

Reduced Conditions for Prime Minister's Impeachment Harm Democracy and Increase Risk of Corruption

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 which warned of the authoritarian processes that have taken place in the State of Israel over the years and which have accelerated since the establishment of the 37th Government on 29 December 2022.

The proposed law amendments are part of a body of legislation aimed at regime change: Immediately upon its establishment, Israel's 37th Government started the accelerated promotion of legislation aimed at crushing the independence of the judiciary and subordinate it to the executive branch, which already fully controls the legislature.² As part of the implementation of this plan, the Knesset has already passed in first reading a series of bills that strengthen the power of the politicians in the Judicial Selection Committee, bar the Supreme Court from invalidating Basic Laws or overturning ordinary laws, and allow the Knesset to enact an override clause.³ The legislation of these and other laws continues to advance these days at full speed. Retired Supreme Court President Aharon Barak has termed the reform pursued by the government a collection of "all the bad proposals made over the years," equivalent to a "revolution with tanks."⁴

The situation today: Article 16(b) of Basic Law: The Government does not restrict the grounds for impeachment, nor does it establish who is authorized to make such a pronouncement. Former prime minister Ariel Sharon was effectively pronounced incapacitated by the Attorney General, whereas a petition to impeach former prime minister Ehud Olmert was rejected by the Supreme Court with a parenthetical note: "Should subsequently transpire that the prime minister's conduct does not allow the criminal investigations against him to proceed properly, there may be room for the Attorney General to pronounce the temporary impeachment of the prime minister."⁵

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 Chen Maanit and Noa Shpigel, [How Far Has Regime Revolution Reached? Update on Legislation Blitz](#), *Haaretz*, 14 March 2023 (Hebrew).

⁴ TOI Staff, [Ex-Chief Justice Barak: Government's Judicial Reform Plan 'Will Strangle Democracy'](#), *The Times of Israel*, 6 January 2023.

⁵ [Supreme Court Ruling HCJ 6231/08 Yoav Yitzhak v. Israeli Prime Minister Ehud Olmert](#), *Nevo*, 4 August 2008 (Hebrew).

The proposed amendment restricts impeachment to cases where physical or mental incapacity prevent a prime minister from fulfilling his duties, and stipulates that the authority to declare this incapacity will lie with the prime minister himself or with the government, if approved by three-quarters of the ministers. The government's decision will be valid for three days, at which point it will be submitted to the Knesset House Committee for endorsement by a two-thirds majority. If the government's decision is due to health reasons, the House Committee will also factor in a medical opinion. Any extension of more than seven days, if suggested by the House Committee, will be put to a vote by the plenum and will require a majority of 80 MKs. Impeachment will be a political decision, which will be immune from judicial review and will not take into consideration the Attorney General's position.

Zulat's Position

- The prime minister would be able to systematically commit serious criminal offenses and abuse his power, yet continue in office business-as-usual. In the absence of judicial review, the irrelevance of the Attorney General's position, and the restriction of impeachment to physical or mental incapacity, the proposal could lead to a situation where, as long as he is not physically or mentally unfit for office, the prime minister could systematically commit serious criminal offenses (such as assault, bodily harm, homicide, sexual offenses, state security breaches, or espionage) but would remain in power until such time as elections are called.
- Impeachment would become a wholly political question. The government, the House Committee, and the Knesset might abstain from declaring the prime minister physically or mentally unfit in order to stay in power or if they sense they lack the majority required for such a move. In the absence of judicial review and the irrelevance of the Attorney General's position, the proposed mechanism for impeaching a physically or mentally unfit prime minister might not work. Given that the government fully controls the Knesset and that the government is formed by the coalition, the proposed majority of three-quarters of the government ministers, two-thirds of the House Committee's members, or 80 MKs may be unattainable due to a variety of political interests. Were the prime minister to be in a coma, the ministers would become a kind of "junta" that would run the country until the scheduled time for elections or until they decided to bring them forward.
- Were elections to be postponed for whatever reason, the incumbent prime minister might become permanent. In the absence of judicial review and the irrelevance of the

Attorney General's position, as long as the date of elections is postponed with the approval of the government-controlled Knesset, either because of an emergency situation or for any political reason, the incumbent prime minister would remain in office indefinitely or until he and the ministers decided otherwise.

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