

The Goal: Undermining Public Trust in the Supreme Court

The Bill That Portrays Supreme Court Proceedings as a 'Rigged Game'

Author and legal consultant: Adv. Eitay Mack

This document addresses Bill for The Courts Law-2025 (Amendment: Decision on Composition of Supreme Court Panels and on Further Hearing),¹ a private bill submitted by MK Simcha Rothman (Religious Zionism), which is scheduled to be discussed by the Knesset's Constitution, Law and Justice Committee on 7 January 2025.

Zulat opposes the bill, which is an integral part of the regime revolution and the government's efforts to undermine public trust in the Supreme Court by portraying its proceedings as a "rigged game," without any factual basis for this claim, in order to justify legislative proposals and initiatives aimed at impairing the Supreme Court's professional autonomy. At first glance, the bill may appear relatively acceptable to the public, as it proposes selecting judicial panels through a computerized system rather than by the Minister of Justice or another political actor. In practice, however, its implementation would harm the functioning of the Supreme Court and the quality of service it provides to the public.

Current Situation and Mechanism Proposed in the Bill

Under existing law, the composition of judicial panels and the decision to hold a further hearing are determined by the President of the Supreme Court (or, with respect to a further hearing, by "other justices designated for this purpose").² In contrast, the bill proposes that panels be determined "by computerized means, without human intervention," and that the decision to grant a further hearing be made by "a majority of the Supreme Court's justices," in which case the matter would be heard by a panel comprising all of the court's justices.

§ All references in this document are in Hebrew.

¹ [Bill for The Courts Law-2025 \(Amendment: Decision on Composition of Supreme Court Panels and on Further Hearing\)](#), *Knesset National Legislation Repository*, 20 January 2025.

² See Article 27(a) of the Courts Law [Consolidated Version], 5744–1984, as well as Article 30(b) of this Law.

Proposal Not Based on Factual Foundation

The explanation attached to the bill claim that the outcomes of hearings on petitions submitted to the Supreme Court are manipulated by the President, who allegedly selects panels whose rulings are known in advance. It further asserts that, in petitions concerning issues contested within Israeli society, the composition of the panel itself predetermines the outcome. Needless to say, however, these assertions are not based on any factual foundation. On the contrary, the bill cites a single reference: an article on a study examining the composition of Supreme Court panels that did not intervene and instead **dismissed petitions at the threshold and without a hearing.**³

Since the outright dismissal of petitions without a hearing generally do not involve a substantive ruling but rest on technical or procedural grounds or on the fact that the matter has already been decided in the past, no inference can be drawn from this study that the existing panel-selection mechanism affects outcomes in a manner that would justify the bill. Given the well-established grounds for outright dismissal developed in decades of case law, judges' positions do not, in any event, differ in any meaningful way. To substantiate the proposed bill, a study should have been presented examining how the existing mechanism affects outcomes in cases that were actually heard and resulted in substantive rulings, where differences in the positions of judges carry greater weight.

For example, one of the decisions highlighted in the article⁴ concerns the dismissal of a petition seeking to permit Jewish citizens to visit the Temple Mount.⁵ The authors claim that President Yitzhak Amit chose Justice Uzi Vogelman as a panel member rather than "religiously observant Justice Noam Solberg," because "this kind of petition is much more likely to elicit a judge's legal and ideological positions." Hence, they contend, this was a "safer choice from President Amit's perspective, and it indeed achieved its objective": dismissal of the petition at the threshold on the grounds of failure to exhaust remedies and foot-dragging. However, contrary to the article's interpretation, the court's decision states that despite dealing with questions of principle, the petition was filed only one week before the scheduled visit and before a reaction was received from the respondents, whom the petitioners had approached only a few days earlier.

³ Yehonatan Givati and Yisrael Rosenberg, [How Do the Supreme Court's Justices Select Their Panel Colleagues](#), *Mishpatim*, 18 November 2020.

⁴ *Ibid*, pp 19-20.

⁵ [Supreme Court Petition 4021/17 Committee for the Land of Israel v. Prime Minister](#), *Nevo*, 17 May 2017.

This being the case, it is reasonable to assume that the aforementioned grounds would have secured the dismissal of the petition by most Supreme Court justices in any event. Moreover, all similar petitions filed over the years have been dismissed due to the wide latitude granted to the political echelon with respect to all matters pertaining to the Temple Mount. It is therefore unclear on what basis the authors deduce that Justice Solberg would have disregarded the extensive case law on the subject merely because he is religious.

Furthermore, the study examined rulings published between January 2015 and April 2017. However, on 13 November 2017, then-Supreme Court President Esther Hayut issued a directive establishing a rotation system for determining the composition of panels considering out-of-hand dismissals. Accordingly, it can no longer be argued that panels are selected based on a desired outcome. It should be pointed out that in response to this directive, the Movement for Governability and Democracy (whose legal adviser at the time was MK Simcha Rothman, the sponsor of the current bill) asserted that "the change introduced as a result of our request is encouraging."⁶

Supreme Court's Functioning and Quality of Service to the Public Would Be Impaired

Contrary to the unsubstantiated claims in the bill whereby the President of the Supreme Court determines the composition and selection mechanism of panels in order to reach a desired outcome, most panels are determined by the court's scheduling department in accordance with criteria and priorities, such as urgency of cases, workload, and seniority and area of expertise of judges. The President intervenes in determining the composition of panels only in exceptional cases, primarily where seniority and expertise are concerned. The proposed bill offers no proof that this intervention is not based on professional reasons.

Given the huge number of new cases reaching the Supreme Court each year (about 10,000, of which 40% are principal proceedings in criminal, civil, and administrative appeals as well as petitions⁷) versus the small number of judges, any computerized system would in any event be limited in its ability to create "diversity," and many panels would end up being similar or identical. From a purely mathematical standpoint, greater randomness and arbitrariness (at the expense of such criteria as urgency, workload, seniority, and expertise) would indeed produce more "diverse" panels. However, adherence to these criteria is

⁶ Revital Hovel, [Supreme Court President: Judges Will No Longer Select Colleagues in Discussions on Dismissal of Petitions at the Threshold](#), *Haaretz*, 27 November 2018.

⁷ See [Supreme Court's website](#).

essential both for the proper functioning of the Supreme Court and for the quality of professional service it provides to the public.

Option of Further Hearing Would Be Invalidated

A further hearing is a rare and exceptional procedure, warranted only when the ruling that is the subject of the request has been overturned by a subsequent Supreme Court decision, or when it is warranted due to its "importance, difficulty, or novelty."⁸ Despite its rarity, it is an important procedure.

As noted, under the proposed bill, a request for a further hearing would require the approval of a majority of Supreme Court judges, and would be heard by a panel comprising all of them. Approval is unlikely to emerge in such circumstances, and even if it were obtained would result in a prolonged delay until all judges could be available to hear and rule on the matter. This could harm both the parties to the specific proceeding and other members of the public whose rights would be affected by the previous or the new precedent.

Conclusion

Zulat categorically opposes the bill. As explained, it is part of the government's efforts to undermine public trust in the Supreme Court by portraying its proceedings as a "rigged game," thereby justifying the impairment of its professional autonomy. Its approval would set a dangerous precedent and encourage further legislative initiatives aimed at divesting the President of the Supreme Court of additional powers through various means.

⁸ [Supreme Court Further hearing 4144/22 Muhammad Musa Shihadah Abu-Aram and 107 Others v. Defense Minister, Nevo, 2 October 2022.](#)