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Fight till the bitter end

The Israeli Knesset just passed the first bill of its judicial overhaul agenda, risking irreconcilable polarisation and violent escalation

The Israeli Knesset just passed the first bill of its judicial overhaul agenda. The government thus chose not to engage in further mediation offers by the President. It also chose to push its agenda through against mass protests and warnings from senior figures from the security establishment. And has thus pushed the country into extreme polarisation.

Already from the start of the year, Israelis have been demonstrating against the re-organisation of state and society that Netanyahu's right-wing, religious cabinet is pushing for. With striking slogans, such as 'democratia', 'shame' (on the government), 'we will win' and 'we are the majority,' the protesters are standing up against the judicial overhaul, as it would undermine the separation of powers and pave the way to an illiberal democracy.

In June, efforts by Israeli President Yitzhak Herzog to broker a compromise between the government and the opposition on the main points of the reform failed. Since then, the government has been pushing for the judicial overhaul through individual bills rather than a comprehensive reform package. To prevent this, the protest movement expanded and intensified its activities in July. In addition to weekly mass demonstrations in Israel's major cities, last week saw the second 'Day of Resistance' with highways and train stations blocked and digital services disrupted across the country. These days, an impressive march to Jerusalem has sought to stop the legislative process. Reservists from the army's elite units - including fighter pilots - have announced they will no longer serve if the government pushes through the legislation.

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The movement owes its disruptive potential – and thus its political weight – to the broad alliance that it represents, bringing together representatives of the decisive sectors of politics, business, security and civil society in Israel.

on the liberal right.

Although organised by the Zionist left, it also enjoys broad support in the centre and on the liberal right of the political spectrum. The speakers at the protest rallies reflect exactly this breadth. For example, Dan Meridor, a former finance minister in Netanyahu's cabinet, spoke in Tel Aviv's protest on 15 July, along with, among others, representatives of the reservists and high-tech industry.

The alliance's objective is to preserve Israel's political and social order, not to transform it. In this vein, it invokes the formula of the 'Jewish and democratic state' ascribed to the Declaration of Independence. With this comes that the movement's speakers do not address the inherent tensions: neither the tension between the two pillars 'Jewish' and 'democratic' inside Israel, nor the fact that around five million Palestinians are under prolonged occupation and have no say in Israel's decision-making process. Although an anti-occupation bloc is present at the protests, it is tolerated rather than welcomed.

Risking the loss of democracy

In the last weeks, the main concern of the protest movement was to halt the government's intended abolition of key legal principles and the change in procedures for appointing judges to the Supreme Court. These legal changes would undermine the independence of the judiciary and limit its powers in reviewing government actions and appointments. The draft law that was just passed earlier today will significantly restrict the application of the so-called reasonableness standard as a guiding legal principle.

What sounds technical at first is a crucial step in undermining the rule of law. For the principle of reasonableness used to play an important role in Israel's system of government: It has served asthe guideline for the Supreme Court when reviewing government actions, be it the appointment of members of the government or the appointment of legal advisors in the ministries (who for their part have a crucial function in upholding the rule of law) or in policy or personnel decisions made by the government. The latter could include, for example, the dismissal of an unwelcome Prosecutor General - i.e. the person currently representing the various charges of bribery, fraud and breach of trust against Prime Minister Netanyahu.

Further bills are to be tabled following the summer break. Most notably, these include one aimed at changing the composition of the body that

appoints judges (not least those of the Supreme Court). The aim is to expand the influence of the government bench at the expense of the opposition and to reduce the involvement of representatives of the Bar Association and Supreme Court judges. This would allow future appointments to the courts match primarily political priorities rather than being based on professional qualifications. They would also no longer be the outcome of a compromise between the government and the opposition, as has been the case up to now. Another draft law aims to limit the powers of the Supreme Court to review legislation and to allow the Knesset to overrule related court decisions with a simple majority.

There are no other effective checks and balances on government action: neither a horizontal or vertical counterweight, nor a constitutionally protected bill of rights or supranational courts.

If the Netanyahu cabinet succeeds in implementing the judicial overhaul using salami tactics, the decisive mechanisms that have been available to date to ensure the rule of law in the Israeli system will be defunct. This would pave the way to an illiberal majoritarian democracy with no effective minority protection. For in Israel there are no other effective checks and balances on government action: neither a horizontal separation of powers (as in the presidential democracies of the US or France), nor a vertical separation of powers (as in the federal system of the Federal Republic of Germany), nor a constitutionally protected bill of rights or supranational courts (like the European Court of Human Rights).

It is still unclear whether the protest movement will succeed in stopping upcoming bills of the proposed legislation or at least putting it on hold once again, thereby permitting a new mediation process or a referendum. It is already blatant though that the focus on the judicial overhaul has obscured the acceleration of the annexation, settlement and displacement agenda which is being pushed forward in parallel by the Netanyahu government. And these policies call into question democracy in Israel at least as much as the restructuring of the judiciary. Because, as the minority among the protesters puts it, there is no democracy with occupation.

Currently, it seems that both sides - government and protest movement - are determined to do their utmost to prevail in the confrontation over the nature of Israel's democracy. The more the anti-Bibi alliance uses its disruptive power, the more the government is likely to rely on mobilising its supporters, including among the partly radicalised and armed settlers. The biggest risk therefore is one of irreconcilable polarisation and violent

escalation.



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