



SHUSHAN STREET: THE NETANYAHU GOVERNMENT'S DANGEROUSLY UNREASONABLE AMENDMENT

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Since his government passed legislation to strip Israel's Supreme Court of the ability to strike down certain decisions undertaken by the executive branch by applying the "reasonableness standard," Prime Minister Benjamin Netanyahu has gone on a US media blitz, assuring Americans that Israeli democracy is just fine. He [told](#) ABC's George Stephanopolous, for example, that the move was a "minor correction" to an "activist" court. Netanyahu's spin notwithstanding, this opening legislative salvo against the Supreme Court – the primary check on the government since the governing coalition controls both the executive and legislative branches – could have profound consequences.

The "unreasonableness amendment," which passed on July 24 with support exclusively from Netanyahu's governing coalition and the entire opposition boycotting the vote, amends Israel's basic law on the judiciary by taking away a key tool used by the Supreme Court to review the government's administrative decisions and determine whether discretion was exercised in an extremely unreasonable way. While the reasonableness standard has been applied relatively [rarely](#), the Supreme Court used it in January when it [ruled](#) that it was unreasonable for Aryeh Deri (Shas) to be appointed as Interior Minister and Health Minister given his recent conviction of tax fraud and his [pledge](#) to retire from public life as part of a plea bargain.

Even legal experts who believe the reasonableness standard has at times been applied in an "arbitrary way" are [raising the alarm](#) about the impact of scrapping it altogether. So what, specifically, are the key potential consequences? Here are five to consider:

- 1. Firing the Attorney General:** Israeli Attorney General Gali Baharav-Miara's job is in jeopardy for two main reasons: she oversees Netanyahu's corruption trial and she has served as a stalwart gatekeeper protecting Israel's democracy since Netanyahu's government assumed power. As Mordechai Kremnitzer of the Israel Democracy Institute [put it](#), "The firing of the attorney general is on the table. It's clear that it has to do with the trial of Netanyahu, as well as it has to do with the wish of this government to get rid of the rule of law." [Dubbed](#) "the most dangerous person in the country" who "should have been removed already yesterday" by Minister Dudi Amsalem (Likud), Baharav-Miara's purported sins include a [scathing legal opinion](#) finding that the government's proposed judicial reforms would give it virtually "unrestrained power," opposition to [multiple bills proposed](#) by the government, and freezing the ouster of Tel Aviv Police Chief Ami Eshed due to [concerns](#) that National Security Minister Itamar Ben-Gvir's actions were politically motivated. Four weeks before the unreasonableness amendment passed, Communications Minister Shlomo Karhi (Likud) vowed the government would get rid of the reasonableness standard, fire Baharav-Miara, and ensure there would be "no more" of the "rule of law gang."

- 2. Enabling corrupt and otherwise inappropriate appointments:** To begin, convicted felon Aryeh Deri is likely to be reappointed to his ministerial positions and return to the Cabinet. Netanyahu has [stated](#) that absent a decision by the Supreme Court to overturn the unreasonableness amendment, “I expect it to happen.” Corruption will be the most immediate result of ending the reasonableness standard, both in the misuse of public funds and “a [spate](#) of highly inappropriate appointments to the most important and sensitive positions in the public administration and government corporations.”
- 3. Allowing the government to prevent judicial appointments:** Justice Minister Yariv Levin (Likud), one of the chief instigators of the judicial overhaul, has refused to convene the judicial selection committee that appoints all judges, including the Supreme Court. As yet lacking the unfettered power to determine judicial appointments due to the [forced deferral](#) of the government’s bill to give itself [broad control](#) over the appointment of new judges, Levin is declining to convene the judicial selection committee. Levin [reportedly](#) wanted to push through the unreasonableness amendment quickly to prevent the Court from requiring him to convene the committee by declaring his failure to do so extremely unreasonable. Following the passage of the unreasonableness amendment, the Court would be barred from using the reasonableness standard in weighing the case and would have to rely on other considerations.
- 4. Eliminating a channel for Palestinians to challenge government decisions:** The likely impact of the unreasonableness amendment on Palestinians has received relatively little attention, but it is worth examining given Justice Minister Levin’s long standing and unfounded [attacks](#) on the judicial system as “controlled by a radical leftist, post-Zionist minority” that puts obstacles in the way of annexing the West Bank – something Levin strongly favors. In Levin’s Knesset [speech](#) before the vote on the amendment, he [listed](#) five cases in which the Supreme Court had invalidated an administrative decision using the reasonableness standard that troubled him. Three involved Palestinians: the overturning of the Defense Ministry’s [refusal](#) to allow bereaved Palestinian families to enter Israel to attend the annual joint Israeli-Palestinian Memorial Day Ceremony in 2018; the reversal of the Interior Ministry’s 2018 [denial](#) of a Palestinian American student’s visa to study at an Israeli university because she allegedly supported the Boycott Divestment Sanctions (BDS) campaign; and the blocking of the Israeli military’s order to expel a Palestinian from the West Bank to Gaza during the Second Intifada (while the Court [allowed](#) two other Palestinians in the case to be transferred). As the ultra right-wing Netanyahu government executes [annexation](#) and [bans](#) Israeli-Palestinian peacebuilding programming, the unreasonableness amendment will make it even more difficult to challenge its decisions.
- 5. Permitting retribution against Israelis who oppose the occupation:** The other two cases Justice Minister Levin mentioned in his Knesset speech involved government decisions to punish Israelis for anti-occupation activism. In 2021, the Education Minister [ordered](#) that Professor Oded Goldreich could not receive the Israel Prize for his mathematical work on computational complexity theory because she claimed he supported BDS. (Goldreich [opposes settlements](#) and signed a petition calling on the European Union to end funding to Ariel University – based in a West Bank

settlement – but indicated he does not support BDS.) Similarly, the Science Minister [blocked](#) the appointment of Professor Yael Amitai to the German-Israeli Foundation for Scientific Research and Development in 2019 because she had signed a petition supporting Israeli soldiers who refused to serve in the occupied Palestinian territory. The Supreme Court invalidated both decisions on the grounds that they were extremely unreasonable. Stripping the Court of the ability to review such decisions on the basis of the reasonableness standard invites more moves to exact retribution against Israelis who oppose the occupation and will make it more difficult to overturn such acts.

Beyond these five potential consequences, the passage of this amendment is problematic for a host of other reasons, including that it will [weaken](#) the ability of government legal advisers to prevent corrupt, politically motivated, and unlawful decisions before they are finalized. The passage of such a significant measure despite [opposition from a majority of Israelis](#) – including some who voted for parties in the governing coalition – is anti-democratic. Making matters far worse, this is merely the first step in forcing through the [full judicial overhaul](#) laid out by Justice Minister Levin in January. As the Israeli Law Professors' Forum for Democracy warns, "The unreasonableness amendment is thus only the first step towards executive authoritarianism."

On September 12, the Supreme Court will convene an [unprecedented](#) 15-judge panel to hear petitions against the unreasonableness amendment. Meanwhile, [massive protests](#) continue week after week; military reservists have pledged to halt their service, prompting serious [concerns](#) about Israel's military readiness; credit agencies and banks have issued [warnings](#) about economic impacts, as venture capital investments in Israel's high-tech sector (which accounts for nearly [half](#) of Israeli exports) decline; and Israel may be on the [brink](#) of a potentially calamitous [exodus](#) of doctors. Against this backdrop, Israelis – including former senior [security officials](#) and [diplomats](#), as well as [protest leaders](#) – are pleading with the Biden Administration and Members of Congress to show their care for the shared values that have underpinned the US-Israel relationship by standing with the pro-democracy protesters and opposing the illiberal, autocratic direction of the Netanyahu government.

With Israel's future on the line, it is vital that they quickly and tangibly answer the call.