

## **A Future 'Whip': Political Appointment of Judiciary Ombudsman Harms Independence of Courts**

This position paper is presented to the Knesset Constitution Committee by Zulat for Equality and Human Rights in response to the bill to amend the Judiciary Ombudsman Law (Amendment: Appointment of Ombudsman-2024) (hereinafter, "the bill").<sup>1</sup>

As will be explained below, the bill is yet another step in the government's relentless effort to promote a regime revolution and its war to abolish the separation of powers and the professional independence of the judiciary. The appointment of a Judiciary Ombudsman by the government is tainted with conflict of interest, may enable it to intimidate judges, may indirectly disrupt legal proceedings, and may violate the right to due process, as the appointee could abuse the extensive powers the position already carries by law today. This may lead to harassment and frivolous interrogations of judges, practices typical of regimes that end up becoming authoritarian. Especially at a time of political and social upheaval in which Israel finds itself, the professional independence of the judiciary is necessary to enable the protection of human and civil rights.

Article 3 of the Judiciary Ombudsman Law-2002<sup>2</sup> states that based on a joint proposal by the Justice Minister and the President of the Supreme Court, the Judicial Selection Committee may appoint as an Ombudsman a person eligible to the position of Supreme Court judge, taking into consideration their public reputation and acquaintance with the judicial system. The committee may accept or reject the proposed candidate, choose one if the proposal includes multiple candidates, or reject it altogether. In other words, the selection and appointment of a candidate requires cooperation between the professional and political echelons.

The arrangement proposed in the bill repeals Articles 3(b) and 3(c) of the law, stating that the Ombudsman will be elected in secret ballot by the Knesset plenum, will be appointed to the job by the president of the state, candidates will be proposed by the Justice Minister or 10 MKs, and the requirement about a candidate's public reputation and acquaintance with the legal system will be abolished. In other words, the professional echelon will have no say whatsoever in the proposal or selection of candidates and the entire process will revert to the political echelon.

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\* English-language reference. All other references in this report are in Hebrew.

<sup>1</sup> [Bill on Judiciary Ombudsman Law \(Amendment: Ombudsman's Appointment-2024\)](#), Knesset, 23 July 2024.

<sup>2</sup> [Judiciary Ombudsman Law-2002](#), Nevo, updated 13 May 2024.

Below are the reasons for Zulat's strong objections to the bill:

- The proposal will enable the government to carry out a political appointment and will harm the public's trust in the institution of the Judiciary Ombudsman. Instead of taking into consideration "a person's public reputation and acquaintance with the judicial system" stipulated in Article 3(c) (which stands to be abolished), what will be assessed in practice is the candidate's connections with politicians and his political identity. The explanation attached to the bill notes that "the election of the Ombudsman by the Knesset, which is the elected authority representing the public, will ensure that the appointment process will be independent, transparent and free of conflicts of interest, and is expected to strengthen the public's trust in the institution of the Judiciary Ombudsman." In reality, the government fully controls the Knesset and there is no real separation between the executive and legislative branches. It is not clear how exactly a full politicization of the appointment and institution of the Judiciary Ombudsman will strengthen the public's trust, when all public opinion surveys conducted in recent years have shown extremely low trust in the Knesset and political parties.<sup>3</sup>
- There is an inherent conflict of interest in the proposal to allow the government to make its own choice of an Ombudsman. Such a political appointee could serve as a 'whip' to lash out at judges presiding over cases where ministers, coalition members, MKs, political parties, and close associates have a personal interest. Ministers and coalition MKs could submit frivolous complaints to the Ombudsman they had elected or, if they wanted to cover their "fingerprints," they could let party activists and affiliated organizations file grievances for them, given that Article 14(a)(1) of the law allows the filing of a complaint by "any person who considers himself, or anybody on his behalf, harmed by the conduct of a judge in the performance of his duty, including the way he conducted the trial. Ombudsmen have over the years provided a "liberal" interpretation of this provision, not limiting the said "person" only to one of the sides in the trial, witnesses, experts, or lawyers. Frivolous complaints would indirectly disrupt legal proceedings and interfere with the exercise of the right of citizens whose human and civil rights have been violated to a fair trial. Such idle complaints would send the "message" to a judge that the case at hand is important to the-powers-that-be and would prompt the Ombudsman to launch sham proceedings against him.
- A government-appointed Ombudsman may abuse the extensive powers that already exist in the law today to launch investigations into frivolous complaints, which would eventually wear

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<sup>3</sup> \*[The Israeli Democracy Index 2023](#), Israel Democracy Institute, 14 March 2024.

out and intimidate judges. Among other things, such an Ombudsman may give broad interpretation to what "the conduct of a judge in the performance of his duty as a judge" means. At the same time, he may narrowly interpret the provisions of Articles 17 and 18 stipulating the grounds on which not to investigate a complaint or rule it as unmeriting investigation. For example, the Ombudsman may narrowly interpret Paragraphs (1) to (3) of Article 17, which stipulate that he will not investigate a complaint if it does not "concern the conduct of a judge in the performance of his duty as a judge," if it "appears to be vexatious, frivolous, or deals with trivial matters," or if it concerns "a substantial legal or evidentiary question." This is particularly true in light of the Ombudsman's extensive powers under Article 20 to carry out an investigation "in any way he sees fit" without being "subject to legal procedures or the laws of evidence," and to demand "from any person or body, within a period and in a manner to be determined, any information or document" that he believes may help elucidate the complaint. It bears noting that according to Judiciary Ombudsman's annual report for 2023, of the 897 filed complaints he decided not to investigate 347 based on Articles 17 and 18.<sup>4</sup> A "flood" of complaints and idle probes by the Ombudsman may wear out a judge, impair his performance, and intimidate him. The damage would have been done, even if the Ombudsman later decides to reject the complaint or invoke Article 21 to stop his investigation because "one of the grounds exists that justify not opening an investigation."

- A government-appointed Ombudsman may abuse his powers under Paragraphs (d) and (e) of Article 22 to recommend to the minister to submit a grievance to the Judicial Disciplinary Court or request the Judicial Selection Committee to terminate a judge. In other words, he could initiate a politically-motivated move to subject the said judge to disciplinary prosecution or impeachment. Even if the court and the committee ultimately decided to reject the minister's recommendation, the sham procedures and induced fear may have a "chilling effect" and hurt the professional independence of the judges. We saw an example in 2023, when ministers and coalition members repeatedly called for the impeachment of the President of the Supreme Court<sup>5</sup> and attacked judges in other courts.<sup>6</sup>
- Especially at a time of political and social upheaval, the professional independence of the judiciary is important in order to protect human and civil rights. Harassment and frivolous

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<sup>4</sup> [Annual Report for 2023, Judiciary Ombudsman](#), March 2024.

<sup>5</sup> Chen Maanit, [Judiciary Ombudsman Rejects Complaints About Hayut's Speech Against Netanyahu-Levin Plan](#), *Haaretz*, 14 February 2023.

<sup>6</sup> Michael Shemesh, [Minister Amsalem Rails at Resumption of Netanyahu's Trial: 'Unprecedented Disgrace'](#), *Kan*, 3 December 2023.

investigations of judges are typical of regimes that end up becoming authoritarian. In Guatemala, for example, frivolous investigations were launched against judges who presided over corruption cases involving top government officials and were trying to uphold the rule of law and the professional independence of the judiciary. Some of these investigations came about as a result of false complaints filed by criminal organizations and extreme right elements associated with the authorities. Their freedom under threat, some judges had to seek asylum in other countries.<sup>7</sup> In Nicaragua, the regime launched a huge investigation against the judiciary and dismissed 900 employees on charges of disloyalty, including judges in the supreme and other courts.<sup>8</sup> Former Brazilian President Jair Bolsonaro urged the investigation and impeachment of judges who presided over cases involving him and his cronies.<sup>9</sup> El Salvador's dictatorial president, Nayib Bukele, ordered the investigation and impeachment of judges whose rulings he disliked. He removed five Supreme Court judges and replaced them with others to enable his bid for re-election in contravention of the constitution.<sup>10</sup>

Author and legal consultant: Adv. Eitay Mack

English Translation: Shoshana Michkin

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<sup>7</sup> Jonathan Blitzer, [\\*The Exile of Guatemala's Anti-Corruption Efforts](#), *The New Yorker*, 29 April 2022.

<sup>8</sup> Wilfredo Miranda Aburto, [\\*Rosario Murillo Carries Out Great Purge in Nicaragua's Judiciary, Dismissing Over 900 People](#), *El Pais*, 16 November 2023.

<sup>9</sup> [\\*Bolsonaro Pushes Against Supreme Court Judge](#), *DW*, 21 August 2021.

<sup>10</sup> [\\*US Concerned Over Removal of Top Salvadorean Judges](#), *BBC*, 3 May 2021.