



## Spotlight

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# The Attorney General

## SPOTLIGHT ON ISRAEL

The Attorney General serves as legal counsel for the Government and public authorities, directs the state prosecution and supervises the legal department that prepares and reviews proposed legislation.

As a result of the high level of professionalism and political neutrality that it has maintained over the years, the office of the Attorney General is held in high esteem both by the public-at-large and by the members of the Government, the Knesset and the Supreme Court. The Attorney General is regarded the legal figure who is the foremost champion of the rule of law and guardian of the public interest.

The Attorney General, who is a civil servant, is appointed by the Government upon the recommendation of the Minister of Justice; the term of his appointment is not defined. Removal of an attorney general from office is effected in a fashion similar to his appointment, but this has hardly ever been implemented.

While the office of the Attorney General has not been the subject of a Basic Law or major legislation, the traditional rules and customs associated with the Attorney General were set out by a committee convened in 1962 and chaired by Shimon Agranat, then a Supreme Court Justice. The Agranat Committee Report substantiated the office's tradition of political neutrality. Since the 1960s, therefore, there has been an understanding that a person who possesses a strong political identity or who is known for his political activism should not be appointed to this post. The report sets out a number of guidelines for ensuring that the office of Attorney General be a non-political entity. It recommended that the person appointed Attorney General should be free of political party influences so that his decisions may be arrived at independently and without concessions to instructions or policy of the Government or the Minister of Justice.

The commission also noted that candidates for the position of Attorney General must meet demanding professional criteria, and it has been Government policy to nominate persons who are qualified to serve as Supreme Court justices. In fact, a number of past attorney generals - Aharon Barak, Haim Cohn, Meir Shamgar and Itzhak Zamir - have gone on to become justices of the Supreme Court.

### Responsibilities of the Attorney General

#### Head of the Prosecution

The Attorney General is authorized to decide whether or not to submit an indictment; to rule with respect to the decision of the police or the State Attorney, to investigate or close a file; to request the extension of an arrested person's detention by a court for a time period longer than 30 days; to request that the immunity of a particular Member of Knesset be waived; and to stay criminal proceedings after an indictment has been submitted. He is further authorized to provide representation and to argue in any legal procedure which, in his view, involves an issue of public interest. In these actions, the Attorney General has exclusive authority and his decisions may be overruled only by the Supreme Court, through petitions submitted to it in its capacity as the High Court of Justice.

Representation of the State in legal proceedings in all courts and tribunals in criminal, civil and administrative matters is entrusted to the Attorney General. He delegates much of this responsibility to the State Attorney. The prosecutors take their direction from the Attorney General and the State Attorney - on whether or not to pursue a matter in the courts on behalf of the State by initiating legal proceedings. If legal actions are taken against the State, the Attorney General may choose to defend, or not to defend, the State and its public bodies in court. The Government may not hire a private attorney without the consent of the Attorney General's office, regardless of whether or not the Attorney General and his staff are prepared to represent the Government in a particular case.

#### Legal Advisor to the Government

As the government's legal advisor, the Attorney General counsels the Government, the ministers, government ministries, local authorities, and other public bodies, such as the post office and the national telephone company. He provides counsel directly or

indirectly through the government legal service, namely by the legal advisors of all government ministries. The Attorney General is also responsible for issuing guidelines to the Government on the interpretation of law and appropriate legal procedures.

The legal opinions of the Attorney General are accepted as authoritative interpretations of the law and are therefore binding on all government authorities. This provides for two important internal checks on the lawful workings of the government. First, because of the authoritative quality of the Attorney General's decisions and the respect in which his office is held, government officials commonly seek his advice and consent before making policy decisions which may later be found to be contrary to the law. Furthermore, if an authority acts against his legal counsel, the Attorney General may decide not to defend that body in court.

#### Legislative Advice

The Attorney General is responsible for ensuring that the Basic Laws of the State and appropriate procedures are respected whenever laws are passed and administrative actions are taken. In this capacity, he advises the Division of Legislation in the Ministry of Justice in the preparation of bills to be presented by the Government and in supervising the promulgation of regulations by all government ministries. The Division of Legislation checks both Government bills and private members' bills to determine whether they are consistent with existing laws and rights and advises the Government accordingly.

#### Guardian of the Public Interest and the Rule of Law

While the Attorney General acts as legal counsel for the government, he is foremost the lawyer for the people. As former Attorney General and current Supreme Court Justice Itzhak Zamir wrote: "The true client of the Attorney General is the public." He is the guardian of the public interest, the rule of law and civil liberties. The Attorney General ensures the efficient and effective functioning of criminal law enforcement, the proper operation of the administration and the appropriateness of the measures of public authorities at all levels. The Attorney General attends Government meetings to advise on legal matters and also to ensure that the government is acting within its powers.

#### See Also

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