

Zulat's Opinion on Government's Proposed Legislation of Override Clause

Government Given Unlimited Power to Violate Human and Civil Rights, Democracy, and Rule of Law En Route to Dictatorship

- Zulat for Equality and Human Rights promotes protection of the rule of law and democracy. On 20 June 2022, we published a report titled *Pseudo Democracy: State of the Regime in Israel*,¹ warning of the authoritarian processes that have been accelerated since the establishment of the new government.
- **The proposed amendment is part of a body of legislation aimed at regime change:** 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 already fully controls the legislative branch.² In order to implement this revolution, Levin announced a package of legislative amendments, including: a clause to override Supreme Court decisions by a majority of 61 of the Knesset's 120 MKs, increasing the number of politicians in the Judicial Appointments Committee, ending the reasonableness standard invoked by the Supreme Court to overrule government decisions deemed unreasonable, and making legal counsels of government ministries positions of trust. Retired Supreme Court President Aharon Barak called Minister Levin's plan a collection of "all the bad proposals made over the years" equivalent to a "revolution with tanks."³
- **The proposed amendment:** It sets strict restrictions on the Supreme Court's ability to annul laws or legal provisions: obligatory court plenum, vote by 80% majority, no authority to perform judicial review of basic laws, judicial review of ordinary laws restricted to cases when these are substantially incompatible with Basic Laws, and an override clause requiring a majority of 61 MKs.
- **Such legislation would spell the abolishment of judicial review of basic and ordinary laws. The government would be able to enact any ordinary or basic law it wishes without any limitations, including personalized legislation that would seriously harm the rule of law and the fight against corruption.** Due to our parliamentary system, the government has a majority in the Knesset or else it would almost always lose a vote of confidence. This is also the reason why most of the bills that become laws are submitted by the government. Therefore, a decision enabling the Knesset to overturn a Supreme Court ruling, either in advance or retroactively, with the 64-MK majority currently enjoyed by the coalition or with a higher number of MKs, would be tantamount to giving the government unlimited power to violate human and civil rights, democracy, and the rule of law.
- **The proposed override clause would abolish the existent protection of all the rights and regime practices enshrined in Basic Laws, as well as the Supreme Court's ability to protect human and civil rights, the democratic system of government, and the rule**

¹ Eitay Mack, [Pseudo Democracy: State of the Regime in Israel](#), Zulat, 20 June 2022.

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

³ TOI Staff, [Ex-Chief Justice Barak: Government's Judicial Reform Plan 'Will Strangle Democracy'](#), The Times of Israel, 6 January 2023.

of law. The proposed override clause would apply to all constitutional rights, including the right to equality, the right to dignity, the right to vote and be elected, the right to liberty, the right to freedom of expression, the right to freedom of conscience, the right to freedom of religion and freedom from religion, the right to privacy, the right to property, and the right to exit and enter Israel.

- **The override clause would make it difficult to block dangerous, corrupt, and undemocratic bills.** To date, the very idea that the rare option exists to overturn a law had a restraining effect on the legislative process in the Knesset and provided its legal advisors and Attorney General's officers with leverage to tone down extreme and predatory bills. In other words, the proposed override clause means not only that the Supreme Court would be unable to annul laws that violate human and civil rights, but that more of such dangerous laws should be expected.

- **The override clause does not suit the Israeli political system, which is not based on a strong system of checks and balances.** In the few countries that have not adopted judicial review or in countries where there is an override clause, there are other mechanisms designed to curb the power of the political majority. Thus, some have a federal regime that distributes power between the central government and the states; some have a bicameral and at times contrarian legislature; some have a presidential regime where a clear separation exists between the executive and legislative branches; and yet other countries subordinate their laws to international treaties and tribunals, such as the European Court of Human Rights. **In Israel, such checks and balances do not exist.**

- **Opposition MKs must refuse to discuss an override clause requiring a majority of more than 61 MKs.**

- The override clause cannot be isolated from the package of legislative amendments announced by Minister Levin. For example, if the Supreme Court's judges are to be political-personal appointments by the government, there would be no need to activate an override clause with any majority whatsoever since in any case the judges would be the servants of the government and its whims.
- Israeli politics being what it is, the fear is not only about an override clause that hinges on a majority of 61 MKs, but about one that requires a greater majority. Sadly enough, in certain contexts, support for the denial of human and civil rights as well as the rights of women, LGBTQ, religious and national minorities cuts across political parties and is a matter of "horse trading." One such example is the omission of the right to equality from Basic Law: Israel-The Nation-State of the Jewish People and the abortive efforts to include it in the law, if only to avoid hurting the Druze minority.

Author and legal adviser: Adv. Eitay Mack