

## **Zulat's Position on "Compromise Proposals" Regarding Judicial Selection Committee: No to Cronyism in Appointment of Judges**

Zulat for Equality and Human Rights promotes the protection of the rule of law and democracy, and concerns itself with the strengthening of authoritarian processes in the State of Israel over the years. These processes have accelerated since the establishment of the 37th government on 29 December 2022, as shown in Zulat's report *The Regime in Israel: Quasi-Authoritarian State En Route to Dictatorship*.<sup>1</sup> The report reviews the moves that have today brought Israel to the brink of full authoritarianism, as part of the regime revolution promoted by Netanyahu's government in his third premiership round.

While at the Presidential Residence in Jerusalem opposition and coalition representatives are purportedly engaged in a dialogue about the regime revolution's laws, away from the public eye, the Netanyahu government continues with all its might its efforts to crush the remnants of the state's democratic institutions. A host of "compromise proposals," both real and bogus, have been reported in the media since the talks began. Reporting on 28 May 2023 that the coalition had agreed to appoint one rather than two representatives to the Judicial Selection Committee, the journalist Amit Segal concluded: "It is meaningless though. Either way, the coalition will have veto powers over the appointment of Supreme Court judges."<sup>2</sup>

Zulat's position is that it makes no difference how the government arranges the seats or if more seats are added to the committee, given that the basic premise of all these proposals is the government's demand to appoint judges on its behalf. Therefore, the opposition representatives must not compromise on the issue.

Zulat's opposition to a compromise is based on the following considerations:

- The fact that the Justice Minister refuses to convene the Judicial Selection Committee until "agreement" is reached on the appointment of judges by the government is an abuse of his power and a violation of the public interest. Failure to appoint judges to all courts, particularly to fill in the vacancies in the Supreme Court (in view of the retirement of its president and another judge by the end of this year),

<sup>1</sup> Eitay Mack, [The Regime in Israel: Quasi-Authoritarian State En Route to Dictatorship](#), *Zulat*, 28 May 2023 (Hebrew).

<sup>2</sup> Amit Segal, [Battle for Judicial Selection Committee: Coalition Won't Try To Appoint Two Representatives on Its Behalf](#), *N12*, 28 May 2023 (Hebrew).

seriously harms the functioning of a judiciary that already suffers from overload and red tape. The government is obscenely exacerbating the artificial crisis in the judicial system created by Prime Minister Netanyahu during his years in office to justify its takeover of the judiciary.

- **Appointing judges chosen by the government will casue a total politicization of the Supreme Court and lead to a loss of public trust in the institution.** Petitioners or appellants against decisions by the government or by local council heads affiliated with the coalition parties will be totally helpless in the face of a judge chosen by the government.
- **It will lead to the politicization of all courts, not just the Supreme Court.** Candidates for magistrate and district courts or judges seeking promotion will know that for their candidacy/promotion to have realistic chances, they must be politically loyal and build a "portfolio" of rulings and verdicts that will prove they are indeed acting on behalf of the government.
- **It will increase corruption.** Appointing judges chosen by the government will allow the prime minister and coalition members being investigated, suspected, or accused of corruption to select judges that suit their legal needs. Candidates for judgeship/promotion may strike corrupt deals with politicians, who will assure them their support in the Judicial Selection Committee in exchange for leniency in the criminal proceedings.
- **Such judges might espouse extreme conservative positions and actually implement the principles of the regime revolution even if its legislation by the Knesset is still incomplete.** According to Israel's legal system and Basic Law: 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 determined according to their interpretation. Judges appointed by the government could actually bring about the implementation of the principles of the regime revolution, even if its 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 reduce 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.** Given the federal system of government in the United States, when the US Supreme Court overturned the constitutional right to terminate a pregnancy, individual states could still enact their own protections, which some of them did, while others engaged in legal battles against these draconian anti-abortion laws. This is not possible in Israel given that, as noted, the Supreme Court has the final say.
- **The government wants to determine the identity of the judges who will hear the petitions against the regime revolution.** The government has not yet unveiled all the "chapters" of the legislation stemming from the coalition agreements that it intends to promote. Moreover, it has not declared that the appointment of Supreme Court judges on its behalf would end its preoccupation with abolishing the independence of the judiciary and the degradation of ministerial 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 the petitions are filed.

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