

## **Zulat's Opinion on Knesset Constitution Committee Chairman's Proposed Amendment to Basic Law: The Judiciary**

- 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*,<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup>

- **The amendment proposed by MK Rotman, Chairman of the Constitution Committee, has no status at this stage given that it has not yet been submitted to the committee as either a private or a governmental bill.**

Here are Zulat's comments concerning the main points of MK Rotman's proposal:

- **Similar to Minister Levin's proposal, MK Rotman also proposes that the Judicial Appointments Committee come under the absolute control of the government.** Of its nine members, six would represent the government: the justice minister, two other ministers selected by the government, and three MKs (the chairmen of the House Committee, the State Audit Committee, and the Constitution, Law and Justice Committee), who are usually members of the coalition.

**The difference:** (1) Levin proposes that the committee should, in addition, include two more public figures selected by the Minister of Justice, one of them a lawyer (in other words, out of 11 members, 8 would represent the government); (2) MK Rotman's proposal does not mention Levin's plan to hold public hearings for Supreme Court candidates and to abolish its seniority system.

- **Similar to Minister Levin's proposal, MK Rotman also proposes to abolish the reasonableness standard.**

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

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

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

**The difference:** His proposal is a shortened version of Levin's, but its implication is essentially the same ("The Supreme Court will not discuss the reasonableness of a ruling or issue an edict about it to the government, the prime minister, a minister, or any other elected official as determined by the law").

• **Similar to Minister Levin's proposal, MK Rotman also proposes to ban judicial review of Basic Laws and to enact an override clause requiring a majority of 61 MKs. Unlike Levin's proposal, MK Rotman proposes to further limit the Supreme Court's ability to cancel a law provision or an ordinary law and to allow "ex-ante" override.**

**The difference:** (1) While under Levin's proposal an 80% majority of all Supreme Court judges would be required to annul an ordinary law that has been found to "substantially" contradict a specific provision in a Basic Law, MK Rotman's proposal requires 100% of the Supreme Court to agree that a law "clearly" contradicts a Basic Law provision; (2) While Levin's proposal speaks only of a "retroactive" override clause (if the law explicitly states that it "shall remain in effect despite the Supreme Court's ruling"), MK Rotman's proposal includes the option of an "ex-ante" override clause; namely, to prevent judicial review by explicitly writing that a law "shall remain in effect despite what is stipulated in the Basic Laws."

- Therefore, Zulat recommends to the MKs representing the democratic public:
  - ✓ **Disguised as a proposal on behalf of the Chairman of the Knesset Constitution Committee, MK Rotman's is the same proposal for regime revolution as the one presented by Justice Minister Levin, and even worse with regard to the override clause ("ex-ante" and "retroactive").**
  - ✓ **There is no guarantee that the components left unmentioned by MK Rotman will not be brought up down the road (i.e., public hearings for Supreme Court candidates and abolition of the seniority system). MKs must refuse to engage in a debate before the government reveals all the "chapters" of the package of legislative amendments that it intends to promote based on the coalition agreements. The "salami method" is designed to confuse MKs and the public regarding the comprehensive move planned by the government to effect a regime revolution.**
  - ✓ **MKs must refuse to discuss any proposed amendment separately. Instead, they must treat them as a single package that will transform Israel into an authoritarian regime and completely eliminate the checks and balances between the branches of government.**

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