year – and it has never used this Doctrine to block any national program, be it economic, social, or defense-related.

The Reasonableness Doctrine is not an Israeli invention; it exists in various forms in other countries (e.g., USA, UK, Canada, New Zealand, etc.). It was an important part of British law, inherited by the newly founded State of Israel, and has continued to evolve since the 1970s both in Israel and internationally.

Perhaps the Reasonableness Doctrine should merely be restricted?

There are those who suggest "restricting" the Reasonableness Doctrine where it concerns political appointments, so that the Prime Minister can appoint ministers as he wishes, even if for example, the proposed minister has been convicted of bribery and tax evasion. Others propose that it should not apply to "policy decisions" by the "cabinet of ministers" (a situation which would be open to misapplication and abuse).

In any case, the law that the government is now attempting to pass is different and much more comprehensive than the above: it involves **complete abolishment of the Reasonableness Doctrine as regards all decisions in all spheres by all elected officials** – the government, all ministers and members of Knesset. Courts will not even be allowed to conduct judicial

review of the most irrational, corrupt decisions, or even hold a hearing regarding the controversial decision at hand; all such decisions will be immune. **If this law is passed, Israel will be the only country in the world in which such a law exists.**

But it's just one law, how bad can it be?

Abolishing the Reasonableness Doctrine would be a **governmental cataclysm**. Despite what proponents would like us to think, this law constitutes a lethal danger to democracy: **the government and all elected officials would effectively have limitless power.**

But won't it work out in the elections in four years' time?

Even elections will not enable us to fix the damage. It will be legally impossible to dismiss all unsuitable or corrupt officials who will have been appointed, and realistically impossible to undo all unreasonable decisions that will have been implemented. This irreversible damage means decreased safety and security, weakened regulators, exploitation of public funds, and corruption and rot spreading throughout the state of Israel.

Who wants to live in a country where there are no checks based on reasonableness, knowing that under these circumstances, there will undoubtedly be politicians who will make high-stake decisions that are outlandish, arbitrary, or corrupt?

What needs to be done now?

When a government attempts to take limitless power, citizens must resist. In the next few days and weeks, during July 2023, the issue will be decided upon. It is now our duty to unite and defend the State of Israel. We must resist with all our might, and non-violently, the "First Law of Dictatorship": the abolishment of the Reasonableness Doctrine.

In this 75th year of Israel's existence, we must be loyal to the Declaration of Independence and keep Israel democratic together.

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