

Zulat's Position on Knesset Constitution Committee Chairman Simcha Rotman's Proposal to Appoint Two Supreme Court Judges on Government's Behalf

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.

In light of the extensive public protest and international criticism against the regime revolution, Knesset Constitution Committee Chairman Simcha Rotman submitted a proposal whereby the first two appointments of Supreme Court judges during every Knesset's term should be approved by the six members of the coalition on the Judicial Selection Committee. Other appointments would require the same majority, but the six committee members would have to include an opposition MK and a judge.

Zulat's position

- ☒ **In practice, the proposal means that the government would select two judges based on their political or party affiliation.** These judges might not be able to to conduct an independent judicial review of government decisions and legislation by the government-controlled Knesset. Even if they proved their independence from the government during their tenure, they would a priori enjoy limited public trust on account of being political appointments, which would hurt the entire judicial system and tarnish its reputation.
- ☒ **The two selected judges might be extreme conservatives who could actually implement the principles of the regime revolution, even if their legislation by the Knesset is still incomplete.** According to Israel's legal system and Basic Law:

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

The Judiciary, Supreme Court rulings oblige all the courts other than itself. In other words, the judges set the rules and their interpretation of the law is binding on all. For example, the substance of the reasonableness standard and the protection of human and civil rights that have not yet been explicitly recognized in Basic Laws, especially the right to equality and freedom of expression, are pending the interpretation of the Supreme Court. Judges appointed on behalf of the government could actually bring about the implementation of the principles of the regime revolution, even if their legislation by the Knesset is still incomplete. In other words, they could block any judicial review of laws or intervention in corrupt appointments, and they could emasculate the reasonableness standard and the protection of human and civil rights.

- ☒ **The impact of politicians controlling the Supreme Court is much more dramatic in Israel than in the United States.** Even after the US Supreme Court overturned the constitutional right to abortion, individual states are still able to protect it thanks to the federal system of government, which is what some states have done, while others continue their legal struggles against draconian anti-abortion laws. This is not possible in Israel, given that the Supreme Court here has the final say.
- ☒ **The proposal gives the illusion of never-ending turnover in the Supreme Court, whereas the reality is that judges are appointed to permanent positions until their retirement at age 70 and that the current government could in effect decide the character of the Supreme Court for decades to come.** The proposal creates the illusion that every government to be formed after a Knesset election would select the first two Supreme Court judges and would steer clear of all other appointments. In practice, the current Supreme Court consists of 15 judges in permanent positions until age 70. During this government's four-year tenure, only four slots are expected to become vacant, and if allowed to appoint two of them,

the government would be able to shape the character of the Supreme Court for decades to come.

- ☒ **The government wants to determine the identity of the judges who will discuss the regime revolution.** Consent by the opposition to let the government select two Supreme Court Judges would not stop the anti-democratic legislation. The government has not yet unveiled all the "chapters" of the legislative package stemming from the coalition agreements that it intends to promote. Moreover, it has not declared that the appointment of these two judges would end its preoccupation with abolishing the independence of the judiciary, the legal counsels, the media, and the public service, and that no further bills would be advanced. The government appears to be using the "salami method" to determine the identity of the judges who will hear the petitions against the regime revolution, before its legislation is completed and petitions are filed.

Author and legal adviser: Eitay Mack