

Bill to Shut Down Foreign Broadcaster Harms Democracy**The bill Turning a Draconian Temporary Provision into a Standing Order
Must Not Be Legislated**

On 26 June 2024, MK Ariel Kellner's private bill seeking to turn into a standing order the temporary provision enacted in April 2024 that allowed the shutdown of a foreign broadcaster was approved by the Knesset in a preliminary reading (henceforth, "the proposed bill").

Zulat's position is that such legislation is unacceptable in a democratic and liberal country, and therefore we believe the Israeli Knesset should reject it outright.

The proposed bill seeks to significantly expand the Law on Prevention of Foreign Broadcasting Entity Harm to State Security: Temporary Provision-2024 (henceforth, "Temporary Provision"), which followed the Emergency Regulations for the Iron Swords War passed on 20 October 2023 (henceforth, "Emergency Regulations").

These far-reaching legislative measures approved by the government in the midst of war confer upon the political echelon the authority to stop the operations of foreign broadcasters in Israel and to block people's access to news that interests them and to varied information, including material that is inconsistent with the government's narrative or is not aired on Israeli media outlets. Such dispositions would very adversely affect freedom of expression, freedom of the press, the free media, and the right to diverse and independent information.

The Temporary Provision, in effect until 31 July 2024, is draconian and extreme, and as will be described below, was legislated immediately after the declaration of a state of emergency at the start of the war. Not only is prolonging such a temporary provision unacceptable in a democratic regime, but a bill proposing to expand powers that were excessive to start with and anchoring them in law is unlawful and illegal. It is a bill that clearly and substantially harms democracy and fundamental constitutional rights, has no worthy purpose, and is disproportionate given that there are other, less harmful means to achieve the goal of upholding state security.

There is no ignoring the fact that the proposed bill is but one in a series of extreme legislative moves being promoted these days, often under the guise of "security needs," which when added up reflect the government's effort to hijack the free media in Israel

amid destruction of the Fourth Estate, the mainstay of a democratic regime, in pursuit of its quest to carry out a regime revolution.

The following are Zulat's main arguments against extending the Temporary Provision:

Draconian Temporary Dispositions in Response to Extreme State of Emergency Upon Outbreak of War

1. As will be detailed below, the powers contained in the Temporary Provision, which are particularly excessive and far-reaching in the first place, were set as limited and temporary dispositions in clear connection to the extreme state of emergency, verging on a threat to Israel's existence, prompted by the outbreak of war. Even if it was enacted in response to a security need at the start of the war, this Temporary Provision instituted radical measures that are unacceptable in a democratic regime. Further on in this document, we point to the dangerous implications of a temporary provision. It should be noted that these were also listed in the petition against the proposed bill submitted to the Supreme Court, which is still pending,¹ and that already in the first hearing the court voiced its position regarding the extreme measures contained in the Temporary Provision, or as the Honorable Judge Yitzhak Amit put it: "It is a dramatic law. Not too many countries enact such a law."
2. The Emergency Regulations imposed by the government on 20 October 2023, in the aftermath of the October 7 terrorist attack and the start of the war, conferred extraordinary powers upon the Minister of Communications, especially with regard to the operation of foreign channels in Israel, subject to the Defense Minister's approval and certainty that their broadcasts were really harming state security, as well as the approval of the Ministerial Committee on National Security Affairs.
3. As part of these extraordinary capacities, the Minister of Communications was empowered to order Israeli media platforms to halt the broadcasts of a foreign channel, order the closure of its local offices, order the seizure of equipment used to deliver content, and order the removal of its website.
4. The minister's powers were limited to a maximum of 30 days, with the option to extend them for another 30 days, should the Defense Minister ascertain that the stipulated

§ All references in this document are in Hebrew.

¹ [Supreme Court Ruling HCJ 2859/24 Association for Civil Rights in Israel v. Prime Minister](#), ACRI, 4 April 2024.

conditions persisted.

5. The Emergency Regulations were to remain in force for three months from the day of publication, or until the expiration of the declaration of the special situation on the home front, or until the end of major military operations (namely, the Iron Swords War), whichever came first. Indeed, the Emergency Regulations expired on 20 January 2024.
6. Three months later, in April 2024, the Knesset enacted a law defined as a temporary provision, which applied most of the dispositions contained in the Emergency Regulations, with certain changes.
7. The Temporary Provision empowered the Minister of Communications to order measures similar to those contained in the Emergency Regulations, with the approval of the Prime Minister, the government, or the Ministerial Committee on National Security Affairs, subject to the opinion of security officials and after the Prime Minister ascertained that the foreign channel's broadcasts actually harmed state security
8. Under the Temporary Provision, the minister's powers were extended for a maximum of 45 days, with the option to extend them for another 45 days, should the Prime Minister ascertain that the stipulated conditions persisted.
9. In this context, it was also decided that the law would be defined a **temporary provision** in effect until 31 July 2024 or until the expiration of the declaration of the special situation on the home front, or until the end of major military operations, whichever came first.
10. The required correlation between the extraordinary powers contained in the Temporary Provision and the state of emergency was made largely clear in the explanation attached to the draft law:

"Due to the fact that the State of Israel is still in the midst of the Iron Swords War, due to a security official's view that the powers conferred upon the Minister of Communications under the Emergency Regulations need to be upheld, and due to the time that has passed since the expiration of the Emergency Regulations, which cannot be extended at this point, it is proposed to anchor in legislation, in the form of a three-month temporary provision or until the expiration of the special situation on the home front or the end of major military operations, whichever comes first, the powers contained in the Emergency Regulations with respect to a foreign channel's broadcasts that actually harm state security, as detailed below."

11. The powers deriving from the Emergency Regulations and the Temporary Provision have to date been used against the Lebanese TV channel Al-Mayadeen, the Al-Jazeera TV network, and reportedly, also against the American news agency AP for allegedly relaying broadcasts to Al-Jazeera. The order regarding AP was rescinded following unprecedented criticism from many countries.

Proposed Bill Seeks to Expand Draconian Powers Excessive to Start With

12. The proposed bill would like the legislator to expand the extraordinary draconian powers conferred upon the Minister of Communications, thereby treading a dangerous path toward the closure of media outlets in a democratic country. As if it were not enough that the powers stipulated in temporary legislation infringe on democracy and fundamental constitutional principles, the proposed bill seeks to significantly expand the constitutional violation already contained in the Emergency Regulations and the Temporary Provision.
13. To that end, the bill proposes to add a paragraph to Article 2(a)(5) of the Temporary Provision conferring upon the Minister of Communications extraordinary sweeping powers to order government entities "in charge of the subject" to stop the broadcasts of a "channel." There is no doubt that this is an extremely broad and general formulation that includes no limits or restraints.

This vagueness appears to indicate that the proposed bill would confer upon the minister extremely broad powers to instruct government agencies to block specific content on YouTube, Facebook, or similar social media platforms where the "channel" can be viewed. This type of restrictions on the Internet and social media platforms is accepted practice only in dictatorships and totalitarian regimes.

14. The proposed bill extends indefinitely the period during which social media platforms can be ordered to stop airing the foreign channel, per Article 2(a) of the Temporary Provision.
15. The proposed bill also extends the period during which other orders of the minister will remain in effect from 45 to 90 days, with the option to extend it by 90 days each time, subject to the limitations stipulated in the bill.
16. And what is worst of all, in our view, is that unlike the time-limited Emergency Regulations and Temporary Provision, the proposed bill seeks to make these open-

ended powers and turn the Temporary Provision into a standing order, even though this fundamentally contradicts freedom of expression and freedom of the press in a democratic regime.

Unreasonable, Disproportionate, Unconstitutional Bill

17. As stated, the dispositions set forth in the Temporary Provision would be considered particularly extraordinary and far-reaching, even if the current bill seeking to expand them had not been submitted.
18. The government has been operating in several ways simultaneously and doing everything in its power, in a hit-and-miss fashion, to extend the draconian and undemocratic powers it wrested for itself under the Temporary Provision and Emergency Regulations, indefinitely and totally unrelated to the state of emergency, in order to impose restrictions on the free media in Israel. Although these were depicted as designed to ward off harm to state security by specific media outlets like Al-Mayadeen and Al-Jazeera, they clearly constitute a slippery slope since both the Emergency Regulations and the Temporary Provision also sanction steps against other foreign channels whose broadcasts may not conform to Israel's PR line. A first example was the use of these powers vis-à-vis the AP press agency.
19. It should be noted that the Emergency Regulations and the Temporary Provision, as well as the current bill, are formulated in such broad terms as to enable sanctions and restrictions to be imposed, say, on American and British channels (e.g., CNN and BBC), and in fact on any foreign broadcaster.
20. There is no arguing that the authority to impose the kind of aggressive, sweeping, and draconian sanctions on media outlets prescribed in the Emergency Regulations and the Temporary Provision, including closing offices, confiscating equipment and journalists' mobile phones, and blocking broadcasts does not belong in a democratic regime and might seriously infringe on the freedom of expression and freedom of the press, as well as on the right of Israelis to receive information.
21. Moreover, the Temporary Provision does not empower the Supreme Court to annul the minister's decisions and even limits the scope of its judicial review, thereby offering no real right of appeal.
22. The courts have ruled that freedom of expression is "the prerequisite for the realization

of almost all other freedoms" and "the lifeline of democracy."² Freedom of speech and the public's right to know are intertwined. People's access to varied sources of information is a sine qua non for the exercise of freedom of expression.³

23. Furthermore, the people's right to know is closely related to the fulfillment of the citizen's right to be part of a democratic society, whose mainstay is a free media. After all, access to free information provided by the media is what enables citizens to form an opinion on what is happening around them. A free flow of information and a free exchange of ideas, including criticism of the government, are the quintessence of a democratic regime.⁴

24. Therefore, the dispositions anchored in the Temporary Provision are clearly incompatible with the principle of proportionality. The law books contain other, less offensive measures to uphold state security in the present circumstances in a more proportionate manner, such as the military censor's authority to selectively remove content that endangers security or impose sanctions on a specific journalist, as well as the authority of the State Attorney Office's Cyber Department to remove specific content from social media platforms that might jeopardize state security.

25. Moreover, it is doubtful that the dispositions in the Temporary Provision actually contribute to security. Today, nine months into the war, consumption of foreign media broadcasts has evidently failed to sway vast segments of the population in a way that truly endangers state security. This gives rise to doubts that the purpose of the aforementioned dispositions is to tag and punish foreign media outlets (thus indirectly tagging and punishing audiences identified with them) because the content of their programs is not to the government's liking. If that's the case, then this is clearly not a worthy purpose.

26. And if this is the case with regard to existing dispositions, then there is no doubt that the proposed bill seeking to expand them even more will conflict with fundamental constitutional principles and will be incompatible with the right to freedom of expression and the people's right to know.

27. Moreover, the proposal to legislate these dispositions as a standing order rather than as a temporary provision totally contradicts the main purpose of the Emergency

² Supreme Court Ruling HCJ 255/68 State of Israel v. Avraham Ben-Moshe, *Nevo*, 8 September 1968.

³ Supreme Court Ruling HCJ 5771/93 Citrin v. Minister of Justice, *Nevo*.

⁴ [Supreme Court Ruling HCJ 751/10 Anonymous v. Dr. Ilana Dayan](#), *Supreme Decisions*, 7 February 2011.

Regulations and the Temporary Provision: the correlation to the state of war, which justified such draconian and anti-democratic measures in the first place. This point reinforces suspicions that there was no reasonable security justification for the Temporary Provision either.

28. The disconnect between the legislated extraordinary dispositions and the current state of emergency totally invalidates the worthy purpose that may have existed or may still exist to justify the violation of fundamental constitutional rights. Their conversion into permanent dispositions will no longer enable invocation of the security justification, which has to date been the main anchor of their legislation, thereby rendering the Temporary Provision illegal.

29. It should be noted that the government is seeking to extend the extreme dispositions in the Temporary Provision in **parallel with the proposed bill** and in addition to a recent proposed amendment, which seeks to **extend the Temporary Provision for another four months, until the end of November 2024**.⁵

Thus, a "temporary provision" brought about by an extreme state of emergency as a short-term arrangement for a maximum of three months might remain in effect for more than a year after the declaration of the state of emergency. This attests to the government's effort to uphold in any way it can the draconian and undemocratic powers it assumed by virtue of a so-called temporary provision.

Conclusion

30. As it is, the Temporary Provision confers upon the political echelon an unreasonable and anti-democratic capacity to impose far-reaching sanctions on foreign media entities, without any real right of appeal, and to block the Supreme Court's judicial review of unconstitutional administrative decisions.

31. The proposed bill to expand the aforementioned powers and enshrine them as a standing order is unlawful and illegal. Its harm to democracy, a free media, and fundamental constitutional rights would be clearly and substantially disproportionate and would serve no worthy purpose.

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⁵ [Memorandum on Amendment of Prevention of Foreign Broadcasting Entity Harm to State Security Law: Temporary Provision for Iron Swords War-2024](#), Ministry of Justice, 27 June 2024.