

In Israel There Is Nothing More Permanent Than the Temporary Government Harms Professionalism of Civil Service With Temporary Appointments to Senior Positions

This document reviews the government's use of temporary appointments to senior positions in the Civil Service in a way that harms its professionalism. This system enables the assignment of jobs to cronies who lack the proper qualifications for a permanent appointment and damages the functioning of the professional echelon and the public's trust in it. In order to reduce this phenomenon, Zulat proposes to tighten the selection of temporary appointees and to add as a default the requirement to consult with a Civil Service committee or other relevant bodies (as established by law and in government resolutions), so their advice to the government/minister should be based on the professional and ethical competence required for the said position and on the fact that it is a temporary assignment.

Background

On 28 December 2023, National Security Minister Itamar Ben-Gvir announced his intention to appoint his security adviser Kobi Yaakobi, an Israel Police superintendent, as the Israel Prison Service's (IPS) acting commissioner, after previously declaring that he would not extend the tenure of incumbent IPS Commissioner, Katy Perry. The appointment was subsequently approved by the government on 14 January 2024.¹

Ben-Gvir's announcement triggered public and political criticism since Yaakobi has no experience on the subject of incarceration and is considered a crony of Ben-Gvir and the Likud party. An *Haaretz* investigation found that Yaakobi pressured senior IPS officers to improve the prison conditions of Jewish detainees jailed on terrorism charges. Moreover, the decision not to extend Perry's tenure contradicts the National Unity Party-Likud agreement on the establishment of the wartime emergency cabinet, whereby senior state officials would not be replaced during the war and their tenures would be extended "under special circumstances."² The agreement notwithstanding, it is not yet clear what will happen with the upcoming appointment of other senior officials, in particular the Bank of

¹ *Josh Breiner and Jonathan Lis, [Israeli Cabinet Approves New Prison Chief, Violating Wartime Government Agreement](#), *Haaretz*, 14 January 2024.

² *Josh Breiner, [Ben-Gvir Appoints New Israel Prison Service Chief, Violating Terms of Wartime Government](#), *Haaretz*, 28 December 2023.

Israel Governor and the Israel Police Commissioner (his tenure was extended by six months on 14 January 2024).³

Another example of a temporary appointment to a senior public position is the decision of Minister David Amsalem, the minister in charge of the Government Companies Authority (GCA), to name Yanki Quint as its acting director. In her letter of resignation as GCA Director, published on 30 December 2023, Attorney Michal Rosenbaum described how Amsalem had pressured her and prevented her from carrying out her duties and exercising her powers, in contravention of the public interest and harming the stability and functioning of government companies in the process.⁴ She wrote that "according to Amsalem's declared worldview, government companies are not a public resource but a pool of jobs that is supposed to serve him for accumulating power and raise his political standing. Accordingly, Amsalem has exerted immense pressure on me and the GCA so that we would appoint political activists and cronies to key positions in these companies, and enable him to fire people as part of a political settling of scores, thereby freeing up positions for his cronies."⁵

In response, as noted, Amsalem announced that he had decided to appoint Quint, the current director of the Israel Land Authority (ILA), as the GCA's acting director. Quint had been the GCA director under Amsalem in a previous government, and at that time he did not object to the abolishment of the "Directors A-Team," a recruitment database listing potential candidates for the position of director of a government company, which had been designed to reduce the phenomenon of political appointments.⁶

As will be explained in this position paper, although Ministers Ben-Gvir and Amsalem received the brunt of the criticism for creating an unnecessary political crisis during the war, the formula of temporary appointments was not invented by them. The phenomenon intensified in recent years due to the coronavirus crisis and the political upheaval crisis stemming from the indictments against Prime Minister Netanyahu for breach of trust, accepting bribes, and fraud. For example, Superintendent Moti Cohen served as Israel Police Acting Commissioner in 2018-2020, in a controversial tenure that involved allegations

³ *Aryeh Stern, [Government Gives 6-Month Extension to Police Chief's Tenure](#), *Hamodia*, 14 January 2024.

⁴ *Sam Sokol and TOI staff, [Top Government Official Quits, Says Minister Seeks To Use Office To 'Accumulate Power'](#), *The Times of Israel*, 31 December 2023.

⁵ *Nati Tucker, [Top Israeli Official Prefers To Quit Rather Than 'Watch Destruction of Government Companies'](#), *Haaretz*, 30 December 2023.

⁶ *Israel Hayom, [After Rosenbaum's Angry Resignation, Amsalem Appointed Yanky Quint as Director of the Government Companies Authority](#), *The Limited Times*, 3 January 2024.

of selective enforcement, especially with regard to freedom of protest and the restrictions during the pandemic.

Temporary appointments are particularly problematic in Israel where the organizational culture is one of "nothing is more permanent than the temporary." While an interim appointment would seem necessary in exceptional and unforeseen circumstances such as death, illness, maternity leave, resignation, or an election campaign,⁷ it is often motivated by political-personal reasons, such as a dispute within the political echelon over a senior appointment, a minister's desire to name an associate who stands no chance of being approved in a full normal procedure for a permanent appointment, or a wish to weaken the professional echelon in charge of ethics, proper management, or regulation.

The Supreme Court has more than once pointed to the impact of the quality of senior appointments on the degree of public trust in the Civil Service, affirming that "without the public's trust, public authorities become an empty vessel. Public trust is the backbone of public authorities, and it enables them to fulfill their role."⁸

Basic Principles of Civil Service, Conflict With Political Appointments

The basic conception of public administration in Israel, as established in case law and legislation, sees the Civil Service as a professional and apolitical entity. The politicians deciding policy and the professional level implementing it are supposed to keep separate, with most professionals (except senior positions of trust) retaining their job upon the change of ministers and governments. This concept is anchored in the Civil Service Law (Appointments)-1959 (hereinafter: the Appointments Law).⁹

This is how Prime Minister David Ben-Gurion introduced the proposed law to the Knesset plenum in 1953: "The law primarily aims to guarantee the following fundamentals: a. The hiring of Civil Service/local government employees not based on partisan bias or political affiliation, but on personal competence; b. The uprightness of civil servants; c. The definition of a civil servant's obligations, both toward the state and toward the citizens."¹⁰

Supreme Court Justice Ayala Procaccia's ruling is applicable here: "The Civil Service in Israel is the long hand of the executive branch for the realization of its policies and

⁷ Attorney General's Directive No. 1.1501, [Appointments During Election Campaign](#), Justice Ministry, 26 January 1999; [Supreme Court Ruling 1004/15 Movement for Governance and Democracy v. Interior Minister](#), Nevo, 1 April 2015.

⁸ [Supreme Court Ruling 6163/92 Yoel Eisenberg v. Construction and Housing Minister](#), Nevo, 23 February 1993.

⁹ [Civil Service Law \(Appointments\)-1959](#), Nevo.

¹⁰ Minutes of Knesset Plenary Sessions No. 14, p 1424, 1953.

objectives. By virtue of various laws, it is charged with providing services to citizens in various areas of life. Without a civil service, there would be no normal social life in a modern country and the government would be unable to manage the affairs of state. The life of individuals and the collective in Israel depends on the Civil Service, its quality, and its functioning. This quality hinges on the professional level of public servants, their values and morality. If these two essential elements are not met, the status of the Civil Service and its ability to fulfill its missions are harmed. The Civil Service is the public's trustee exercising the powers vested in it. By virtue of this trust, it has an obligation to ensure that public servants are suited to their roles, both in terms of their competence and level of morality. The suitability for a position lies in the selection process of the Civil Service."¹¹

A political appointment clashes head-on with this concept. The moral-ethical basis for the condemnation of political appointments and the duty of a public entity not to appoint candidates based solely on their political affiliation is derived from the status of a public authority as a trustee of the public. This trust must be exercised fairly, honestly, without extraneous considerations, and for the benefit of the public by virtue of which it exists and to which it should be devoted.¹²

The State Comptroller's report for 1987 notes the damage that political appointments inflict upon the Civil Service: "An organization plagued by the scourge of political appointments exhibits typical side effects. Such an organization often tends to swell up and expand to allow the smooth integration of a new incumbent by creating unnecessary new positions.... People who were wrongfully appointed are at times promoted rapidly, above and beyond the regular practice in the said organization, and awarded all kinds of benefits. At times, such appointments have provoked labor disputes.... Hence, political appointments seriously violate not only proper management and ethics, but also the Civil Service's level of professionalism.... Political appointments come in all shapes and forms, but the common denominator is that the job does not go to the best suited person. In many of the appointments we reviewed, our audit found officeholders whose qualifications did not meet the requirements of their position, be it in terms of their education, experience, or other qualities required for the performance of their job."¹³

¹¹ [Supreme Court Ruling 5657/09 Movement for Quality Government in Israel v. Israel Government](#), paragraph 13 of Justice Ayala Procaccia's opinion, *Nevo*, 24 November 2009.

¹² [Supreme Court Ruling 154/98 New Histadrut Labor Federation v. Israel Government, et al](#), *Nevo*, 13 October 1998.

¹³ [State Comptroller's Annual Report No. 39 for 1988 and for Fiscal Year 1987 Accounts](#), *State Comptroller's Office*, 12 April 1989.

The Supreme Court has ruled that "when an officeholder is the servant of two masters, a public one and a political one, there are grounds to fear that when fulfilling his public duty, he will identify, consciously or unconsciously, with his other master, and will fulfill his duty under the direct or indirect influence of his political views. This dual loyalty gives rise to fear that the Civil Service will be tainted by political considerations."¹⁴

Therefore, the highlight of the Appointments Law, which underscores its main purpose, is the mandatory tender process set forth in Article 19, whereby the selection should be of the most suitable candidate for a position, while ensuring equal opportunity and absence of arbitrariness and bias and keeping irrelevant considerations and political contexts out of the process.¹⁵

Tender-Exempt Appointments

The Appointments Law cited exceptions to the mandatory tender process to address needs of certain Civil Service positions due to their unique nature, in particular the requirement for trust on the part of the minister in charge.

One such exception is the position of director general of a government ministry, since it requires special trust between the officeholder and the minister, without which the ministry's performance and the public interest might be harmed. Nevertheless, Article 12 of the law states that "the government's appointments must be subject to the provisions of this law." In other words, the appointment of a director general cannot be purely political and must also meet standards of competence, professional experience, and personal-ethical suitability.¹⁶

Moreover, Government Resolution No. 345 in 1999 for the first time set criteria for tender exemptions and for hiring through a search committee.¹⁷ It listed 31 fully tender-exempt positions, where candidates would nevertheless be subject to a review by a Civil Service committee or a search committee. The resolution noted that the exemption would apply to "the most senior positions in the Civil Service whose holders are entrusted with the

¹⁴ [Supreme Court Ruling 7157/95 Nava Arad v. Knesset Speaker Prof. Shevah Weiss](#), *Nevo*, 1 April 1996.

¹⁵ [Supreme Court Ruling 154/98 New Histadrut Labor Federation v. Israel Government, et al](#), paragraph 12 of Justice Tova Strasberg-Cohen's opinion, *Nevo*, 13 October 1998.

¹⁶ Government Resolution No. 86, [Threshold Qualifications for Government Ministry Directors General](#), *Prime Minister's Office*, 10 May 2009.

¹⁷ Government Resolution No. 345, Positions Appointed by Government/With Government's Approval: Tender Exemption According to Article 21 of Civil Service Law (Appointments)-1959, 14 September 1999.

execution and implementation of government policy, and therefore require a high degree of trust and coordination between them and government ministers.”

As for the criteria for positions to be filled through a search committee, they would apply to “senior positions where implementation of a minister’s or government policy is not the dominant feature. These would be one of the following two types: (1) positions of a distinct professional or scientific character; (2) positions whose holders are charged with safeguarding the public interest in a specific area, and therefore require a great deal of independence and professional autonomy.”

Thus, as a consequence of legislative amendments, more government resolutions, Attorney General directives, and the Civil Service Regulations, it was determined how a series of senior positions would become tender-exempt. In addition to the tender-exempt appointment of ministry directors (Article 12 of the Appointments Law), it was also determined that in compliance with conditions set by the Civil Service, the government would be entitled to decide on specific positions to which the aforementioned tender requirement would not apply (Articles 21 and 23 of the Appointments Law); Attorney General Directive No. 1.1500 decreed that appointments at a minister’s discretion, selected/approved/recommended by him, as well as any appointment by the government or subject to its approval that is not reviewed by a committee, would be subject to a preliminary review by ministerial legal counsels,¹⁸ and that other positions would be tender-exempt in accordance with the provisions of other laws.¹⁹ As a result, some 360 senior positions in the Civil Service had become tender-exempt by 2015.²⁰

The Civil Service has three appointment committees for tender-exempt senior positions: (a) An advisory committee created in the aftermath of the “Bar-On-Hebron Affair,”²¹ which has been operating by virtue of government resolutions since 1999,²² composed of the Civil Service Commissioner and two public representatives and headed by a retired Supreme

¹⁸ See [Attorney General’s Directive No. 1.1500, Review of Appointments by Ministry Legal Counsels](#), Justice Ministry, 23 June 1999 (last updated in 2020).

¹⁹ See [Amendment of Government Resolution No. 2127: Tender Exemptions – Certain Diplomatic Positions](#), Prime Minister’s Office, 30 June 2002.

²⁰ [State Comptroller’s Annual Report No. 66c for 2015 and for Fiscal Year 2014 Accounts](#), State Comptroller’s Office, 24 May 2016.

²¹ Series of events in early 1997, during which suspicions were raised that Prime Minister Netanyahu and Shas Party leader Deri had conspired to appoint Roni Bar-On as the next Attorney General in exchange for Shas’s support for an IDF pullout from Hebron.

²² Government Resolution No. 91, [Advisory Committee on Senior Appointments](#), Prime Minister’s Office, 30 May 2006; Government Resolution No. 689, [Extension of Tenure of Members of Advisory Committee on Senior Appointments](#), Prime Minister’s Office, 12 August 2013.

Court justice. It advises on the moral integrity of candidates for the position of chief of the IDF, Israel Police, Shin Bet, Mossad, IPS, as well as of Bank of Israel governor and acting governor; (b) A committee composed of eight public representatives and chaired by the Civil Service Commissioner operating by virtue of the Appointments Law and government resolutions,²³ which reviews the qualifications and suitability of a candidate for a tender-exempt position, as per Government Resolution No. 345; (c) A committee reviewing appointments in government companies and public corporations established by virtue of Article 18b of the Government Companies Law-1975.²⁴

As noted, Government Resolution 345 also set the criteria for tender exemptions when hiring candidates through search committees. The main difference between an appointment committee and a search committee is that the latter "locates" candidates, sorts them, and submits a list of finalists to the minister who presents his recommendation to the government, while the former checks the candidate who has already been selected by a minister. In other words, the search committee checks the candidates before a minister makes his recommendation, while the appointment committee checks them retroactively, after a minister has formulated his recommendation.²⁵

As for the government/minister's obligation to abide by the recommendations of the aforementioned committees, the Supreme Court ruled (the ruling applies to all committees) that unless the committee's opinion is revealed to be flawed from an administrative point of view, its disavowal would require special reasons and exceptional circumstances as justification, given that the government created the committee and empowered it to discharge this task.²⁶

Obligation of Government/Ministers To Make Permanent Senior Appointments

In light of the principles of the Civil Service, the provisions of the Appointments Law, and other laws determining the authority of the government/ministers to make senior appointments, as well as in light of the rules of administrative law and Article 11 of the Interpretation Law-1981 anchoring the obligation of government entities to exercise their

²³ Government Resolution No. 4892, [Amendment of Government Resolution No. 516 Dated 14 August 1960: Appointments Committee Headed by Civil Service Commissioner](#), Prime Minister's Office, 7 March 1999.

²⁴ [Government Companies Law-1975](#), Nevo.

²⁵ [Supreme Court Ruling 2699/11 Movement for Quality Government in Israel v. Israel Government](#), Nevo, 17 May 2011.

²⁶ [Supreme Court Ruling 5657/09 Movement for Quality Government in Israel v. Israel Government](#), Nevo, 24 November 2009.

authority "with due urgency,"²⁷ as soon as a senior position becomes vacant or an upcoming vacancy is made public, the government and the minister in charge must proceed to advance the process to fill it up. The Supreme Court has ruled that "coalition agreements or disputes cannot prevail over the obligation of the government and the pertinent bodies to make permanent appointments to senior positions."²⁸

Despite the obligation set by law and court rulings, the government/ministers often refrain from exercising their authority to make appointments. For example, in 2017, Prime Minister Netanyahu appointed Udi Praver as the Civil Service's acting commissioner.²⁹ Attorney Yossi Gvili, a senior Civil Service official, told the Knesset Finance Committee in January 2018 that some 70 senior positions remained unfilled at that time.³⁰

One of the most serious crises in Israeli history around the appointment of senior officials occurred against the backdrop of the coronavirus pandemic, the political crisis, and frequent rounds of elections. On 3 November 2020, former Attorney General Avichai Mandelblit wrote to Prime Minister Netanyahu and Alternate Prime Minister Benny Gantz: "I ask you to act without delay based on your legal powers to promote permanent appointments to senior Civil Service positions," including an Israel Police Commissioner, a State Attorney, and ministry directors. Mandelblit emphasized that "the failure to take urgent action to advance these appointments is intensifying the existing damage to the Civil Service's functioning and stability. It should be noted that the failure to advance these appointments without, to the best of my knowledge, any factual justification creates an ever-growing significant legal problem given the number of unfilled permanent positions, their nature and prominence, and the long time that has elapsed since the establishment of the government."³¹

Temporary Appointments Feared Abused for Political-Personal Reasons

Despite the obligation on the government/ministers to make permanent appointments to senior Civil Service positions, the option exists of making a temporary appointment if a

²⁷ [Interpretation Law-1981](#), *Nevo*, 18 November 2023.

²⁸ [Supreme Court Ruling 7180/20 Israeli Movement for Ethical Conduct v. Israel Government](#), *Nevo*, 10 December 2020; [Supreme Court Ruling 3056/20 Movement for Quality Government in Israel v. Attorney General](#), *Nevo*, 25 March 2021.

²⁹ Adrian Pilot, [Supreme Court Already Awaiting Netanyahu's Next Appointment](#), *Calcalist*, 10 December 2017.

³⁰ Shahr Ilan, [Civil Service Commission: Every Substitute Appointment To Require Issuing of Tender Within a Month](#), *Calcalist*, 23 January 2018.

³¹ Tova Zimuki, [Mandelblit to Netanyahu and Gantz: No Justification for Withholding Senior Civil Service Appointments](#), *Ynet*, 3 November 2020.

position becomes vacant or the officeholder is unable to exercise his authority or fulfill his duties.

While a temporary appointment may appear necessary in unusual and unforeseen circumstances, such as death, illness, maternity leave, fear of a specific conflict of interest, resignation, or an election campaign,³² more often than not it is actually done for political-personal reasons. Temporary appointments are particularly problematic when it comes to officials in charge of law enforcement, moral integrity, and regulation, whose duties require autonomy and extra independence from the political level.³³

Temporary appointments can be given to both civil servants and non-civil servants. The fundamental premise set by the Supreme Court is that the government is entrusted by the public to execute all the tasks and functions of governance, including Civil Service appointments. The government and its ministers are obligated to exercise their power to make appointments fairly and honestly, to weigh only material considerations after gathering sufficient factual data, and to act reasonably in accordance with the standards of administrative law.³⁴

Temporary appointments allow a ministry to fill positions until the tender process has been completed or permanent appointments are made, thus helping it to continue its normal work. However, a temporary appointment might impede an egalitarian selection of the most suitable candidate for a permanent position, given that the temporary appointee gains an edge to prove his ability to do the job, to forge work relations, and to create a kind of "mutual expectation" for his continued employment.³⁵ As noted, this is especially true in Israel, where the organizational culture is one of "nothing is more permanent than the temporary."

The problematic nature of temporary appointments has been noted by the Supreme Court: "The principle of equality is the lifeblood of a tender issued by a public authority, and giving an edge to any participant undermines this principle. It is not a technical-formal flaw, but a fundamental one that goes to the root of the matter. Furthermore, it is absolutely clear that a tender conducted with the foreknowledge that a specific participant will be selected

³² Attorney General's Directive No. 1.1501, [Appointments During Election Campaign](#), Justice Ministry, 26 January 1999 (last updated July 2019).

³³ [Supreme Court Ruling 5403/22 Lavi-Civil Rights and Good Governance v. Prime Minister](#), Nevo, 22 September 2022.

³⁴ [Supreme Court Ruling 7402/11 Movement for Quality Government in Israel v. Israeli Prime Minister](#), Nevo, 4 January 2012.

³⁵ [State Comptroller's Annual Report 56b for 2005](#), State Comptroller's Office, 9 May 2006.

is flawed and invalid. This violates the principle of equality, and attests to a lack of good faith and dishonesty.... The problem originates with the fact that the vacant position is initially filled by a substitute, and only then is a proper tender conducted. Given that the temporary employee is also entitled to participate in the tender and a priori enjoys a significant advantage over the other contestants, the result is that the tenders are not conducted under equal conditions. Moreover, this opens the door to bypassing the objectives underlying the tender requirement."³⁶

In 2009, despite the support of the Civil Service's committee, the Supreme Court overruled the government's decision to appoint the National Religious Party's secretary general as director general of the Ministry of Science and Technology for a six-month trial period. Explaining her ruling, Justice Ayala Procaccia said that "any doubt about the suitability of an appointment ought to rule it out altogether, so as not to put the Civil Service and the people's trust through the experience of trial and error. Top positions in the Civil Service should not be given on a trial basis to anyone whose ability to meet the requirements of the job are in doubt. Government ministries are not an experimental laboratory for officeholders whose basic skills are questionable. The responsibility and obligations that come with the position and the public's dependence on officeholders are so vast that even if an iota of doubt exists about a person's suitability for the position the candidacy must be rejected."³⁷

Justice Procaccia noted the harm that might be inflicted on the Civil Service as a result of the temporary appointment of a candidate who does not meet the minimum qualifications for the position: "A trial period of several months cannot cure a candidate's basic professional incompetence. Such a trial period cannot replace the lack of managerial experience in senior positions in the Civil Service or the business sector; it does not provide the candidate with the missing managerial knowhow accumulated over decades in senior positions. All that this trial period does is to help the candidate to establish a foothold in the position and accelerate the upcoming permanent appointment process. It is a proven way to bypass the threshold qualifications set in Government Resolution No. 86, to ignore the recommendations of an appointments committee, and to turn the clock decades back to a reality where appointments of ministry directors did not comply with any standards

³⁶ [Supreme Court Ruling 703/87 Dr. Yaakov Kraun v. Civil Service Commissioner](#), *Nevo*, 14 March 1991.

³⁷ [Supreme Court Ruling 5657/09 Movement for Quality Government in Israel v. Israel Government](#), paragraph 62 of Justice Ayala Procaccia's opinion, *Nevo*, 24 November 2009.

and the candidate's political affiliation possibly was a decisive and sometimes exclusive consideration."

The temporary appointment option is anchored in the Civil Service Regulations and the Appointments Law.³⁸ Until the latter was amended in 2010,³⁹ Articles 12 and 23 permitted the temporary replacement of a ministry director or a government-approved officeholder for a three-month period that could not be extended. Amendment No. 15 added Article 23a, which canceled the time limit and replaced it with an arrangement whereby the minister may initially appoint a replacement for a period not exceeding three months in consultation with the Civil Service Commissioner, and then, "after consulting with the latter, extend it further, provided that the total duration of the temporary assignment does not exceed six months." In addition, "with the consent of the Commissioner and the Attorney General, the minister may notify the government of the extension of the temporary assignment beyond the aforementioned six months, should special circumstances justify it and for the duration of those circumstances."⁴⁰

Despite the damage to the public's trust, the harm inflicted on the Civil Service's professional and functional level, and Justice Procaccia's ruling that "government ministries are not an experimental laboratory for officeholders whose basic skills are questionable," after Amendment No. 15 the government/ministers have often chosen the "creative solution" of temporarily appointing patently politically-affiliated candidates for up to six months, in order to validate future appointments doing away with basic eligibility conditions and with professional opinions ruling the candidate unfit for a permanent appointment. At times this was coordinated with the Civil Service Commissioner, who approved a period of "validation" after which the option of a permanent appointment would be examined.

This is exactly what Transportation Minister Miri Regev did after a Civil Service appointments committee rejected the nomination of her political associate Moshe Ben-Zaken as her ministry's director general. Announcing that she had appointed him to the position of acting deputy director so that he could gain experience, she explained: "It emerged in the discussion with the Attorney General, her deputies, and the Civil Service Commission that the appointment would lead the Supreme Court to intervene in the

³⁸ [Policy Paper: Delegation of Authority To Hire Temporary Substitute Employees](#), Civil Service Commission, April 2015.

³⁹ Law Register No. 2257, p 7, 24 October 2010.

⁴⁰ See explanation in [Draft Law: The Government-2007](#), p 622, Nevo.

government's decision and to disqualify it, which would have hurt Ben-Zaken's reputation. Therefore, I decided to appoint him as acting deputy director. I have no doubt that Ben-Zaken will go on to contribute to the Civil Service in the future. I will not give the Supreme Court the pleasure of rejecting a professional and worthy appointment, and criticize me and the government from the ivory tower."⁴¹ The "trick" worked, and on 25 June 2023 the Civil Service Commission approved Ben-Zaken's appointment as the ministry's director general.⁴²

One of the most serious crises regarding a temporary appointment evolved over the appointment of Attorney Dan Eldad as Acting State Attorney in 2020. In a scathing letter to the Civil Service Commissioner, then-Attorney General Avichai Mandelblit wrote that there were legal impediments to extending his tenure and that he had objected to his appointment from the outset. Mandelblit said Eldad had exhibited moral, professional, and administrative failings during his short time in office, accused him of concealing from him professional and managerial matters he was involved in as well as meetings he held with Justice Minister Amir Ohana, of giving him only partial and sometimes false reports when explicitly asked on the matters he had discussed with Ohana, and of focusing on "odd" priorities.⁴³ The Supreme Court issued a temporary injunction preventing the extension of Eldad's tenure until further notice, as well as the appointment of any other substitute (Mandelblit himself ended up assuming the role).⁴⁴

Mandelblit went on to explain that even though it was a temporary assignment, Eldad's appointment had to comply with the Appointments Law in terms of professional and ethical suitability.⁴⁵ Furthermore, in view of the special characteristics of the job of a State Attorney, who is called upon to make autonomous decisions, the appointment process must reflect non-dependence on the political level and absence of bias toward it. Therefore, the interpretation of the Appointments Law "cannot be divorced from this

⁴¹ Omer Carmon, [Miri Regev Recants: To Appoint Ben-Zaken as Acting Deputy Director General for Six Months](#), *TheMarker*, 12 January 2023.

⁴² *TOI staff, [After Initial Rejection, Regev Gets OK for Ex-Likud Operative To Be Ministry Chief](#), *The Times of Israel*, 25 June 2023.

⁴³ *TOI staff, [Attorney General, Acting State Attorney in Unprecedented Clash](#), *The Times of Israel*, 23 April 2020.

⁴⁴ *TOI staff, [Court Freezes Extension of Acting State Attorney's Tenure, Which Expires Monday](#), *The Times of Israel*, 30 April 2020; [Supreme Court Ruling 2740/20 Irit Edri v. Justice Minister](#), *Nevo*, 30 April 2020; *Netael Bandel, [Israel's Attorney General Assumes Role of State Prosecutor, Justice Minister Objects](#), *Haaretz*, 3 May 2020.

⁴⁵ Attorney General Avichai Mandelblit's letter to Civil Service Commissioner, [Legal Impediment To Extend Tenure of Acting State Attorney](#), *Attorney General's Office*, 23 April 2020.

objective, even when it comes to the appointment of a temporary Acting State Attorney" (paragraph 5).

A general prosecutor's autonomy and non-dependence on a political entity is ensured by the selection of a permanent State Attorney through an independent search committee. This being the goal, "it would have been appropriate to consult with an independent search committee even on the appointment of a substitute to ensure his non-dependence on the political echelon. This is all the more important given the fact that at stake is a short-term appointment for a period of three months, which may be extended at the minister's discretion" (paragraph 6).

Mandelblit defined the process of appointing a substitute set forth in the Appointments Law as "peculiar, frivolous and superficial" when compared to the regular selection of a permanent officeholder (paragraph 8). Although Article 23a requires the Attorney General's formal consent to extend the tenure of a substitute only after six months, Mandelblit ruled that as the Attorney General he was entitled to weigh in on the process earlier than stipulated in the said article, given the special characteristics of the job of State Attorney and that no search committee exists for substitutes (paragraph 9). It is worth noting in this context that a search committee is consulted regarding the selection of an Acting Attorney General.⁴⁶

Zulat's Recommendation: Amend Article 23a, Tighten Temporary Appointee Selection

In light of all the above, as a lesson from the Eldad affair, and concern over unsuitable and improper temporary appointments made for political-personal reasons and contrary to the public interest, **Zulat proposes to tighten the process of selecting temporary appointees to always include a professional and ethical examination of the candidate's suitability by a Civil Service committee or other relevant bodies, taking into account the requirements of the position and the temporary nature of the appointment.** The current "frivolous and superficial" process (as Mandelblit put it) is lacking compared to the established and accepted selection process for permanent positions.

As noted, the fundamental premise is that the government has been entrusted by the public to perform all the and functions of governance, and that the government/ministers have an obligation to exercise their power to make appointments fairly and honestly, to

⁴⁶ [Report of Public Committee Examining Appointment Process of Attorney General and Issues Pertaining to His Tenure](#), Justice Ministry, 18 March 1998.

weigh relevant considerations only after gathering sufficient factual information, and to act reasonably in accordance with the standards of administrative law.

In order to gather sufficient factual information and weigh all relevant factors and circumstances, the government/ministers would have been expected to "initiate" an expansion of the meager procedure stipulated in Article 23a of the Appointments Law. Obviously though, the government/ministers cannot be trusted to initiate such a step, as this might impede their ability to bestow temporary appointments on their cronies that could become permanent later.

Therefore, we propose to amend Article 23a of the Appointments Law, to include as a default the obligation to consult with a Civil Service appointments committee or other relevant bodies (as stipulated in the law and government resolutions), as follows:

(b) Should a position become vacant or should an officeholder be prevented from exercising his authority or fulfilling his duties, the minister in charge, **in consultation with the Civil Service Commissioner, an appointments committee, or other relevant bodies, as stipulated in the law and government resolutions,** may assign another civil servant to fill the position for a period not exceeding three months.

(c) The minister may, after consulting the Civil Service Commissioner and an **appointments committee or other relevant bodies, as stipulated in the law and government resolutions,** extend the period cited in Article (b), provided that the total duration of the temporary assignment does not exceed six months. Nevertheless, the minister may, with the consent of the Civil Service Commissioner and the Attorney General, notify the government of the extension of the temporary assignment beyond the aforementioned six months, if special circumstances justify it and as long as these persist.

(e) As stated in Articles (b) and (c), the Civil Service Commissioner, an appointments committee, and other relevant bodies will advise on the professional and ethical competence necessary for the position taking into account the fact that it is a temporary assignment.

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