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AN INDEPENDENT JUDICIARY: THE ISRAELI EXPERIENCE WITH A MIXED JURISDICTION SYSTEM

The Israeli legal system is unique, combining principles and traditions from common law and civil law. Israel strives to see itself as a constitutional democracy. It is a democracy, as it is a system of government governed by the principle of the majority and in which fundamental values and at their core, the human rights, are guaranteed against the abuse of the power of the majority. It is a constitutional democracy, as the structure of governmental authorities and human rights are enshrined in basic laws, chapters of an entire though unfinished constitution. The state of Israel operates through three bodies: the legislature ("Knesset"), the executive (Government), and the judiciary (courts). The powers of these organs are enshrined in the Basic Law. There is a "checks and balances" relationship between the authorities designed to ensure that each authority operates within its mandate and that none of them has unlimited powers. And what about the judiciary? From the judges' point of view, there is independence in several aspects that will be discussed. But from a budgetary and administrative point of view, the judiciary does not enjoy independence and autonomy from the executive branch. The executive branch is also litigating in the courts. Can the personal independence of the individual judge be complete as long as the independence of the judiciary is not complete?

Keywords: Israeli legal system; "checks and balances"; independence of judges; judiciary.

1. JUDICIAL INDEPENDENCE – OPENING WORDS

This paper seeks to highlight one of the most valuable assets of a democratic state, vital for protecting citizen rights from the state and other citizens: an independent judicial system. The theoretical basis of this asset is the doctrine of the separation of powers. In its modern meaning, this doctrine does not ask for an absolute separation between governing powers but rather for the presence of "checks and balances". According to this mechanism, the judiciary should be independent from the other two powers. Since this independence is

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not created of its own accord, it can be achieved *via* the balances determined by legislation, judicial decisions, and the formation of ideological perceptions. I will try to present the status of the Israeli judiciary's culture of independence. I will indicate a few aspects concerning the independence of the judicial system from an institutional point of view, mainly with regards the process of appointing judges; the personal independence of judges with respect to external factors which may impact their decisions; the collective independence of the entire system with respect to other government authorities; the internal independence of a single judge with respect to other judges.

2. APPOINTMENT OF JUDGES

The first and probably the essential factor that impacts the judges' independence is the way they are appointed, whether politically, professionally, in some combination of both, etc. Inspired by the method applied in France, Israel had adopted in 1953 a new groundbreaking method for appointing judges: a commission for electing judges that incorporates representatives from the three authorities, the executive, the legislature, and the judiciary, as well as professionals from the practice of law. Since then, this method has spread worldwide and international organizations recommend it as a suitable means to balance the principle of judicial independence and the democratic accountability of judges. These principles are based on the understanding that in addition to the legal authorization to adjudicate, judges have an important role in protecting the state's fundamental values and human rights and impact the formation of the political, social and economic policy. Since judges need the public trust and legitimacy when ruling on such issues, the judiciary, and more specifically, the process of appointing judges, is to be designed according to the two competing principles: independence and accountability. On the one hand, the process of nominating and promoting judges should ensure their independence from government authorities and enable them to rule professionally, independently and following the law in order to prevent government authorities from violating human rights and the rule of law; on the other hand, especially given the understanding that the judge has an impact on forming the customary policy, the accountability of the judges towards the sovereign, *i.e.* the citizens. The Basic Law: The judiciary determines that the President nominates judges in Israel according to the decision of the Commission for the Selection of Judges. [1] The Commission comprises nine members: three judges: the President of the Supreme Court along with two other judges selected by the Supreme Court members; two ministers: the Minister of Justice who is the head of the Commission and an additional minister selected by the government; two members of Knesset which it elects by secret ballot.[2] This format was adopted in 1953, as mentioned, following the transition which started taking place from the method of appointing judges by the executive authority to the one that reduces their dependence on this authority. Pinhas Rozen, who was then the Minister of Justice,

[1] Section 4 of the Basic Law: The Judiciary. Available at: https://www.mfa.gov.il/MFA/MFA-Archive/1980-1989/Pages/Basic%20Law-%20The%20Judiciary.aspx (26/6/2021).

[2] Section 6(1) of the Courts Law [consolidated version], 1984 (hereinafter: "The Court Act").

explained in a Knesset assembly that while the nomination of judges, in Israel and around the world, was formally done by the executive authority, he wanted to ensure the independence of judges and had thus decided to follow the method applied in France and Italy. To a large extent, the establishment of the Commission for the Selection of Judges in 1953 was ahead of its time, given that already at that time this institution adhered to what has now become a trend of appointing judges in other democratic countries. Creating the judicial bureaucracy of the central government was an essential step in establishing the modern nation.[3] In the modern era, the executive authority was responsible for appointing judges. In the European kingdoms of the late Middle Ages and the beginning of the modern era, appointing judges was considered the king's role and responsibility. Looking at the history of democratization, especially in the twentieth century, we can observe many attempts to separate the role of appointing judges from the executive authority.

The many methods applied today for appointing judges may be classified into four main classes:[4] direct election by the public (applied, for example, in a few states in the USA and some cantons in Switzerland); the nomination is conducted by one of the political authorities: the executive, the executive along with approval by the legislature or the legislature; appointment by a "judiciary commission" (similar in composition to the Commission for the Selection of Judges in Israel); appointment by the judiciary or representatives of the legal practitioners. Mixed methods exist, and different methods are used in the same country for nominating judges for different types of courts and instances. All method classes may thus be located on a continuum where the democratic accountability or the democratic legitimacy towards the citizens is on one end while judicial independence is on the other.

In classifying the methods for appointing judges, it is vital to discern between common law *vs* civil law traditions, applied in and outside Europe, mainly due to the significant difference in the nature of the judicial career and the judge's role as a "lawmaker". In the common law method applied in countries such as Britain, Canada, New Zealand, and Israel, judges are elected among experienced lawyers. In contrast, in countries applying the civil law method, such as Italy, Germany, Spain, France, and Sweden, being a judge is a career in the public service that starts after completing law studies.[5] Since World War II, the civil law tradition formed a mixed approach for appointing judges: politicians nominate the judges of the constitutional court, usually a two-thirds or three-fifths qualified majority is required, with a broad political agreement between the coalition and opposition; the judges of the other instances are appointed by a "judiciary commission" where judges are the majority of members or have a crucial impact on the decision.[6] In law traditions exercised in Britain, Canada, Australia, and Israel, officials from the executive authority used

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[3] See, for example: Paul Brand, *The Making of the Common Law* (1992); Steven Gunn, Political History, New Monarchy and State Formation: Henry VII in European Perspective, 82 *Historical Research* 380 (2009).

[4] See: Kate Malleson, Introduction, in *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* 3-4 (Kate Malleson & Peter H. Russell eds., 2005); Tom Ginsburg, Judicial Appointments and Judicial Independence (Paper written for the US Institute for Peace, January (2009). Available at: http://comparativeconstitutionsproject.org/files/judicial_appointments.pdf.

[5] Mary L. Volcansek, Appointing Judges the European Way, 34 *Fordham Urb. L. J.* 372-376 (2007).

[6] Víctor Ferreres Comella, *Constitutional Courts and Democratic Values: A European Perspective* 98-99, 103 (2009).

to have a significant say in judges' appointments. Occasionally, judges would be appointed by officials who held a mixed position in the executive authority and the judiciary, such as the Lord Chancellor in England. In these judicial methods and pre-1953 Israel, the entity responsible for appointing judges used to consult with judges and representatives of the legal practitioners. This practice of informal consulting is extremely important since it provides a glimpse of the gap between the legal *vs* the actual procedures for appointing judges. Considering the custom of consulting with officials from the judiciary and the immense weight given to their opinion, one may conclude that in methods that provide the formal authority for appointing judges to public representatives, the actual nomination is highly influenced by the opinion of judges. This observation regarding the informal weight given to the opinion of judges is actual in both the common law and the civil law traditions.[7]

From the twentieth century onward, changes were made in these principal traditions in that the procedure for appointing judges is less dependent on the political authorities. However, it seems that during the last decade, some countries withdrew from this trend. In other words, it may generally be pointed out that the trend around the world is to give increasing weight to professional considerations on the account of the impact of political officials.[8] The constitutional court judges in the civil law tradition are appointed by the political authorities by a qualified majority. In contrast, those of other instances are selected by a special commission in which the judges are either the majority or their opinion is given significant weight. The "judiciary commission" model adopted in Israel in 1953 for appointing judges in all instances (the Commission for the Selection of Judges) was first adopted by France and Italy and gradually spread in Europe and worldwide.[9] In the beginning, this idea took hold in countries applying the continental law tradition to increase the independence of judges whose appointment was then governed, like in Israel, by political officials. This way, judiciary commissions for appointing judges and disciplinary actions, when required, were established in France, Italy, Portugal and Spain. From the 1980s, the judiciary commission model spread worldwide, including South America, East European countries and Commonwealth countries, such as South Africa, Malesia, Kenia, and the Caribbean. Giving major weight to the opinion of judges, this commission appoints judges or is consulted by the appointing entity, sometimes even concerning Supreme Court judges.[10] The judiciary commission became the dominant model in both common law and civil law traditions and is not restricted to countries with constitutional courts.

International institutions also started recommending this model. *De facto*, many judges, sometimes a majority of judges, are members of these commissions, in line with

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[7] Rachel Davis, George Williams, Reform of the Judicial Appointments Process: Gender and the Bench of the High Court of Australia, 27 *Melbourne Uni. L. Rev*. 819, 823-825 (2003); Lee Epstein, Jeffrey A. Segal, *Advice and Consent: The Politics of Judicial Appointments* 9 (2005).

[8] Nuno Garoupa, Tom Ginsburg, *Judicial Reputation: A Comparative Theory* 98 (2015).

[9] Wim Voermans, Councils for the Judiciary in Europe, 8 *Tilburg For. L. Rev*. 121 (2000); Wim Voermans, Pim Albers, *Councils for the Judiciary in EU countries* (2003).

[10] Jan Van Zyl Smit, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (2015).

the recommendations of international institutions.[11] Nevertheless, it should be clarified that the composition of these commissions may change from country to country. They usually comprise representatives of judges, selected by their colleagues or by the political authorities, representatives of the political authorities, lawyers and others. As mentioned, this model is perceived as a suitable means for balancing between the independence of judges and their accountability towards the citizens.[12]

Here are two examples: the first relates to Britain. In a reform conducted in Britain in 2005, the authority to appoint judges was transferred from the Lord Chancellor, who was at the same time part of three entities (the executive authority, the legislature and head of the judiciary), to professional commissions where judges' opinions were given a significant weight. As part of the reform, a new Supreme Court of the United Kingdom was founded. Its members are nominated by a commission comprising the Chief Judge of the Supreme Court, the Vice-Chief, and one representative from each commission for appointing judges for courts in England, Scotland and Ireland. At least one of the representatives is not a judge. The commission includes neither a representative of the executive authority nor of the legislature. The commission is allowed to recommend only one candidate to the Lord Chancellor – the equivalent of the Minister of Justice in Israel – who makes the actual nomination decision. He may postpone the nomination once and ask the commission to reconsider its recommendation. Commissions with a varied composition of judges, lawyers, and other members are responsible for appointing judges in the lower courts in England, Scotland and Ireland. The English commission consists of fifteen members: seven judges, two lawyers, and six other members, who may be, for example, senior academy members, army and public service retirees, and human resources experts, out of which one is the head of the commission. Though the commission members are recommended by the Lord Chancellor and nominated by the Crown, a binding recommendation is *de facto* given by the commissions for nominating candidates, whose members are assigned in a complex procedure which gives great weight to the head of the judiciary or a council of judges.[13] One may thus conclude that judges and professional commissions independent of the

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[11] See *Budapest Resolution of the General Assembly of the European Network of Councils for the Judiciary* (May 21-23, 2008); Council of Europe, *Judges: Independence, Efficiency and Responsibilities* (Recommendation CM/Rec (2010) 12, November 17, 2010); The General Assembly of the European Network of Councils for the Judiciary, *The Sofia Declaration on Judicial Independence and Accountability* (June 2013); European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary and the Prosecution: Improving the Performance Indicators and Quality of Justice* (ENCJ Report 2015-2016, June 3, 2016).

[12] The criticism sometimes expressed in research literature against the judicial commissions is less relevant for us for two reasons: firstly, it usually concerns judicial commissions that started working in the new Eastern European democracies while ignoring the existing judicial culture, unlike in Israel which was the first to adopt this procedure out of a special sensitivity to the political-legal culture of the time. Secondly, this criticism refers to judicial commissions handling the administrative management of the courts, not the appointment of judges. For exploring this criticism, see: Markus B. Zimmer, *Judicial System Institutional Frameworks: An Overview of the Interplay between Self-Governance and Independence*, 2011 Utah L. Rev. 121, 130-131 (2011); Michal Bobek & David Kosaˇr, *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe* (Research Paper in Law, College of Europe, 2013).

[13] See Erin F. Delaney, *Searching for Constitutional Meaning in Institutional Design: The Debate over Judicial Appointments in the United Kingdom*, 14 Int'l J. Const. Law 752 (2016).

political authorities have a crucial impact on the procedure for appointing judges in the UK.

The second example concerns Canada. In Canada, the Prime Minister had had the authority to appoint the judges of the Canadian Supreme Court, having, supposedly, the broad discretion to do so. However, the procedure for appointing judges had many informal rules, such as the dominance of the professional considerations and the rule that judges appointed to the Supreme Court usually should be judges from lower courts. Moreover, Canada conducted reforms in the procedure for nominating the Supreme Court judges. It adopted a model where these judges were appointed by a professional independent advisory commission, seemingly informal status which is not formulated under the law and which is based on a government decision. The commission comprises seven members: four professional members – an ex-judge, two lawyers and an academy member – and three members appointed by the Minister of Justice out of which at least two are not supposed to be lawyers. The commission, which recommends three to five candidates based on their professional skills, is in line with the prevalent trend in the Canadian provinces and the lower federal courts since the 1960s, where the provinces' Ministers of Justice are authorized to appoint judges.

In contrast, the government is authorized, given the recommendation of the Minister of Justice, to appoint federal courts' judges in a procedure that involves independent professional commissions. The power of these commissions is diverse and includes providing consultations, selecting candidates and providing a binding recommendation. Their composition is also diverse, though the majority of their members are judges and lawyers.[14]

The trend to neutralize the politicization of the procedure for appointing judges by applying mechanisms involving independent professional commissions skipped the constitutional courts whose judges are appointed by political officials. These courts, established in increasing number of countries since World War Two, are the sole authority with the power to judicially scrutinize the congruity between legislation and the constitution. The methods to appoint these judges seem less relevant in Israel since the Israeli Supreme Court is not a constitutional court – most of its work is not constitutional in nature. It has no exclusivity on judicial scrutiny of legislation since other courts may do so as well. Nevertheless, given the call of some people in the Israeli public to turn the Supreme Court into a constitutional court or alternately, the counter-call to narrow its power of judicial scrutiny of legislation because of the "democratic deficit" in the way its judges are appointed, it is worth mentioning that mechanisms for preventing partiality in appointing judges are also exercised in constitutional courts. Very frequently, mechanisms that give weight to judges and the parliamentary opposition are applied in selecting the judges of constitutional courts.

The three dominant mechanisms for appointing judges for constitutional courts, in all of which attempts were made to moderate the politicization of the appointment procedure, are as follows:

Appointing judges by the three state authorities. In Italy, Bulgaria and Ukraine, for example, the executive authority, the legislature, and the judiciary appoint the constitutional

[14] Peter McCormick, *Judging Selection: Appointing Canadian Judges*, 30 Windsor Y.B. Access Just. 39 (2012).

courts' judges, each nominating a specific lot of judges: one-third of judges are appointed by the President, one third by the legislature and one third by the Supreme Court. This composition ensures a balance and susceptibility to varied interests: the judiciary usually appoints incumbent judges; the President nominates judges from a variety of sources: court judges, law professors, or highly experienced lawyers. This method creates a balance between the ideological and professional composition of the court.

The appointment through a consensus between the coalition and the opposition: as mentioned above, the elected authorities appoint the constitutional court judges in many European and non-European countries, but a qualified majority of two-thirds or three-fifths is required in order to give weight to the opposition's stand. This method is used in electing at least part of the judges of the constitutional courts in Italy, Belgium, Mexico, Spain and Portugal. This mechanism has a positive impact as judges are nominated through a broad consensus, and their nomination is accepted by diverse political parties rather than by just a specific political wing. Moreover, the judges are loyal to the constitution and the law and not to a particular political ideology.

The collaborative model: applying this model necessitates collaboration between a few elected bodies. Being elected by the citizens, each body is bestowed an independent democratic legitimacy and reflects different political powers. For example, in Czech Republic and Belgium, the President proposes the candidate and the legislature approves him or *vice versa*. A certain degree of broad consensus between the governing bodies is required in this model as well. Applying this model in Belgium enables appointment of judges by a general consensus, including the opposition.

In addition to the different methods for appointing judges, the power of the regular courts in Europe, in matters of judicial scrutiny of the legislation, has been strengthened in recent years on account of the constitutional courts. One reason for this is that the nations that are signatories of the European Convention for the Protection of Human Rights have subordinated themselves to the judicial scrutiny of the European Court of Human Rights on these matters. England has additionally included the law for the protection of human rights, enabling its courts to apply the Convention's provisions on human rights and even indicate an incongruence between the Parliament's laws and the Convention. The second reason for the rise of power of the regular courts is the subordination of the EU countries to the judicial scrutiny of the European Court of Justice, the central judicial institute of the EU. As a result, the signatory states subordinated themselves to the doctrine that is increasingly taking hold, which deems that the EU countries' regular courts should interpret the local state laws according to the EU's laws as expressed in the "displacement doctrine".[15] The European Court of Justice ruled that ordinary courts of a country should do so – in cases when an internal appeal is not possible – when they think a state law does not comply with the EU law, even if the national constitutional court objects to it. This trend adds to the increasing number of appeals of regular courts in the European Union member states to the EU's Court of Justice due to violation of human rights in their country. These trends

[15] Jan Komarek, *National Constitutional Courts in the European Constitutional Democracy*, 12 Int'l J. Const. L. 525 (2014); Jan Komarek, *National Constitutional Courts in the European Constitutional Democracy: A Rejoinder*, 15 (3) Int'l J. Const. L. 815 (2017).

combined signify that the ordinary courts in EU states – where judges are appointed in a non-political procedure that gives a lot of weight to judges – have more and more power to scrutinies legislation on account of the constitutional court's power.

Observing the international trends over a long period of time indicates that the method for appointing judges in Israel is not exceptional but rather part of a worldwide trend of attempts to neutralize political considerations in appointing judges. Ensuring professional and independent judiciary along with preserving public trust in the judiciary by preventing its politicization are primary goals of this trend. Nevertheless, and more so in the last decade, growing attempts have been made to reverse the trend and increase the government's involvement in several European countries as well as in Israel. In this sense, judicial independence is under constant threat.

The manner in which judges are elected and their work terms – which release them from being supervised by the government with regard to their appointment, salary, immunity, suspension, dismissal, and the like – guarantee their personal independence.

3. THE PERSONAL INDEPENDENCE OF THE INDIVIDUAL JUDGE

After being nominated and in order to ensure their independence, the judges' tenure should be guaranteed by appointment for life or at least up to a certain age. Had the nomination been restricted for a limited period of time, their job security would not have been guaranteed, and the nomination of a "desired" judge may have been preferred over that of an "undesired" judge. That would have impaired their judicial independence. International standards determine that judges should be appointed, if not for life, then at least until the law's retirement age.[16] Nevertheless, judges are appointed for life only in a few countries; usually, there is a fixed age for retirement or different ages according to the judge classification. In Israel, the binding retirement age for judges in all instances is age of 70.

It is worth mentioning the procedure in Israel which enables the Minister of Justice, pending the approval of the President of the Supreme Court, to appoint a judge in office to a higher instance for a limited period of up to a year. This temporary appointment for a "trial period" is undesired and is usually considered as being contrary to the international standards.[17] The motives for such a temporary appointment may result from political or some other pressures and not of pure judicial interests. For this reason, such an appointment sets a problem in terms of personal independence and may appear to be inadequate.

Concerning the judges' salaries, the principle of personal independence necessitates that their salary is not decreased either due to changes in the direct salary or the financial benefits. International standards enable impairing the judges' employment terms only if they are part of public financial measures in that State, *i.e.* not due to a policy that selectively damages the judicial sector.

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[16] IBA Minimum Standards of Judicial Independence (Adopted 1982), Art. 22. Available at: https://www.ibanet.org/MediaHandler?id=bb019013-52b1-427c-ad25-a6409b49fe29

[17] The Montreal Universal Declaration on the Independence of Justice (10 June 1983), Art. 2.20. Available at: https://www.icj.org/wp-content/uploads/2016/02/Montreal-Declaration.pdf

An individual judge's material independence means that judges are subject only to the law and their own conscience in the judicial work. This ensures they are neutral, impartial and free from any undesired influence. This principle is enshrined in section 2 of the Basic Law: The Judiciary [complete]. The prevention of irrelevant considerations in the judicial act serves two purposes: the first is the social interest of attaining the judges' neutrality and impartiality; the second is the appearance of justice and the public trust in the courts, the judges, and the procedure itself. This entails a requirement of rules that protect judges from any inappropriate influence. Part of the rules restricts the judges themselves, such as the rule prohibiting judges from holding any office in other government authorities or having business relationships. Different practices limit the manner judges are treated by others, such as the sub judice principle, and limit the parliament's criticism of judges.

4. COLLECTIVE-INSTITUTIONAL INDEPENDENCE

Collective-institutional independence refers to the judiciary in its entirety. Any intervention may impact the sense of independence of individual judges in the judiciary. Institutional independence of the judiciary – *inter alia*, supervision, and control of workforce, court budgeting, and maintenance – is an essential measure for evaluating collective judicial independence.

The Minister of Justice is responsible for the court administration. With the approval of the President of the Supreme Court, the Minister nominates the Director of the Courts, who is responsible for the administration of the courts and reports directly to the Minister. Additional powers of the Minister of Justice is the power to establish courts and the power to enact rules that regulate the courts' administration and procedures. S/he also heads the Commission for the Selection of Judges and has the power to initiate disciplinary measures against judges, which may directly impact the independence of the individual judge. Additional powers, which require the approval of the President of the Supreme Court, include: temporarily appointing a judge for a different instance, appointing presidents of the courts (except for the Supreme Court), etc. The judges' salary is determined by a committee of Knesset, the Israeli parliament. In my opinion, reform is urgently required *vis-à-vis* the broad powers given to the Minister's and his responsibility for the courts' administration. The desired arrangement would be to give the responsibility for the administration of the courts and the power to determine administrative measures to the President of the Supreme Court or at least to the President and the Minister conjointly.

5. INTERNAL INDEPENDENCE

Internal independence is required in order to prevent other judges' pressures or instructions from influencing an individual judge's judicial roles. That may refer to three responsibilities: the judge's administrative responsibilities such as managing files, scheduling hearings, expediting hearings, etc.; procedural accountability while the trial is conducted; material responsibility pertaining to ruling and decision-making.

A subtle balance is required between tight administrative control *vs* loose or lack of such control – unrestricted administrative control in allocating files to judges may impair the independence of a nonconformist judge, for example. At the same time, lack of administrative control is also undesirable for reasons of efficiency.[18]

6. CONCLUSION: THE APPROPRIATE APPROACH WHERE THE JUDICIARY IS AN INDEPENDENT AND SELF-GOVERNING POWER

A public committee in Israel examined and recommended this approach in the 1990s, yet the recommendations were rejected. The current problematic situation is especially criticized since independence is given to other state bodies. The President, for example, is not part of the executive power but rather an independent branch that is elected by Knesset and budgeted separately from the government's budget. So are the National Bank and the State Comptroller. On the other hand, the courts' budget is part of the Ministry of Justice budget, and the Minister of Justice controls the judicial system's administration. This situation is abnormal as in many legal proceedings the state is a party, which happens very frequently – in all criminal proceedings, most of the legislative and administrative proceedings, and in many civil law proceedings as well. The courts rule in many proceedings where the state is a party and should consequently be free from any dependence or undesired interests. The judiciary's budget should thus be determined directly by Knesset and not by the government.

It is important to clarify that an independent judiciary does not mean a "privatized judiciary". Clearly, the judiciary should always remain an organic part of the state; the state employs its employees, and its acts are considered the state's acts. We refer to the independence of the judiciary, not to an independent power. Moreover, the desired independence is from the executive power, *i.e.* the government. As for the budget, our approach does not imply budgetary independence from the legislative power but, quite the contrary, we wish to strengthen the Knesset's status relative to the government's. Phrased differently, we "rely" on the parliament more than on the government.

Once this model is applied, one may ask how the independent system should be administered and how it would make decisions. In the USA, for example, the judiciary is run by other judicial bodies like the judicial conference or the judicial council. The federal courts are not sub-units of the executive branch. Neither the President nor the Minister of Justice has any power over the court system, and Congress determines the courts' budget.

[18] J. Zagel, A. Winkler, *The Independence of Judges*, 46 Mercer L. Rev. (1995) 795.

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