With G-d’s Help

9 Shvat 5783

31 January 2023

To:

The Minister of Justice – MK Yariv Levin

Subject: Request for an Urgent Meeting Regarding the Impact of the Judicial Reform on Environmental Protection and Public Health

As heads of organizations for the protection of the environment and public health in Israel, we are writing to you to a request an urgent meeting with our representatives in order to hold an in-depth discussion regarding the impact of the planned judicial reform and its accompanying processes on the area of the environment and health.

We are aware that the subjects raised in this letter are at the heart of a lively debate taking place in Israeli society. We want to emphasize that this letter does not address all the political and social questions under discussion, but refers to one specific issue with which we, the environmental and health groups, are entrusted: protecting the health of the citizens of Israel and their right to a safe environment. The environmental movement is composed of people from a variety of political backgrounds, united in their shared concern with public health and environmental protection, nature, and heritage values. We are united in our opinion that a substantive, respectful, and fair discussion must be held urgently on the implications of the reform for the activities of civil society.

Deeply concerned with the possible impact of this reform on the environment and on citizens, we believe that it is vital to listen to the voices of the affected parties and understand the consequences of the present reform. The anticipated changes are liable to undermine the tools at our disposal as a civil society. Harm to the environment and to public health could cause irreparable damage to all aspects of Israeli society. Our goal is to foster a comprehensive understanding of the environmental consequences of the reform and to find a solution that protects the citizens as well as the environment.

The good of Israel – its people and its land – stands before us and is precious to us.

Attached to this letter is a position paper on behalf of the environmental and public health organizations. It details the serious danger facing the protection of public health, nature, and the environment in Israel as a result of the reform.

Copies to:

The Prime Minister – Benjamin Netanyahu

The Chairman of the Constitution, Law, and Justice Committee – Judge Simcha Rothman

The Minister for the Protection of Nature – Ms. Idit Silman

In anticipation of coordination of a meeting as soon as possible,

The Heads of Public Health and Environmental Protection Organizations in Israel

To coordinate the meeting: Shir Goldovsky, Life and Environment 052-5785776 [policy@sviva.net](mailto:policy@sviva.net)

**Changes in the Legal System – A Serious Threat to the Protection of Public Health, Nature, and the Environment in Israel**

Position of the Environmental Organizations

**Preface**

This position paper presents the position of the environmental and public health organizations in Israel, a coalition of non-political bodies with no party affiliation. The environmental and public health organizations and their many supporters in the public represent the entire range of the political spectrum and are united around one single issue for the sake of the Israeli public – advancing the protection of nature, the environment, and public health in Israel.

The environmental organizations operate as part of Israeli civil society as a whole. The flourishing of civil society and its actions in the judicial field, among others, are prominent features of every successful, democratic country in the world, which we aspire to resemble.

Having examined the various drafts of the law that have been published recently, along with additional initiatives that may be raised in the future, it appears to us that the changes in the legal system being discussed are expected to cause serious harm to our ability as civil society organizations to act on behalf of the interests of the environment and public health. They also threaten to undermine the public’s basic right to actively respond to hazards that harm its health, quality of life, environment, and the nature it enjoys. This harm is liable to be particularly severe in light of the fact that the reform represents a series of steps whose cumulative damage is greater than the sum of its parts.

Unfortunately, we have seen no serious reference to the consequences of the reform on civil society and on the tools available to the public to protect its environment and health.

We believe that the purpose of a democratic regime is to benefit the residents of the country and protect their basic rights against the power of the government even when it is a regime elected by a majority. This is accomplished by determining the norms and rules of the game, for which the court has enforcement responsibility. The potential pending sharp change in these norms, which have evolved since the establishment of the state, represents no less than a social tsunami, the full consequences of which cannot be predicted. The judicial reform the government and the Knesset are currently seeking to advance will leave the protection of the environment and public health exposed to many threats, without any actual rules for preventing them or even raising them for substantive discussion with decision makers. The gravity of this potential ensuing damage in the context of health and the environment cannot be overstated.

**The Environmental Crisis in Israel and the Vital Role of the Environmental Organizations**

The state of Israel is a crowded country subject to great developmental pressures from a wide range of interests competing for every square meter of land. Human use of land for the purposes of infrastructure, housing, transportation, tourism, industry, and commerce is accompanied by a heavy environmental price which necessitates careful and intelligent utilization of land resources. This need is greater than ever now in order to meet the anticipated challenges arising from the consequences of climate change in our region and the biodiversity crisis resulting from human activity. These are both causing the increasing extinction of species, the destruction of habitats, and a change in entire ecological systems.

The legal tools the proposed reform measures will undermine are those very means that presently help the public in the state of Israel breathe less polluted air and benefit from right of access to beaches, nature, and parks. They also support public authorities in several vital functions: exercising supervision and control over polluting factories; protecting the public interest and the transparency of environmental information; ensuring the availability of water suitable for drinking; protecting natural resources and preserving them for future generations; and protecting disadvantaged groups while striving for environmental and climatic justice.

In recent decades, the civil environmental movement in Israel, like those in developed Western countries, has greatly influenced government policy and legislation in the Knesset and has made a considerable contribution to the integration of environmental considerations into the framework of the decision-making process. The positions of the environmental organizations, which in the past were sometimes ignored or despised, today stand at the heart of scientific and professional consensus throughout the world.

At the same time, we continue to face a significant challenge, as often the most pressing needs and short-term economic pressures tend to push the environmental considerations and long-term needs to the bottom of the order of priorities, since the environment does not have its own voice to advocate for its interests. And this is precisely the vital function of the environmental organizations in Israeli society – to represent the purely environmental interest, free of institutional, commercial, and other constraints and to ensure that it receives the appropriate weight in the framework of policy and decision-making.

A significant portion of the environmental and health achievements in Israel can be attributed to the work of organizations for the protection of the environment and public health as well as that undertaken by environmental activists in the legal field. Applying administrative law, the courts have assisted in the development of environmental norms within government ministries, planning institutions, and local government, thereby preventing immeasurable and irreversible damage.

The reform proposals currently under consideration are expected to: weaken the protection of the rights of the environment and health; deprive the public of its right to raise claims and objections against governmental actions before the court; prevent the courts from conducting effective judicial reviews; and reduce the ability of civil society organizations to protect human rights and seek effective remedies to correct environmental injustices.

The aforementioned are the result of the following:

1. **Annulment of the grounds of reasonableness**: In the context of the environment, the ground of reasonableness constitutes a vital tool in environmental petitions. As noted, the current law grants powers and discretion to the various regulators, but their discretion is not unlimited. Theoretically, taking an extreme hypothetical example, what is to prevent the government from deciding on the establishment of a pub compound on the Temple Mount or the construction of a “floating shopping mall” in Eilat that could destroy the Coral Beach Nature Reserve? Clearly, a judicial brake is needed whereby the court can review such decisions and ensure that the government is balancing properly between the various public interests. In fact, experience teaches that the courts have set a high bar for petitioners and do not rush to interfere in official decisions, so that there is considerable difficulty in winning a case brought on the grounds of unreasonableness. This can be attributed to, among other things, the fact that the government authorities are aware that they are subject to public and judicial scrutiny and are currently extremely careful that their decisions will remain within the boundaries of reasonableness. Therefore, the annulment of the grounds of reasonableness will represent a very far-reaching step, giving government authorities the freedom to make arbitrary and harmful decisions, with public health and nature in Israel being among the main victims. Moreover, this is also a serious blow to the “ordinary citizen” – that person about whom it has been decided to carry out a harmful construction project, to pave an unnecessary road on nature and recreation areas used by they and their family use, and more.

Essentially, those saying “no” to the grounds of reasonableness are actually saying (a partial list):

* **“No to leaving beaches open to the general public with entry to them free of charge,”** as stated in *ATAD (Adam Teva V'Din) vs. the Minister of the Interior*, Supreme Court 5824/05;
* **“No to limiting the construction of residential neighborhoods on polluted land,”** as stated in the *ATAD* appeal in Additional Administrative Hearing 4753/19;
* **“No to protecting natural resources of the public and ensuring transparency in what is done in them,”** as stated in *ATAD vs. the Tax Authority*, Administrative Appeal 45845-04-21;
* **“No more protection of clean air and the government’s commitment to prepare a national plan for the prevention and reduction of air pollution in Israel,”** as stated in *ATAD vs. the Government of Israel*, Supreme Court 8187/20;
* **“No to the duty of the authorities to examine planning alternatives prior to the approval of plans in environmentally sensitive areas,”** as stated in *ATAD vs. the National Infrastructure Committee*, Supreme Court 9409/05;
* **“No to the protection of the public’s right to participate in planning processes,”** as stated in *ATAD et al. vs the Minister of the Interior*, Supreme Court 288/00; *ATAD et al., vs. the District Planning and Construction Committee*, Administrative Petition Appeal 10112/02 Jerusalem District;
* **“No to transparency in the planning processes and publishing of building permits for the public,”** as stated in *Yehiye Joisi vs. the Tayibe District Planning and Construction Committee,* Administrative Petition Appeal 1662/14;
* **“No to protecting the spaces which prevent harmful development done without a proper environmental inspection,”** as stated in *ATAD vs. the South District Committee*, Administrative Appeal 264/08;
* “**No to protecting the Dead Sea and the limitation of use of rare natural resources by the Dead Sea Works,”** as stated in *ATAD vs. the Water Authority*, Appeal According to the Water Law 14047-06-15;
* “**No to preventing the nontransparent and uncontrolled expansion of the oil refinery complex in Haifa,”** as stated in *ATAD vs. the National Planning and Construction Council*, Administrative Petition Appeal 2677-18.

1. **Limitation of the right of standing:** Expansion of the right of standing had special importance in the environmental context, since nature has no voice of its own and usually there is no specific person who can file an appeal, as a direct victim, to prevent the destruction of rare habitats, the division of an ecological corridor, or development on public beaches. In other words, “standing” is, in effect, the key giving environmental organizations and the public access to the courts of law when the government is harming environmental interests contrary to law. The environmental organizations are fighting daily against large, powerful forces – capitalists, polluting energy companies, the most powerful families in the country. Therefore, the ability of the environmental organizations and activists to appeal to the courts reduces the power gap between the interests of polluters and environmental interests. This standing has been recognized in many rulings of the Supreme Court over the years, and thanks to it, many legal achievements benefitting the environment in Israel have been recorded. Thus, for example, the breach that arose in the construction plan for the Carmel Coast prevented general public access to the beach and did not directly affect the interest of any specific petitioner. Due to the right of standing of the environmental organizations, the Supreme Court ruled that the public right to the beaches prevails over the proprietary right of the developer (Supreme Court 1054/98). Any weakening of the right of standing by legislation is expected to reduce the legal scope of action by civil society in the environmental field: instead of winning in a substantive decision in court on the basis of evidence and claims on the merits, hearings in appeals will not even take place, as the procedures will be rejected at the outset due to a lack of standing. Therefore, from an environmental viewpoint, this is a harmful and destructive step which will give a clear and undue advantage to those with a narrow interest over those concerned with protecting the interests of the general public. Thus, for example, the standing of entities with an economic and commercial interest (contractors, industry, polluters, and others) will be maintained, but the voice of those wishing to defend nature and the environment will be silenced.
2. **The appointment of legal consultants “on behalf of” (harm to the independence of legal advice to the government):** This step is expected to cause significant damage in the context of the environment. The principal tools for the preservation of nature and the environment in Israel are environmental legislation and the mechanisms it has created. The setting of environmental norms in legislation has created a direct link between adherence to the rule of law and proper administration as well as protection of the environmental interest. The obvious concern in this matter is that the appointment of legal consultants “on behalf of” will permit biased and distorted interpretation of legislation and environmental norms and allow the government to harm the environment, contrary to law, while receiving a “green light” from those same non-independent consultants that the government has appointed for itself (and who can be transferred from their position if they are not “providing the goods”). To make it clear, while the judicial review comes after the fact (and sometimes years after the harm until a decision is given), the legal advisors are the only parties able to prevent harm before it occurs and to refer to environmental risks and harm to environmental human rights in real time. The inevitable result of this proposed step would be a significant increase in anti-environmental initiatives and decisions in the government, which mainly responds to immediate and short-term needs.
3. **A de facto cancellation of constitutional judicial review along with the override clause:** This represents a substantial regime change that is expected to considerably weaken the power of the Supreme Court and to reduce the limitations on the ability of the government to harm fundamental rights – and practically speaking, to indirectly cancel the Basic Law of Human Dignity and Freedom. The direct victims of this are mainly disadvantaged groups in society and minorities that lack political power and the court, which is the main source of defense of their rights. As a result, civil society organizations that deal with the defense of constitutional rights will also be greatly harmed. In 2004, the Supreme Court, ruling on the status of the right to a decent environment in the constitutional context, held that this right is not included in the rights protected in the Basic Law, but amounts to harm to human dignity. The main concern in this context is that the proposed judicial reform will permit the government in the future to take extreme measures (for example, a real reduction in the right of objection in planning), which today are avoided, thanks to the existing constitutional protections, among other measures.
4. **Breach of the balance in the Committee for the Selection of Judges:** Legal proceedings about environmental issues are sometimes very complex, since they deal with complicated scientific, planning, and professional issues. Therefore, the professionalism and expertise of the judges is of utmost importance in terms of the environmental interest. The choosing of judges according to their political identification or any other consideration other than their professionalism is expected to harm the environmental interest. Presently, following the amendments made in the mechanism for choosing judges, a balanced mechanism has been created that does not give excess power to any particular factor – not to the judicial system and not to the political sector. This balance must be maintained at all costs, and any politization of the process for the choosing of judges must be avoided.

**Summary**

The changes being proposed in the judicial system are expected to cause great harm to the protection of public health, nature, and the environment in Israel. These changes cancel most of the effective tools available to civil society to act for the public interest, tools such as: judicial review of administrative decisions, including on grounds of reasonableness; the right to file petitions and claims in environmental matters; and, clearly, a constitutional limitation on governmental power in particular when it involves the protection of vital public assets such as the environment and health.

**The environmental and public health organizations have been able to conduct a respectful and fruitful dialogue over the years with all the governments of Israel and cooperate with Knesset members from the right and from the left, from all parties and sectors. The protection of public health, nature, and the environment is an interest of every Israeli, uniting diverse publics and communities around shared goals. Therefore, it can be concluded that harm to the environmental and health interest is harm to the Israeli public.**

We call on the government of Israel and the Israeli Knesset to act judiciously and avoid promoting such drastic changes hurriedly and without in-depth dialogue. Unfortunately, the changes are being promoted in a way that will harm a range of important public interests that have an impact on every person in Israel from all political camps.

* Life & Environment (L & E) - Umbrella organization of those who love the quality of life and the environment
* Green Course
* Teachers for Climate
* Arava Institute for Environmental Studies
* Spaces of Rehovot for Sustainability
* Heschel Center for Sustainability
* Hatikva Association (Al-Amal)
* Keshet: Community, Culture, Environment
* Fossil Free Israel
* Zalul Environmental Association
* Kyama in the Western Galilee for Life and the Environment
* Climate Net
* Green Jerusalem Fund
* Israel Home Guardians
* Beer Sheba Nature Guardians
* Fly Safe and Sound
* Transport Today and Tomorrow – Israeli Organization for Sustainable Transportation
* EcoOcean
* 2be-friendly
* 15 Minutes Public Transport Consumer Organization
* Adam Teva V'Din
* Brotherhood in the Vineyard
* ANU – Making Change Ltd.
* Community Gardens of Israel
* Greenpeace Mediterranean
* Parents for Climate
* Society for the Protection of Nature
* Extinction Rebellion
* Israeli Forum for Sustainable Food
* Israeli Council for Green Construction
* Forum for Urban Renewal
* The Natural Step Israel Ltd.
* Green Network
* Committee of the Israeli Association of Public Health Physicians