

Paper – Position **New Order**

A proposal to change the electoral system and government in Israel

*International Comparison, Analysis of Governance and Balances, and Proposal for a Referendum
on Regime Change and the Constitution*

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Introduction – Why this position paper, and why now

The State of Israel today is faced with a question that is not technical but essential: Is the structure of government on which it has relied since its establishment still suitable for a country that has grown and strengthened as it has grown in its seventy-eight years? This position paper, "A New Order – Israel between Promises and Reality," deals with diagnosing the problem: the gap between political promise and governmental implementation, the multiplicity of centers of power, the tension between governance and balances, and the ongoing erosion of public trust – and then does not suffice with a diagnosis, but rather proposes an improved model for the electoral system and government in Israel.

The main proposal of the position paper is a profound structural change: a complete separation between the Knesset and the government, direct election of the prime minister in national elections and personal and regional election of Knesset members who are no longer bound by the national party list mechanism. This is a change that is not satisfied with a cosmetic correction of the existing system, but rather seeks to change the rules of the game themselves.

Due to the depth of the proposed change, this position paper calls for the proposal not only to be passed as a regular law in the Knesset, but to be brought to the public for approval in a referendum alongside a parallel proposal for an entire constitution for the State of Israel, a basic document – that the state has lacked since its inception. A regime change with such far-reaching implications requires broader legitimacy than that granted by an occasional coalition in the Knesset; it requires the deep and broad consent of the public itself.

In order to substantiate the proposal, it is not enough to present it in and of itself. It must also be examined against the models that are familiar and implemented in long-standing and stable democracies: the United States, France, Britain, and Germany. Each of these countries has a different solution to the question of the division of power between the branches, and each solution has advantages and disadvantages. This position paper will examine each model on its own merits and then explain why, in the author's opinion, the model proposed here combines the main —advantages of each of the methods while minimizing the inherent disadvantages of each of them: especially in the two most critical dimensions of the functioning of a modern democracy: governance on the one hand, and supervision, checks and balances, and checks and balances on the other.

The first part of the position paper briefly presents the roots of the problem in Israel. The second part reviews the four comparative models. The third part presents the proposed model in detail. The fourth part makes a systematic comparison and explains the advantages of the model. The position

paper concludes with a call for a referendum and a constitution, and the appendix attaches a proposal for reform of the judicial system

The overarching goal: a Jewish and democratic state equal to all its citizens

Beyond the institutional and legal details, the main goal underlying the proposed change in this position paper is to establish the State of Israel as a Jewish and democratic state that cares for all its citizens according to equal criteria: a fair justice system that does not distinguish between citizens according to their origin, sector, or place of residence (as described at length in the chapter on the reform of the judicial system), and a fair and transparent distribution of public resources (as described in Part C above)

However, equality before the law and the distribution of resources does not deprive the state of the authority to determine that those who contribute more to the state will receive appropriate priority. Thus, for example, IDF soldiers who serve and sometimes give their lives for the defense of the state – they and their nuclear family members – are entitled to appropriate priority in the allocation of public resources; and the same applies to those who perform national service, in cases where the army did not require their enlistment for military service. Such a prioritization does not contradict the principle of equality, but rather complements it: true equality is not ignoring differences in contribution to society and national security, but rather fair and open recognition of them, which is applied to all citizens according to exactly the same criteria – and not according to sectoral or political identity

Part 1 — The Roots of the Problem in a Nutshell

Before we turn to the comparative models and the new proposal, it is worth briefly mentioning the structural failures diagnosed above, as they are the main driver of the proposed change

Gap between promise and fulfillment .1

The national proportional electoral system, which is based on party lists, creates governments composed of a large number of coalition partners. The platform presented to the public on election day is not the one that is actually implemented; it is replaced by a coalition agreement that the public did not vote on directly

Multiple centers of power and dispersion of responsibility .2

The government depends on the coalition, the coalition depends on small partners, and sometimes a single vote of a Knesset member decides the fate of an entire reform. In such a situation, it is difficult to identify exactly who is responsible for the success or failure — neither the public can reward, nor judge, clearly

Instability and impairment of long-term planning .3

Governments that change frequently find it difficult to carry out reforms that require a horizon of years: education, health, infrastructure. The minister knows that his term could end within months and this affects his priorities

Political blackmail and dependence on small partners .4

The narrower the coalition, the greater the power of each partner, even if he represents a relatively small part of the public. A party with a single-digit number of Knesset members can delay or change broad national policy

Disconnect between the citizen and his elected representatives .5

The national list system creates a situation in which most citizens do not know exactly who to turn to when they have a problem with the government. A Knesset member does not have a clear "area of responsibility," and therefore it is difficult for a citizen to demand personal accountability from him

The elected officials are committed to the party and not to the citizen

The intermediate conclusion of this analysis is that the problem is not necessarily personal or partisan, but structural. True change therefore requires a change in the structure itself—not only in the actors operating within it

Part 2 — Four Established Democratic Models, and One Israeli Precedent

Before discussing the new proposal, it is worth examining how other long-standing democracies have solved the same fundamental dilemma: how to create a government that is capable of execution (governance), without sacrificing checks and balances (checks and restraints). Each of the four countries reviewed below—the United States, France, Britain, and Germany—has chosen a different path, and each path reflects a different compromise between these two values

The United States — Rigid Separation of Powers .1

The American model is based on a sharp separation between three branches: the president (the executive branch), the Congress with its two houses (the legislative branch), and the Supreme Court (the judiciary). The president is elected in national elections separate from the congressional elections, and cannot be a member of Congress. Cabinet ministers (secretaries) are not members of Congress but appointees, subject to the approval of the Senate

Pros

- A clear separation between executive and legislative — the president does not depend on the confidence of Congress to continue to serve
- A clear personal mandate for the president, which allows the public to demand direct accountability from him
- Independent and robust judicial review of the Supreme Court

Cons

- Divided government, where the president and the majority in Congress belong to different parties, often leads to a protracted legislative impasse
- The congressional election system is based on first-past-the-post districts, which reinforce a rigid and polarizing bipartisan structure
- Protracted appointments and approval processes (such as judicial appointments) have sometimes become an arena of intense political confrontation that paralyzes the system

France — The Presidential-Parliamentary Model (Fifth Republic) .2

France has adopted a "semi-presidential" model: a president who is directly elected by the public in two rounds of national elections (if no candidate wins an absolute majority in the first round, the top two candidates run in the second round), alongside a prime minister who relies on the

confidence of the National Assembly. The president appoints the prime minister and the rest of the government, but this requires a parliamentary majority to survive

Pros

- A direct and personal election of the president provides a clear popular mandate, similar to the central idea proposed in this position paper regarding the prime minister
- The mechanism of the second round ensures that the elected person wins the support of an absolute majority of the voters, and not just a relative majority
- A Conseil Constitutionnel that oversees the constitutionality of legislation

Cons

- The phenomenon of "cohabitation" — when the president and the prime minister belong to opposing political camps — creates paralysis and ongoing conflict between the two heads of the executive branch
- The National Assembly is still mostly elected in districts with a two-round majority, leaving room for gaps between the election result and the map of public opinion
- The president's considerable concentration of power at times when he also enjoys a parliamentary majority has drawn criticism of the excessive concentration of power

Britain — The Classical Parliamentary Model .3

Britain represents the model from which the Israeli system of government has been influenced: the merger of the executive and legislative branches. The prime minister is the leader of the party (or bloc of parties) who has won a majority of seats in the House of Representatives, and the ministers are sitting members of parliament. Britain does not have a single written constitution, but rather a constitutional tradition and conventions that have developed over the centuries

Pros

- The election of constituencies creates a direct and clear connection between the member of parliament and his constituents — a principle that this position paper seeks to adopt and strengthen in the proposed Israeli model
- High execution ability when there is a stable majority for the government, which enables rapid legislation and consistent implementation of policy
- The sovereignty of the parliament as a basic principle provides great flexibility for adapting the constitutional system to a changing reality

Cons

- The lack of separation between the executive and legislative branches concentrates too much power in the hands of the government when it has a stable majority, and weakens the ability of the parliament to effectively oversee its ministers and members
- The first-past-the-post proportional majority system is liable to give the government an overwhelming majority in seats based on less than half of the actual votes
- The absence of a written constitution makes it difficult to establish clear boundaries for the government's authority and judicial review of it

Germany — Parliamentary Federalism with Built-in Restraints .4

After World War II, Germany developed a model that sought to prevent a dangerous concentration of power: the chancellor is elected by the Bundestag (the federal parliament), but can only be removed by a "constructive vote of no confidence"—that is, only if the parliament simultaneously elects an alternative chancellor. The electoral system combines regional-personal representation (districts) with proportional representation from party lists, subject to a 5 percent threshold. Alongside the Bundestag is the Bundesrat, which represents the federal states (Länder), and a federal constitutional court (Bundesverfassungsgericht) with broad audit powers.

Pros

- The constructive vote of no confidence prevents the overthrow of governments without a ready alternative, thus contributing significantly to long-term political stability
- A mixed electoral system (regional-personal and relative) balances fair party representation with a personal connection between an elected person and his or her constituency
- The Federal Constitutional Court enjoys strong authority and public standing, allowing for effective judicial review without often spilling over into sharp political disagreement

Cons

- Multi-party coalitions are still needed to form a government, and sometimes protracted coalition negotiations (many months) delay the formation of a government
- The prime minister (chancellor) is not directly elected by the public, but only indirectly through the Bundestag, so his personal mandate is weaker than that of the French president
- The division between the executive and legislative branches remains partial — ministers in Germany can also be members of the Bundestag at the same time

The most important precedent of all: Israel itself, 1996-2001 — the failed .5 attempt

Before moving on to the proposed model, we must stop and dwell on a precedent that is not a foreign country, but Israel itself. Between 1996 and 2001, Israel conducted an experiment of direct election for prime minister, separate from the Knesset elections—an idea that is ostensibly very close to the model proposed in this position paper. The experiment was conducted three times (1996, 1999, and 2001) and was subsequently canceled. Understanding the reason for the failure is critical because it clarifies exactly why the model proposed here must go all the way to the separation of powers, and not settle for a half-solution.

?What exactly was done then

The 1992 reform (which was first implemented in the 1996 elections) was born out of a severe coalition crisis — the "stinking maneuver" of 1990, in which Knesset members switched parties in exchange for favors while trying to form a government. The solution was to add a separate ballot for the prime minister, alongside the regular ballot for the party's list for the Knesset. The idea was that a prime minister with a direct personal mandate would be strong enough to restrain the coalition.

Why it fails

The main flaw was this: In contrast to the model proposed in this position paper, the prime minister elected in Israel between 1996 and 2001 continued to be completely dependent on the Knesset's trust in order to form and maintain a government, and the ministers continued to be sitting Knesset members. In other words, a direct election mechanism was added, but no real structural separation was made between the executive and legislative branches. The result was disastrous precisely because of this half-solution:

- Split-ticket voting: Since voters now had two separate ballots, many chose a prime minister from one large party, while at the same time voting for a small, sectoral list for the Knesset without paying the usual price of a "wasted vote." The result: the two large parties — actually weakened in seats, and the smaller parties became even stronger than they were before the reform.
- A strong prime minister on paper, weak in practice: In the 1996 elections, Prime Minister Benjamin Netanyahu won a direct personal mandate, but his party received few seats in the Knesset compared to the Labor Party. In order to form a government at all, he needed the support of the small religious parties — exactly the same coalition dependence that the reform was intended to abolish.

- Instability that worsened did not diminish: The governments formed under the new system were no more stable than their predecessors — Ehud Barak, who was elected in 1999 with an impressive personal mandate of 56% of the votes, resigned in less than two years, and was forced to dissolve a special election for prime minister only (2001), in which he lost to Ariel Sharon
- Party weakening and over-personalization: Campaign resources have shifted almost entirely to the personality of the candidate for prime minister, at the expense of the party-ideological discourse, without contributing to governmental stability

In 2001, it was decided to cancel the system and return to the previous model, only five years after it was introduced

The Lesson of the Proposed Model

The Israeli experience does not refute the principle of direct election – it proves exactly the opposite: direct election to the head of the executive branch can succeed (as it does in France and the United States), but only when it is accompanied by a real and complete structural separation from the legislative branch. As long as the elected prime minister depends on the Knesset's confidence in order to survive, direct voting does not solve anything – it only adds another layer of choice above the old coalition dependence, and even invites a tactical vote that weakens the major parties. This is precisely the flaw that the model proposed in this position paper corrects: the prime minister in the proposed model does not need the confidence of the Knesset at all to serve and form a government, and therefore the temptation to a split vote is gone, and direct voting can finally achieve what it was intended to achieve in 1992 and did not succeed

The four foreign models, along with the Israeli experience itself, show that there is no perfect solution: each country has chosen to sacrifice some of the stability for the sake of supervision, or a little of the supervision for the sake of stability, and Israel itself has tried a partial solution that exacerbated the problem rather than solved it. The central question that this position paper seeks to examine now is whether it is possible to combine the strengths of each model – the French direct choice, the American separation, the British regional connection, and the inherent German restraints – while correcting the flaw discovered by the Israeli experience, into a single coherent model that is appropriate to the Israeli reality

Part 3 — The Proposed Model: Full Separation between the Knesset and the Government

The model proposed in this position paper rests on a simple principle: the Knesset and the government are two different branches, and therefore they must be elected, act, and examined as separate authorities. The goal is not to concentrate power in the hands of the government or to weaken the Knesset, but to create a system in which each of the authorities can fulfill its mission .without constant political dependence on the other

The Structure of the Knesset Elections – Regional-Personal Representation

- The State of Israel is divided into 12 electoral districts, with about half a million voters in each region
- Each region elects, personally and directly, 10 representatives to the Knesset (a total of 120 .Knesset members
- Representatives are allowed to belong to political parties, but they are not subject to party discipline – they are committed to their voters in the region, not to the party. The party is .only an ideological house, not a framework that requires voting
- A candidate for the Knesset must have lived in the area of his choice for at least five years before submitting his candidacy — in order to ensure true familiarity with the needs of the .region
- A member of Knesset is elected to a single position – membership in the Knesset only. He cannot serve as a minister in the government, neither at the time of election nor during his term. A member of Knesset who resigns from his position may not be transferred to serve in the executive branch: resignation from the Knesset cannot serve as a bypass for the appointment of a minister, neither in that term nor in the next term. This separation is .absolute and cannot be circumvented by means of resignation
- If a member of Knesset is unable to continue his term (for health reasons, death, or resignation), he or she will take his place next in line from among the candidates in that .constituency, and not from a central party appointment mechanism
- .A member of Knesset may serve a maximum of four consecutive or non-consecutive terms This limitation, similar to the term limit set for the prime minister, is intended to prevent long-term entrenchment in the government even at the level of the only regional .representative

The principle of regional-personal representation is not a theoretical invention: countries such as Finland implement an "open list" system in electoral districts, in which the voter votes not only for a party but for a specific candidate within the party's list in his region, and the number of seats each

candidate receives is directly derived from the number of personal votes he has accumulated. This experience shows that personal-regional voting, even when combined with proportional representation, does not harm the stability of the system, but rather significantly strengthens the relationship between the voter and the elected person and the elected person's sense of personal responsibility towards his or her area of residence – precisely the principle that the proposed model seeks to adopt and deepen for Israel

Institutions Ancillary to the Knesset: State Comptroller, Immunity of Members of Knesset, and Length of Term

State Comptroller

The State Comptroller continues to be elected by the Knesset and serve it, just as is customary today: a designated committee examines the candidates proposed for the position and recommends to the Knesset two or three suitable candidates, and the Knesset chooses from among them. This mechanism does not change in the proposed model – it already guarantees a professional and broad consensus selection, and there is no need to amend it

Immunity of Knesset Members

Members of Knesset will enjoy immunity solely for the purpose of fulfilling their duties as members of Knesset – voting, speeches, parliamentary and supervisory activities. This immunity is also limited and qualified: it does not apply when it is capable of harming the security of the state, and does not constitute a sweeping protection against criminal proceedings unrelated to the performance of the position

Length of term

,The term of office of the Knesset and the prime minister currently stands at four years. In the future it is possible to consider an extension to five years for each term, in order to give the elected authorities another full year of action to implement a long-term policy, but this is an optional change that is not necessary for the implementation of the proposed model, and is not part of the core of the proposal, which requires a referendum

Election of the Prime Minister: Personal and National Mandate

- The prime minister was directly elected in national elections separate from the Knesset elections
- A prime minister is someone who received more than half of the votes of the actual voters
- If none of the candidates wins an absolute majority in the first round, a second round will be held two weeks later between the two leading candidates, and the winner will be the prime minister
- Term limitation: A prime minister may serve a maximum of two full terms, consecutively or nonconsecutively. This limitation is intended to prevent long-term entrenchment in power, even when the prime minister enjoys high public support

Deputy Prime Minister

The preferred model is for the prime minister to run in the elections together with his vice president, as a single joint "list" – similar to the model of the president and vice president in the United States – so that the public votes for both of them at the ballot box, and the deputy prime minister also enjoys a direct public mandate and not only an internal appointment

- If the Deputy Prime Minister is unable to continue in his position during his term (for health reasons, death, or resignation), the Prime Minister may appoint a replacement deputy subject to the approval of such appointment by the Knesset in the Appointments Committee

Ousting the Prime Minister

- The Knesset may remove a prime minister from office by a privileged majority of at least Knesset members 80
- The removal of the prime minister in this vote also entails the dissolution of the Knesset itself. In other words, the Knesset cannot oust a prime minister and continue to serve as usual under an alternative prime minister — it itself is going to new elections along with the re-election for prime minister. This mechanism is intended to ensure that the removal will be a serious and final step, and not a routine tool for changing the composition of the government without re-appealing to the public

The Prime Minister's Incapacity

In the event that the Prime Minister is permanently incapacitated (due to death, complete medical incapacity, or any other reason that prevents him from continuing in office), one of two tracks applies, depending on the period of time remaining until the end of his term

- More than half of the term remains: the deputy prime minister will serve as interim prime minister, and within three months a special and separate election will be held for the prime minister. The winner of these elections will serve in office until the end of the original term.
- Less than half of the term remains: In this case, too, special elections for prime minister will be held within three months, but the winner will serve for a full term plus the remainder of the remaining term from the previous term — so that the end date of his term will not fall too close to the date of the next election.
- In both tracks, the Knesset elections are not affected by the incapacity of the prime minister and are held on their regular date, regardless of the special elections for the prime minister.

Criminal Responsibility of the Prime Minister

- Eligibility for office: A person who has been indicted, or who has been convicted in the past of an offense that was determined as part of the convicting judgment that involves disgrace, is not qualified to be a candidate for prime minister. The determination of disgrace is an inherent part of the convicting judgment itself, and is done by the court hearing the case – not by another external party.
- Procedural immunity while in office: While the prime minister is in office, he cannot be indicted. Any possible criminal proceedings against him are postponed until the end of his term.
- Exception: A criminal incident related to the prime minister's performance during his tenure is grounds for the Knesset, by a regular majority of 61 Knesset members and on the basis of prima facie evidence, to decide to establish a state commission of inquiry to investigate the matter. The Knesset's decision is not a finding of guilt, but only the opening of a professional inquiry process.
- Upon making the decision, the State Committee opens a professional investigation with the assistance of the relevant professionals (such as investigative and security agencies). Since the Prime Minister is in regular contact with the Shin Bet and other investigative and security agencies, it is necessary to neutralize the possibility that he will influence them even if indirectly, during the investigation – and for this reason alone, and not as a preemptive punishment, the Prime Minister will enter the status of temporary incapacity for the entire duration of the committee's work, in order to allow him to be cleared of his fears in an unquestionable manner.
- The deputy prime minister will manage state affairs until the committee's work is completed, which will work to complete the investigation of the matter as quickly as possible.

- In accordance with the conclusions of the State Commission of Inquiry, the Knesset may act to remove the prime minister. In this case, special elections will be held for the prime minister only – in accordance with the same time rules set out in the incapacity track above and not the dissolution of the entire Knesset as required in the regular impeachment track – .(Knesset members 80)

This track deliberately differs from the usual parliamentary impeachment track: while impeachment initiated by the Knesset by a majority of 80 members also leads to the dissolution of the Knesset itself, the criminal liability track – which is exercised by a regular majority solely on the basis of *prima facie*, and is ultimately decided according to the findings of a professional and independent state commission of inquiry – leads to elections for the prime minister only, similar to the incapacity track. This distinction stems from a different logic: parliamentary impeachment is a political decision that should be re-examined at the Knesset level as well, whereas impeachment following criminal findings is based on a factual and legal inquiry that has nothing to do with the .composition of the Knesset or its conduct

The Government – Professional and Separate Performance Level

- The prime minister elects 11 professional ministers who are not Knesset members and were .not Knesset members at the time of their appointment
- Each minister undergoes a hearing in the Knesset Committee for the Approval of Candidates, in which a representative from each of the 12 constituencies examines his ".qualifications and the absence of "skeletons in the closet
- ,Each minister is represented by a designated supervisory committee in the Knesset composed of a representative from each constituency, so that oversight of each government .ministry relies on balanced national representation

Budgetary savings and equality in the allocation of public resources

Alongside the structural and political advantages of the model, it also has a direct and real economic .contribution to the taxpayer's pocket

- Instead of a government that currently has up to 38 ministers and deputy ministers – many of whom are positions invented to compensate coalition partners and are not required for the actual management of the country – only 11 professional ministers will serve in the proposed model. The sharp reduction in the number of portfolios, in accompanying government ministries, in manpower standards, and in vehicles, in accompaniment, and in ,the representation budgets involved in each position of minister and deputy minister .represents significant budgetary savings

- Since each minister is under the full supervision of a designated committee throughout his term, and every ministerial budget is regularly examined by this committee, the possibility of transferring public funds to coalition entities, politically affiliated associations, or regional-sectoral projects without professional examination and without supervision is ".significantly reduced – a phenomenon known today as "coalition budgets
- The cumulative result: more of the public's funds are available for services provided to all citizens in an equal manner – health, education, infrastructure, and welfare – rather than being allocated according to specific coalition negotiations that serve certain audiences at .the expense of the public
- — Reducing the scope of arbitrary and non-transparent decisions by the executive branch since each minister operates under close supervision and independent of coalition survival is also expected to reduce the number of petitions filed to the High Court of Justice — against government decisions. A significant portion of the petitions filed today stem from unprofessional political appointments, budgetary decisions that are skewed by coalition constraints, or a lack of transparency in the decision-making process. When decisions are made professionally, transparently, and supervised from the outset, there is less need for judicial intervention, and only truly exceptional cases – and not everyday political disputes .that have been turned into legal proceedings – will reach the Supreme Court

Full Transparency as a Basic Principle – in the Knesset and in the Government

Transparency is no longer an accompanying principle in the proposed model, but rather a basic condition for its operation—this is, in fact, the essence of democracy itself: a government that is subject to constant and immediate scrutiny by the public on whose behalf it acts. The model :imposes a duty of full transparency on the three branches of the elected authorities

- All deliberations of Knesset committees – including the Finance Committee, the Constitution Committee, and the committees for approving ministerial candidates and oversight of government ministries described above – will be open to the public and documented, with the exception of limited and predetermined exceptions in the law (such .(as state security or the privacy of minors
- Every vote in the Knesset plenum and its committees will be open and documented by the .voter's name, and will be published to the public in a full and accessible manner
- All government decisions, minutes of its meetings (with the exception of parts that justify clear security confidentiality), and the budgets of the ministries and their various items will .be published in a regular and accessible manner to every citizen
- This transparency is also essential for the quality of appointments in the public sector: when every appointment, standard, and budget are exposed to immediate public scrutiny, the

temptation to appoint officials on the basis of political affiliation rather than skills decreases, and the likelihood that public appointments will be made on a proper and open basis increases

This transparency does not stand on its own, but rather complements the other principles of the model: it is the practical tool through which the public, the media, and the regional supervisory committees can actually realize the criticism that the model gives them – both toward the government and toward the Knesset itself

The High Court of Justice — Judicial Oversight of the Government and Knesset Legislation

The absolute separation proposed by the model between the Knesset and the government greatly strengthens each of the two branches in its sphere, but it also sharpens a crucial question: Who examines that the executive branch acts with authority and the law, and who examines that the legislative branch does not deviate from the fundamental principles on which the state is based? In the absence of ongoing interdependence between the Knesset and the government (as exists today when the government relies on the Knesset's trust), a third, independent and professional body is required to fulfill this role – and this role continues to be entrusted to the Supreme Court sitting as the High Court

The guiding principle of this entire chapter is this: The Supreme Court exists to protect the citizens of Israel and Israeli democracy – from the tyranny of the majority on the one hand and from the violation of the rights of the individual or the minority on the other. This is its role, and this is its limit. The Supreme Court is not the body that decides policy; it is the body that ensures that the policy, whatever its content, will not harm the citizen in an unlawful manner

It is not the majority that decides” – this is the rule that summarizes the principle of the minority that underlies the role of the Supreme Court. Democracy is not only the rule of the majority; it is also the protection of those who are not part of the majority. A majority, even the largest one, may not act through legislation or government policy to harm a weak minority for reasons that do not meet the test of proper purpose and proportionality described above. This is precisely the role that the Supreme Court is intended to play – not to determine what is the right policy, but to ensure that the policy chosen does not make the minority a victim of the majority

The Two Supervisory Functions of the High Court of Justice

- Administrative review of the work of the government: The High Court of Justice is empowered and even obligated to examine that the government is acting in accordance with the provisions of the law and its purpose, and to prevent situations of corruption, conflicts

of interest, or manifestly improper appointments that may lead to corruption. Its role here – is to protect the rights of the minority and the proper functioning of the executive branch .not to decide policy considerations themselves

- Constitutional review of Knesset legislation: The Supreme Court is empowered to invalidate a provision of the Knesset Constitution Law only when it harms the minority in a disproportionate or justified manner, or when it stands in clear contradiction with the constitution that will be approved in a referendum (as described in Part E above). This review is not intended to allow the High Court to replace the Knesset's political discretion with its own discretion, but only to ensure that the legislation does not deviate from the .protection of rights established by the constitution itself

Both of these roles already exist in the Israeli legal system today, but the proposed model seeks to sharpen their boundaries, strengthen their legitimacy, and reduce the public controversy .surrounding them

The Intervention Test: Adherence to the Law's Provisions and Purpose

- A law that contradicts the constitution will be annulled by the High Court. Until the constitution is approved in a referendum as described in Part E above, the existing Basic Laws will serve as the source of constitutional review, and the power to repeal them will be .exercised – until they are replaced by a constitution
- ,A government action or policy that harms citizens without a proper purpose – that is without a substantive justification that is consistent with the values of the state as a democratic state, and beyond what is necessary to achieve that purpose – can be revoked .by the High Court
- The general guiding principle is this: the government and the Knesset are obligated to adhere to the provisions of the relevant law and its purpose. A deviation from the provisions of the law or an action that deviates from the purpose for which the authority was granted .gives the court the authority to annul the action, decision, or law, as the case may be

This test – adherence to the law and its purpose as a condition for validity – is what gives judicial ,review its stability: the intervention is not based on a moral preference on the part of the judges but rather on a factual and focused examination of the question of whether the authority acted .within the limits of the authority granted to it by law, and for the purpose for which it was granted

Preliminary Defense Mechanism: The Court's Comments Before Final Legislation

It is important to clarify: this is an optional defense mechanism, not an obligation. There is no obligation to bring a bill before the Supreme Court, and the Supreme Court does not use

it to determine policy. Its role is limited to a legal-technical examination only – whether the wording of the proposed law meets the requirements of the law and the constitution – and if such a flaw is discovered, to present it to the legislature so that it does not accidentally fall into a drafting error. It is a preventive tool, inspired by the French model (a preliminary review of the Conseil constitutionnel, reviewed in Part B above), and not a tool that expands the court's involvement in the content of the policy

- The Knesset may, on its own initiative and at its discretion, pass a bill that has passed its first reading for examination by a designated committee in the Supreme Court. There is no obligation to do so with respect to any bill
- The committee's examination is limited to a narrow legal-technical question: whether the text of the proposed law is liable to contradict the constitution or the basic laws. The committee does not express a position on the correctness of the policy underlying the proposal, nor does it recommend preferential wording – it only points to a place where the existing wording is liable to fail constitutionally
- – In the event that such a comment is raised, the legislature must refer to it explicitly accepting it, rejecting it with reasons, or amending the wording of the law accordingly. The Knesset is not obligated to adopt the comment; it is only obligated to refer to it explicitly
- Once the law has passed the preliminary examination and is amended in accordance with the comments received (to the extent that they were received), it can no longer be invalidated by a later judicial review of the same ground that has already been examined. This certainty is the incentive for the Knesset to use the mechanism voluntarily: the price of the investment in the preliminary examination is full immunity from future cancellation on that ground

This mechanism does not contradict the principle that the Supreme Court does not set policy – on the contrary, it expresses it in its entirety: the committee examines only expected legal drafting flaws, not the policy wisdom itself, and the final decision whether to accept, reject, or amend always and exclusively remains in the hands of the Knesset

It should be clarified that there is no conflict of interest here between the role of the committee at the preliminary examination stage and possible judicial review in the future, since logic operates in a binary and unequivocal manner: if the wording of the final law corresponds to what the committee examined and approved (including the implementation of the comments received), then the law is immune from revocation – and there is no scenario at all in which the same judges are required to reconsider the question that they have already decided. And if the wording of the final law is different from the one that was examined, and it does not apply to the comments that were given, in any case the achievement of immunity does not apply to it, and it is subject to regular judicial review – but this is not a repetition of a previous decision of the committee, because the

committee never approved the new and different version. In both cases, there is no situation in which a judge is required today to invalidate what he approved yesterday

What is outside the scope of the High Court: A policy that does not concern the protection of the citizen

Equally important as the definition of its powers, it is important to explicitly define the limits of the High Court's authority. The High Court has no authority to rule on questions of government policy that do not directly relate to the protection of civil rights or basic democratic principles. In particular

- Residents of Judea, Samaria, and Gaza may appeal to the High Court of Justice, but the High Court of Justice has no jurisdiction to determine which military operations are permitted or prohibited, and it has no jurisdiction over political questions regarding Judea Samaria, and Gaza, including questions such as annexation of territory, the expulsion of terrorists or their families, and other clear political and security decisions
- The High Court of Justice does not have the authority to impose an interpretation of international law on the government, and it is not permitted to intervene in professional-operational procedures such as open-fire procedures, military operations procedures, and similar procedures that are under the sole professional responsibility of the security echelon and the elected government
- The rights of enemy detainees are not within the jurisdiction of the High Court of Justice. Issues relating to the conditions of their detention, their rights, and the manner in which they are handled are subject solely to government policy and the security echelon, and are not subject to judicial intervention. This arrangement is based on approaches practiced in democratic countries larger than Israel, which entrust these matters to the elected security and political echelons and not to the civilian courts
- The guiding distinction is this: when the question is whether the basic right of an Israeli citizen has been unlawfully violated, this is a clear area of the High Court. When the question is what is the right security, political or extra-security policy for the state to adopt this is a clear area of the elected government and the Knesset that oversees it, and not of the court

The High Court's Powers from an International Perspective: How Its Counterparts Operate in the World

The distinction proposed here between the protection of civil rights and the decision on foreign and security policy is not an Israeli novelty, but rather a principle that is familiar, in different formulations, in each of the four veteran democracies reviewed in Part B above. A full review of the parallels to the High Court of Justice in each of them – their composition, powers, and the rules

for referring to them – strengthens the justification for the proposed arrangement, and in particular .the proposed reduction of the right to standing

מדינה	The Authorized Body	Criticism of legislation	Criticism of the Executive Branch	Right of standing
United States	Supreme Court, 9 Justices in Life	Full authority for constitutional invalidation	Full authority, subject to the doctrine of the political question	Concrete and direct harm to the petitioner himself only (case or controversy)
France	Constitutional Council (חסיקה) ו- Council of State (מנהל), בנפרד	Preliminary or retroactive audit (QPC, 2008) only within an existing procedure	Full audit, subject to the doctrine of "acte de gouvernement"	Until 2008: only official officials; since 2008: Only a party in a pending proceeding
Germany	Bundesverfassungsgericht, 16 judges by two-thirds majority in the Bundestag and the Bundesrat	Broad authority, including on the initiative of a citizen (Verfassungsbeschwerde)	exists, but is secondary to constitutional review	Personal infringement of a basic right but without the need for a prior proceeding
United Kingdom	The Supreme Court and the Administrative Court	There is no power to invalidate primary legislation (the sovereignty of Parliament); only a "declaration of non-conformity"	The Heart of Criticism: The Legality and Reasonableness of the Procedure (The Wednesbury Test)	Sufficient interest' in the outcome of the decision
The Model Proposed for Israel	The Supreme Court, sitting as the High Court of Justice, is staffed by the professional judicial reform	Constitutional Review vs. Written Constitution Only	administrative audit for the protection of citizens and minorities; not in foreign affairs and security	Direct and concrete harm to the petitioner himself only

What all four countries have in common: they have a principle that distances judicial review from decision-making in foreign policy, security, and military operations, while maintaining full scrutiny in the areas of civil rights and proper administration. The model proposed to the High Court of Justice in this position paper adopts exactly the same distinction, and thus establishes the ,boundaries of its authority on a recognized and accepted basis in the world's leading democracies .and not on a unique Israeli invention

Limited Right of Standing — Not a Petition for Anyone

One of the most striking differences between the Israeli High Court of Justice today and its counterparts in the United States and France relates to the question of who is even entitled to appeal to it. Today, the High Court recognizes the right to a particularly broad stance – in practice, almost any person, organization or association can appeal on the grounds of "public interest," even without any personal and direct harm to the petitioner himself. The proposed model fundamentally changes this, and adopts the approach used in the United States and :France

- Only a person who is directly harmed, personally, and concretely by a government decision "or a provision of the law—and not an indirect, theoretical, or general "public interest ,injury—may petition the High Court of Justice. This is the principle of case or controversy .which requires personal injury-in-fact, causal connection, and enforceable relief
- Similar to the French approach after the 2008 QPC reform, constitutional review of a law will be possible only within the framework of an existing and pending legal proceeding, in

which the harm to the petitioner is already being realized in practice – not as an abstract .preventive” petition against a law that has not yet been applied to anyone”

- Organizations and civil society bodies may join as amicus curiae and bring knowledge and professional arguments to the High Court, but may not serve as main petitioners in the .absence of personal and direct harm to them or those they lawfully represent

This change is intended to restore the High Court of Justice to its original role – to decide real disputes in which a real person is harmed – and to prevent it from becoming a constant arena of political struggle, in which every government decision or law is immediately examined in court at the initiative of parties who have not been harmed at all, but only oppose the policy for ideological reasons. It is the reduction of the right of standing, together with the definition of the limits of authority described above, that allows the High Court to focus on what it was intended to do in the .first place: the protection of the citizen who is actually harmed

Enshrining in a Written Constitution – Less Interpretation, More Certainty

Today, in the absence of a complete constitution, the Supreme Court is forced to rely on principles that have been identified in case law from the Basic Laws, which raises constant criticism that it is .inventing” powers for itself. A written constitution, as proposed in Part E above, will explicitly” anchor the basic rights and the limits of the authority of each authority, and will significantly reduce the scope of judicial interpretation required to justify intervention – constitutional review will be examined against an agreed and clear text, not against principles derived from a purely purposive .interpretation

The professionalism of the appointment as a source of legitimacy

The reform of the judicial system detailed in the appendix to this position paper ensures that the Supreme Court justices will reach their positions on a purely professional basis, and not through a political appointment. This means that the criticism exerted by the Supreme Court of Justice on the government and the Knesset can no longer be perceived as criticism of one political ”camp” against another, since no politician, neither in the coalition nor in the opposition, has been involved in the appointment of the judges who discuss the matter. This is a necessary condition for restoring public .confidence in the authority of judicial review itself

Reducing the Scope of Litigation – Not Reducing the Authority

As noted above, the government's tight oversight and professional composition in the proposed model – only 11 ministers, under designated oversight committees and full transparency – are expected to reduce the number of arbitrary or non-transparent decisions that come before the High Court in the first place. This is a reduction in the scope of actual litigation, rather than a reduction in the audit power itself: the Supreme Court will continue to have full authority to intervene in any case that justifies it, but such cases are expected to be rarer, and are concentrated on real questions

of principle rather than on day-to-day political disputes that have been turned into legal proceedings

The combination of these three components – constitutional anchoring, professional appointments and supervised and transparent governance from the outset – is intended to achieve what previous attempts at reforming the judicial system have failed to achieve: strong and legitimate judicial review, which is not perceived as an arena for another political struggle between the authorities

Summative principles of the model

- Absolute separation between the branches: No one can serve simultaneously, or continuously, in both the Knesset and the government. The transition between the branches is closed in both directions, and not only at the time of appointment but also through resignation
- Clear personal responsibility: the success or failure of a government ministry is attributed to the minister and the government; success or failure in legislation and supervision is attributed to the Knesset
- Governmental stability is balanced on the brakes: The prime minister is not dependent on the survival of a coalition on a daily basis and can plan long-term policy, but the Knesset retains in its hands a severe impeachment tool (a majority of 80 Knesset members), which comes at a heavy cost — dissolving the Knesset itself — so that impeachment does not become a routine tool
- Preventing entrenchment: Limiting the prime minister's term to two terms ensures periodic reshuffles, even without the need for an impeachment mechanism
- Institutional continuity in times of crisis: The incapacity mechanism ensures that the country will always have a functioning prime minister, while maintaining the principle of direct election even in the special elections following incapacity
- Direct representation: Every citizen knows exactly who represents him, both in the Knesset and – through the regional supervisory committees – before any government ministry
- Budgetary savings and reduced litigation: Moving from a maximum of 38 ministers and deputies to 11 supervised ministers saves a lot of public money and reduces dependence on unsupervised coalition budgets, thereby reducing the number of petitions that reach the High Court
- Cross-Governmental Transparency: Full publication of Knesset debates, votes, and government decisions is not a cosmetic addition, but rather an essential condition for effective oversight and proper public appointments

Part 4 — Why the Proposed Model is Better: Comparative Analysis

This section examines the proposed model against the four models reviewed, and shows how it draws the main advantages of each, while addressing the inherent weaknesses of each method

Versus the United States — Separation Without Paralysis .1

As in the American model, in the proposed model, there is a complete separation between those who legislate and supervise (the Knesset) and those who carry out (the government). However unlike in the United States, where a divided government between a president from one party and a congress controlled by the other party could lead to a prolonged impasse, in the proposed model the prime minister elects his ministers independently of a permanent parliamentary majority, and does not need a stable majority in the Knesset to continue serving and acting. The Knesset approves ministers in individual hearings and supervises their implementation, but cannot topple the entire government against the backdrop of coalition power struggles — as is currently happening in Israel, and partly in Washington over budget and appointments

Against France — a personal mandate without a paralyzing cohesion .2

The proposed model directly adopts the principle of the direct election of the head of the executive branch in two rounds, as in France – a principle that guarantees the prime minister a mandate of an absolute majority of the public, and not just a random majority. Unlike France, however, the proposed model does not have two parallel heads of executive branches (president and prime minister) who are liable to belong to opposing political camps and create a paralyzing cohesion. The elected prime minister is the only head of the executive branch, and therefore there is no risk of an internal power struggle within the executive branch itself

Vis-à-vis Britain – Regional-Personal Relationship Without Merging .3 Authorities

The proposed model draws from the British model the principle of the personal-regional connection between the elected member and his constituents – each member of Knesset represents a defined area and can be directly held accountable. However, unlike Britain, where a merger between the government and parliament concentrates too much power in the hands of the government when it has a stable majority, the proposed model maintains complete separation: a member of Knesset cannot be a minister at the same time, and therefore does not have a built-in conflict of interest between loyalty to the ruling party and his role to supervise it

Vis-à-vis Germany — Stability Independent of the Coalition .4

As in Germany, the proposed model places a strong emphasis on governmental stability and the prevention of the overthrow of governments without absolute necessity. However, while Germany achieves this stability through a parliamentary mechanism (a constructive vote of no confidence) that still depends on the formation of a multi-party coalition, the proposed model achieves maximum stability – the prime minister is directly elected for a fixed term, and is not at all dependent on a changing coalition composition. This completely avoids the phenomenon of protracted coalition negotiations and the phenomenon of political "blackmail" that is characteristic of both Germany and, to an even greater extent, of today's Israel

Another brake that has no full equivalent in any of the models: elimination .5 at the price of dispersion

The first three models recognize different mechanisms of impeachment: in the United States impeachment in Congress; in France, there is almost no actual impeachment of the president; In Britain and Germany, a vote of no confidence (constructive in Germany) topples the government but leaves the parliament intact. The proposed model chooses a different approach: the Knesset can remove a prime minister by a privileged majority of 80 members, but the price is the dissolution of the Knesset itself and a renewed appeal to the voters. In this way, a delicate balance is maintained there is a real impeachment tool for extreme cases, but it does not become a routine tool for – toppling governments under coalition pressure, as is currently the case in Israel through a regular vote of no confidence. In addition, limiting the prime minister's term to only two terms — a restriction that does not exist in either Britain or Germany, but exists in France and the United States — prevents long-term entrenchment without the need for a proactive impeachment mechanism

Summary of the comparison: both governance and balances

– The following conceptual table illustrates the position of each model between the two main axes : the ability to govern on the one hand, and the power of supervision and balances on the other

Model	Mandate for the Head of the Executive Branch	The main weakness	The Stability Mechanism
United States	Direct, Nationalistic	Paralysis in Divided Government	Independent term of office in Congress
France	Direct, Two Rounds	Co-operation between the President and the Prime Minister	Fixed term of office of the President
United Kingdom	Indirect (majority leader)	Concentration of power in the absence of separation	Stable parliamentary majority
Germany	Indirect (Bundestag selection)	Dependence on a multi-party coalition	Constructive Distrust
The proposed model	Direct, Two Rounds	avoided by complete) — (separation	Fixed term + separation from the Knesset

The table shows that the proposed model is the only one that combines a full personal, direct mandate for the head of the executive branch (as in France and the United States) with a mechanism that completely eliminates the need for ongoing coalition negotiations (Germany's strength, but without its price), without relinquishing the regional-personal connection between the elected official and his constituents (Britain's strength). In other words, the proposed model does not seek to invent a new idea out of thin air, but rather to distill from four veteran and successful democracies their main strengths, and integrate them into a single system that matches the unique characteristics of Israeli society: multiple identities, geographic dispersion, and a clear need for regional representation alongside government stability

Part 5 — Call for a Referendum and a Constitution

A regime change of this magnitude cannot and should not be enacted as a temporary order in a regular Knesset, in part because each Knesset is elected according to the same method it is asked to change – a situation that creates a built-in conflict of interest. Hence the central reading of this position paper: The proposal to change the electoral system and the government will be brought to the public for approval in a direct referendum

Alongside this proposal, and because of the exact same logic, it is also proposed to bring a proposal for a full constitution for the State of Israel for approval in the same referendum. The State of Israel is currently one of the few democracies in the Western world that lacks a single cohesive constitutional document, and instead relies on a system of basic laws, rulings, and cumulative constitutional tradition. A written constitution will clarify the boundaries of authority between the authorities, anchor the basic rights of citizens, and reduce the legal and political uncertainty that currently accompanies any conflict between the Knesset, the government, and the court

The combination of the two proposals—regime change and a constitution—in the same referendum process is intended to ensure that the new system is born with a clear constitutional framework from the outset, and is not forced, as has happened to date, to rebuild its borders retroactively through ongoing legal and public litigation

Appendix — Proposal for Reform of the Judicial System

The proposed change in the electoral system and government (parts 3-4 above) and the legal reform presented below constitute two complementary axes of the same "new order" – one in the political-representative dimension, and the other in the legal-constitutional dimension. The two axes share the same basic principle: deep structural decisions, which have implications for the relations of the authorities over the generations, do not deserve to be enacted by a random majority in the Knesset but rather require the broad consent of the public itself in a referendum

Towards a professional, politicized and connected judiciary to the people

Justice, justice, you shall pursue" (Deuteronomy 16: 20)"

Introduction: Why Reform is Needed

For more than three years, Israel has been engaged in an unprecedented and intense struggle over the judicial system. An ongoing confrontation between the Knesset and the government on the one hand and the judiciary on the other has brought masses out into the streets, divided families and friends, and called into question the state's ability to resolve its fundamental disputes peacefully and through agreed democratic means

Surveys conducted in recent years show a worrying picture: Most of the public supports the – principle of judicial review of the government, but at the same time there is a widespread feeling, even among those who are not part of the original reform – that the way judges are appointed today and those who influence it, is not transparent enough and does not provide the public with a sense of belonging to the system that is supposed to serve it. This trust gap is not the domain of one political camp – it undermines the legitimacy of the rulings themselves, whether they are convenient for the government or the opposition

At the same time, the legislative attempts made so far – changing the composition of the committee for the selection of judges in a way that gives the ruling coalition control over it, reducing the power of judicial review, and limiting the legal advisors – have aroused widespread public opposition including among a significant portion of the coalition's own voters, and led to stormy legal and social decisions, including the Supreme Court's ruling in a full panel in January 2024. The result Not only has the dispute not been resolved, it has deepened, and the crisis of trust between the authorities has not yet been resolved

This proposal proposes a third way. It does not seek to transfer control of the appointment of judges to politicians – neither to the coalition nor to the opposition, present or future. Nor does it seek to leave the status quo, in which the Bar Association, the incumbent judges, and the political echelon share influence over the identity of future appointees. Instead, the proposal seeks to transfer the

decision to a professional, measurable, and transparent mechanism, in which the promotion of a judge depends solely on the quality of his work – and not on the identity of his appointee

The declared goal: professional judges, unrelated to the person who appointed them, who begin their careers in the Magistrate's Court and advance – as in any other profession – according to proven achievements and not by proximity to any of the authorities. Such a judge will be connected to the public he serves, and not detached from it; he will be responsible for his productivity and the quality of his work, as any professional is responsible for his own; and at the same time, he will be immune to political pressure, because none of the politicians – neither today nor in the future – will be the one who appointed him or who can fire him

The reform proposed below operates on two levels: a new institutional structure for the appointment, evaluation, and promotion of judges; and anchoring the change through a referendum, so that such a substantive decision – which will affect the relations of the authorities for generations – will not be decided by a random majority in the Knesset, but by the broad consensus of the public itself

It is important to clarify here what the main contribution of the reform is to the private citizen, since this is in fact its essence: first, a fair and professional trial – every judgment will be reasoned according to the law and subject to appeal, and as will be detailed in chapter six below, the possibility of issuing an unreasoned ruling that is immune from appeal is eliminated. Second, the judge is no longer subject to only professional criticism, by his – colleagues and lawyers, but also to the criticism of the public that comes before him. Feedback from the parties themselves is part of his evaluation system, even if with limited weight. These are not technical details; they are the answer to the question of what exactly the ordinary citizen gains from the reform, beyond the institutional independence of the system

Chapter 1 — The Authority for the Appointment and Evaluation of Judges

Structure of the Authority

- The "Authority for the Appointment and Evaluation of Judges" (hereinafter: the Authority") will be established, which operates in an independent administrative and budgetary framework, separate from the Civil Service Commission and any government ministry, and without subordination to the executive or legislative branches
- The Authority will be headed by a professional committee composed of seven retired Supreme Court and District Court judges, including the Ombudsman for Judges
- The composition of the professional committee will be appointed by the incumbent President of the Supreme Court, from among retired Supreme Court and District Justices

The President may appoint the committee only once during his term of office, and he may not replace its members except in a disciplinary proceeding as stated in Chapter D. The list of candidates will be published to the public with short reasons 30 days before the appointment takes effect, for the purpose of public review

- The professional committee has an independent budget that is set out in the law as a separate item that cannot be unilaterally cut by the government
- The professional committee is not required to convene in its full composition (the seven members) for the purpose of making any decision. Its day-to-day work – the evaluation of judges, disciplinary proceedings, the selection of the attorney general, the selection of the head of the Attorney General, and the like – is carried out through rotating panels of three members from the seven, who are determined according to need and according to the relevant area of expertise. This division of labor enables the committee to handle the scope of tasks required of it efficiently, without placing an undue burden on any of its members

It is important to clarify that the composition of the professional committee made up of retired judges, including the Ombudsman for Judges, does not give it excess power over the judicial system or over the judges who work in it. The committee does not determine who the candidates for the judiciary are and does not determine who will advance – it merely slots candidates who have already undergone training in the various courts according to their grades, training and experience and manages the disciplinary process in the appropriate cases. Its main role is to maintain the court as a professional body and the public's trust in it, not to serve as the decisive factor in promotion. As detailed in chapter three above, the actual promotion is determined by the public and the lawyers who come before the judge on the one hand, and by the results of his own judicial work – the rates of appeals and their decisions – on the other; not by the discretion of the committee. All the data grades and assignments are open and publicized, so there is no room for "shticks" or informal agreements on the promotion of judges

The Authority's Functions

- Screening and admission to the judicial training track
- Initial placement of graduates of the training to the courts
- Managing the ongoing evaluation system and promoting judges between courts, based solely on published grades – without the committee's separate discretion
- Managing the disciplinary proceeding, as detailed in Chapter D

Chapter 2 — Training Track and Entry into the Profession

Prerequisites

- An attorney who has been active for at least 5 years, or has equivalent experience in a legal-public position (prosecutor, public defender, legal advisor)
- Successful completion of a judicial training program at a university or institution accredited by the authority

The content of the training

- .Writing a judgment
- .Laws of Evidence and Scientific Evidence
- .Forensic Psychology
- .Civil and criminal proceedings
- .Economics and economic offenses
- .Torts Law
- .Judicial ethics and judicial time management

First Placement

A graduate who has received a certificate of qualification will apply to the Authority. The Authority will assign him to a judicial position in the first instance – Magistrate's Court, Execution Court Land Supervision Department, or any equivalent quasi-judicial position – according to the needs of the system and regional priorities

Cancellation of Direct Appointments to High Courts – A Substantial Change from the Existing Situation

This is one of the most fundamental changes brought about by the reform. Today, a lawyer or university lecturer can be appointed directly to the Supreme Court without serving even a single day as a judge and without any previous judicial experience. In the same way, lawyers close to him are often appointed directly to the District Court, and sometimes even to the Supreme Court, based solely on their connections and professional status – not on the basis of actual proof of judicial qualifications

The proposed reform eliminates this possibility entirely. It is no longer possible to appoint a person as a judge in any instance, without having completed the full training track described – above and has actually served as a professional judge. Any judge, without exception whatever his academic qualifications or professional status may be before – will begin his judicial career in the Magistrate's Court, and advance to the District Court and then to the Supreme Court only in accordance with his proven qualifications, as described in Chapter 3

above, and not by virtue of his connections, academic status, or personal acquaintance with any of the authorities in question. There are no more "shortcuts" to the higher courts

Chapter 3 — The Evaluation and Promotion System

The guiding principle of this chapter, and of the proposal as a whole, is the biblical commandment, "Justice, justice, pursue": a judge who rules according to the law, pursues justice, and gives a fair trial to those who come before him will advance. A judge who deviates from this will not advance, and if he repeats it, he will be removed from his position. This is not an ancillary goal, but rather the main goal of the evaluation mechanism: to ensure that only good judges advance, and that promotion is determined solely by qualifications—not by connections, political seniority, or the identity of the appointer

The basic structural principle: A judge's promotion is determined by two completely separate criteria – an objective legal quality index, based on the results of appeals; and an index of judicial behavior and efficiency, which is based on structured human feedback. This separation is intended to prevent a situation in which a judge who "loses" one of the parties in a case is punished for it while it examines his proficiency, efficiency, and actual conduct

It is important to clarify another basic principle: the appointment and promotion of judges in the proposed model has no connection to the candidate's sectoral, ethnic, religious, or political affiliation. A judge will be promoted solely on the basis of his or her grades – whether he is Arab, Haredi, Mizrahi, Ashkenazi, religious, or secular – and never for reasons of "adequate representation of one group or another. The "appropriate representation approach that was used in the past in public appointments has actually contributed to deepening the polarization and rifts among the country's citizens, because it reinforces the perception that every public position is the property of an identified group and not of the most deserving of it. The professional-measurable evaluation model described in this chapter eliminates this perception altogether and replaces it with a single criterion: who is the best at his job

Legal Quality Index (weight: 60%)

- The rate of appeals filed against the judge's rulings, out of all the cases he concluded
- The rate of appeals received out of those submitted
- Bonus for a precedential ruling: A ruling that has decided a legal question that has not been previously discussed ("a question of first importance"), and which was not reversed on appeal will earn the judge a bonus score, and not just a "non-fine." Such a ruling, which is later properly adopted by a higher court, will receive an additional bonus. Thus, the risk of

an innovative and reasoned ruling becomes worthwhile for the judge, and not something to be avoided

- The rate at which cases are closed ("procedural efficiency") is relative to the average of the court, subject to the fact that the actual pace of the hearing will not harm the parties' right to argue
- The index will be normalized according to the type of court, the type of case, and its complexity, so that judges handling complex or groundbreaking cases will not be punished. The ISA will publish the scoring methodology and update it once every two years following external professional audits

Behavior and Judicial Efficiency Index (weight 40%)

- Structured feedback (in a uniform, non-free form) from the parties' lawyers, regarding the judge's patience, proficiency in the case, and the conduct of the hearing
- Feedback from parallel judges and the court administration
- Direct feedback from the parties to the case (plaintiff, defendant, accuser, accuser) will be given only marginal weight (up to 5 percentage points out of the 40%), due to a built-in bias: a party that lost the case tends to rate the judge low, regardless of the quality of the hearing
- The number of motions for disqualification (disqualification request) filed against the judge, relative to the average of the court and the number of cases he managed, when a request for disqualification that was received is weighed more severely than a motion that was rejected, so as not to harm a judge whose tenure is the focus of ordinary professional disputes only
- Complaints filed against the judge to the Ombudsman against judges will also be included in the weighting of the index, relative to the average of the court and the number of cases he has managed – where a complaint found to be justified by the Commissioner is weighed more severely than a complaint that was rejected or found to be unfounded
- The feedback will be collected once a year, and all the data will be weighed and the index of the judges' scores will be published
- This feedback from the parties themselves – and not only from the lawyers and fellow judges – is one of the most essential components of the reform from the perspective of the citizen: for the first time, the person who comes before the court has a voice, even if partially, in the assessment of the judge who heard his case. The judge is no longer subject to closed professional scrutiny, but also to the public itself

Promotion between courts

- A judge who has served at least 7 years in the Magistrate's Court and is in the top decile of the Zionists in his area will be summoned by the Authority for candidacy to the District Court.
- A district judge who has served for at least 7 years and is in the top decile of the country will be invited to run for the Supreme Court
- A judge who is in the bottom decile twice in a row will be referred to a professional hearing at the authority, which can lead to transfer, supplementary training, or the opening of a disciplinary proceeding if substantial suspicions arise

Chapter 4 – Grounds for Dismissal and Disciplinary Proceedings

The bill distinguishes between two completely separate tracks of dismissal, which differ from each other in both cause, procedure and outcome: the professional failure track, which is not an offense but rather a lack of suitability for the position; and the trial bias track, which is an offense that justifies a severe sanction. This distinction is essential – there is no law for a judge who made a professional mistake like a judge who violated his duty of trust to the public

Track A — Professional Failure (Not a Crime)

- Grounds: Scores in the bottom decile over time (bottom decile twice in a row and then also at the end of a defined improvement period), inappropriate judicial temperament that arises repeatedly in structured feedback from lawyers and parallel judges, or an unusual and prolonged rate of rulings that have been reversed in relation to the average of the court
- Procedure: After a professional hearing, the judge will be given a defined improvement period (12 months), including professional guidance from the Authority. There has been no significant improvement – the Authority will recommend dismissal, and the final decision will be made by the professional committee after granting the judge full the right to plead and the right to appeal before an expanded panel
- The result: dismissal from the judicial position, while maintaining all the social rights that were legally accumulated – pension and severance pay. This is a fundamental difference from Track B: professional incompatibility is not an offense, and there is no reason to deny rights that were lawfully accrued

Track B: Judicial Biases and Corruption

- Grounds: Failure to disclose a conflict of interest and non-self-disqualification when a party to the proceeding, his attorney, or anyone on their behalf is a family member, business partner, or personal associate of the judge; Appointing an associate to a position of economic value in the case (receiver, liquidator, expert on behalf of the court, lawyer on

behalf of a minor) without disclosing the closeness; Receiving a benefit, bribe, gift, or any consideration for a ruling, decision, or appointment of economic value; Forging documents .or giving false testimony in the proceeding; Knowingly obstructing court proceedings

- Procedure: A judge against whom there is a reasonable suspicion of an offense from the above list will be brought before a disciplinary tribunal composed of three members of the professional committee (retired judges), who is not subject to the executive branch. The proceeding will be public, for the sake of being seen and seen, with the exception of parts that require immunity by law (such as details of minors). The judge in question has the right to representation, the right to review the investigation material, and the right to appeal .before an expanded panel of the professional committee
- The level of proof: In view of the severity of the outcome, the factual basis of the offense will be proven at an increased level of proof – beyond the usual balance of probabilities .”customary in civil law – and not only with a ”high probability
- Result, if the offense is proven: Immediate dismissal from jurisdiction, and complete revocation of all the rights accumulated – budgetary pension, severance pay, and any other .social rights accrued during the term of office
- A judge who resigned after a Track B proceeding was opened against him – the process will continue until a final decision is made despite the resignation, and will not be entitled to a .pension or compensation if the offense is proven

The deliberate severity of this track – an increased level of proof alongside an unequivocal and uncompromising result in the event that the offense is proven – is not accidental. A judge who has erred, and in particular who has biased a trial or acted out of corruption, harms not only the direct .parties to the proceeding before him, but also the public's trust in the judicial system as a whole For this reason, the reform requires a rigid approach to such cases: it is not possible to allow a judge against whom an offense has been proven from the list of grounds to continue to enjoy rights as if his term had lawfully ended. It is this severity, on the other hand, that allows, the professional confidence granted to a judge who acts honestly – since it is the distinction between the relatively forgiving Track A for professional failure and the rigid Track B towards corruption that ensures .that the severity is directed to exactly the right place

Chapter 5 — Serving in the Supreme Court, Retirement and Cooling-off Period

- A Supreme Court justice will serve for 7 years from the date of his appointment, regardless .of his age, and will retire at the end of the term
- A retired Supreme Court judge may serve in additional state positions (such as the State Comptroller or public committees), and may serve as an arbitrator in private arbitration .proceedings

- A retired Supreme Court judge will not represent parties in legal proceedings and will not give paid legal opinions for 5 years from his retirement
- A judge appointed to serve as an arbitrator will not hear a case in which he appeared before him as a judge during his tenure

Appointment of the President of the Supreme Court

The presidency of the Supreme Court will be appointed by a judge who has four years left on his term until the end of the fixed seven-year term – that is, a judge who has already accumulated three years of actual experience in the Supreme Court at the time of his appointment to the presidency, and who will be able to serve as president for a significant period of time before his retirement. If more than one meets this criterion at the same time the Supreme Court justices will choose the president from among the qualified candidates. This system ensures that the presidency will be granted to a judge with proven experience in the Supreme Court itself, and will not be determined by general seniority or external considerations.

Backup rule: If at that time there is not a single judge who has exactly four years left in his term the search will be expanded to a judge who has five years remaining in office. If more than one meets the expanded criterion, the Supreme Court justices will choose the president from among the candidates as stated above

Transitional Provisions

Judges currently serving in all courts will continue their terms and will not be fired or replaced when the reform comes into effect. However, they will enter the ongoing evaluation system described in Chapter 3 above, and will be subject from this moment on to the same rules of feedback, grades, and promotion – or discipline, if necessary – that apply to any other judge. A sitting judge whose term of office exceeded seven years at the time of the reform came into effect will end his current term within a reasonable period of time to be determined in the transitional legislation, in order to enable the reform to be implemented gradually and without compromising the functional continuity of the courts

Appointment of Presidents of District Courts and Magistrate's Courts

In contrast to the presidency of the Supreme Court, which is determined almost automatically according to the rule described above, the presidents of the district courts and the magistrate's courts will be appointed by the professional committee, in accordance with the criteria of experience and grades only: a presidential candidate must have served in the judiciary for at least five years, and be fit for the position in terms of the grades he has accumulated in the evaluation system described in chapter three above. Here, too, as in any

other aspect of the reform, the decision is based on measurable and public data – not on subjective judgment or connections

Chapter 6 – Duty to give full reasoning in every judgment: Annulment of a ruling under section 79a(a) of the Courts Law

,This is one of the core components of the reform from the perspective of the private citizen and it is not enough to address the institutional aspects of the appointment and promotion of judges without referring to it explicitly

The Current Situation

Section 79A(a) of the Courts Law [Consolidated Version], 5744-1984, authorizes a judge, with the consent of the parties, to rule on the matter before him by way of compromise or according to broad discretion, without detailing his reasons in full, and sometimes almost without reasoning at all. In accordance with the rules of appeal, such a judgment can be appealed only by authority, and in practice it is almost impossible to appeal substantively

Originally, this arrangement was intended to streamline the system and encourage the conclusion of cases by consent. In practice, the large number of cases and the burden on the courts have led to the fact that the arrangement is sometimes used by judges who wish to reduce their workload, and not only for the benefit of the parties themselves. The parties' consent to a "ruling" under this section is not always truly free consent: it is often given under indirect pressure from the presiding judge, out of concern that refusal will lead to the prolongation of the proceeding, and in the absence of a practical alternative to a party already in the midst of an expensive and lengthy legal proceeding

The result: a citizen may find himself relinquishing, in effect, under circumstantial constraint, both his right to know why it was decided against him and his substantive right of appeal – the two basic elements of a fair trial

The Proposal

.The proposed reform eliminates the possibility of rendering a judgment without full reasoning Any judgment in which the judge is the one who decides the outcome – including a judgment given under section 79a(a), when the parties have agreed only that the judge will decide by way of a compromise – will be reasoned by law, at a level appropriate to the type and complexity of the proceeding, and will be subject to appeal according to the ordinary rules that apply to that court. A judge who wishes to promote a settlement between the parties themselves may do so at any time ,and in any acceptable way, but once the proceeding is decided by a judgment on behalf of the judge it will be the result of a reasoned judicial decision, and not a technical waiver of fundamental .procedural rights

Important clarification: A settlement agreement between the parties is not harmed

A clear distinction must be made between two completely different situations, which are sometimes blurred by the common use of the public

In the first situation, the parties themselves reach – on their own initiative and with full agreement on the content – a compromise arrangement that ends the dispute, and ask the court to grant this agreement the force of a judgment. This is a welcome and desirable move, and this reform has no interest in harming it: it is the parties who determined the outcome of their own free will, and the court only grants it enforcement force. This mechanism will continue to exist exactly as it is today

The second situation, which the reform nullifies, is a ruling under section 79a(a) – a situation in which it is the judge himself, and not the parties, who decides the outcome of the dispute according to his broad discretion “by way of a compromise”, when all that is required of the parties is a preliminary agreement for the judge to rule in this way, and not an agreement on the substantive outcome itself. In this case, the result is not the result of a genuine agreement between the parties, but rather of a judicial decision for all intents and purposes – but one that is given, as stated, without detailed reasoning and without a substantive right of appeal. This is the mechanism that the reform cancels: if it is the judge who decides the outcome, and not the parties themselves, the decision must be reasoned and subject to appeal like any ordinary judgment – just like any other judicial decision

Prohibition of the use of legal expenses as a tool of pressure, and the right to appeal the costs themselves

An accompanying phenomenon to the problem of unexplained rulings is the use sometimes made by judges of the threat of court expenses rulings as a means of pressuring a party to withdraw an appeal or a lawsuit – formulations such as “if you do not withdraw the appeal you will be exposed to significant expenses” have in practice become a tool for reducing the burden of cases, rather than for substantive management of the proceeding. The proposed reform puts an end to this phenomenon: a judge receives his salary in order to judge, and must decide any dispute brought before him in a reasoned judgment – not to urge a party to waive his legal right to appeal or sue out of fear of costs

- The court expenses ruling itself will be subject to appeal, like any other part of the judgment
- An appeal against the amount of expenses will be possible especially when there is no reasonable correlation between the expenses awarded and the scope of the case, its complexity, and the expenses awarded in other similar cases – that is, when the expenses significantly deviate from what is customary in similar circumstances
- This mechanism is intended to prevent the use of expenses as a covert punitive tool against a person who chooses to exercise his procedural right to litigate or appeal, and to ensure

that the expenses reflect only relevant considerations – such as the scope of work invested in the actual case and the conduct of the parties themselves

Prohibition of Rulings on the Basis of Mere "Impression" – The Obligation to Establish a Factual Basis for Any Determination of Reliability

A further extension of the duty to give full reasoning relates to the manner in which judges decide in cases of opposing versions. It will no longer be considered a sufficient reasoning for a judge who writes "I believe this side" or "I believe this witness," without specifying the factual basis for doing so. The determination of reliability, like any other judicial determination, must be anchored in facts and evidence – not on a purely subjective impression of one side or the other

- Any determination as to the reliability of a witness or party to the proceeding will be accompanied by a detailed description of its factual basis: internal contradictions in the testimony, compatibility or incompatibility with objective evidence (documents documentation, supporting testimony), documented conduct, or any other substantive indication that can be examined
- A determination of reliability that is not accompanied by such factual basis will not be considered a sufficient reason for the judgment, and will in itself constitute grounds for appeal
- The aforesaid does not negate the special status of the judge's impression of the witnesses ; who appeared before him, an advantage that is also recognized in the appellate court however, this advantage does not exempt the judge from the need to anchor his conclusion in facts and concrete evidence, and does not allow for sufficiency with a sweeping and undetailed determination

?What does this contribute to the citizen

- The citizen always knows not only "what" was decided, but also "why" – a full and professional explanation for every judicial decision concerning him
- A judge can no longer use this mechanism as a tool to reduce a personal workload at the expense of the rights of the parties
- When the possibility of an unreasoned ruling that is immune from appeal is blocked, the essential right of appeal of every citizen is preserved, and not only on paper
- In the long run, the cancellation of the settlement is expected to reduce the number of appeals: when the reasoning is clear and clear from the outset, it is easy for the party to accept the outcome when it is properly founded, and it is equally easy for the party to identify the real point of contention if it chooses to appeal anyway – rather than appealing in the dark" out of not knowing why the case was lost"

- The arrangement also improves the accuracy of the evaluation mechanism described in chapter three above: once every judicial ruling, and not just a partial ruling, is subject to reasoning and appeal review, a fuller and more accurate picture is obtained regarding the quality of each judge's work, and not only with regard to those cases in which he chose not to use unreasoned rulings
- A citizen will no longer be forced to waive his right to appeal or litigate for fear of a hidden threat of disproportionate legal expenses; and even if expenses have been awarded against him, he can appeal them directly if they do not correspond to what is customary in similar cases
- When a case is decided on the basis of opposing versions, the citizen will receive a factual explanation as to why the opposing party's version was preferred – and not just an unreasoned assertion of "I believe" – which also allows him to examine in depth whether there is room for appeal

Chapter 7 — Ratification of the Referendum Reform

What a referendum needs — the core of the reform

A fundamental change in the structure of the judiciary, which has implications for the relationship between the three branches for generations, should not be decided by a random and temporary majority in the Knesset. Therefore, and similar to the principle according to which the establishment of a constitution or a change in the system of elections and government should be passed in a referendum, it is proposed that the idea and structure underlying this reform be approved in a nationwide referendum process, and that they can only be changed in the same process

The core elements that cannot be changed except in a referendum: the principle that the executive and legislative branches have no influence on the appointment, promotion, or dismissal of a single judge; the structure of the authority for the appointment and evaluation of judges and the composition of the professional committee; the two-measure evaluation method (legal quality and judicial conduct) and its principles; and the fixed tenure of the Supreme Court justice. At the heart of the proposal is one basic principle that is not negotiable: politicians should not be given the power to appoint judges

What Doesn't Require a Referendum — Operational Changes

Not every change in the judicial system is a fundamental change that requires the approval of the people. Operational-administrative changes – such as adding courts, increasing the number of judicial institutions, or budgetary changes derived from workload needs – do not require a referendum and will be approved in the regular process: (a) the judiciary indicates the existence of a need; (b) the executive branch expresses its budgetary consent; (c) the legislative branch approves

,in regular legislation. This process allows the judicial system to grow and adapt to changing needs .without burdening any technical adjustment in a cumbersome referendum process

It should be clarified: As of today, Israeli law does not have a general mechanism for a referendum on a basic law. There is only a "Basic Law: A Referendum" (2014), which applies only to territorial concessions. Therefore, before approving this reform, a separate arrangement law must be enacted that will determine: (a) the quorum and the majority required for the result to be valid; (b) whether the result is binding on a constitutional or advisory level only to the Knesset; (c) A closed definition of the core components that require a referendum, as opposed to the operational changes in the previous section, so that it will not be possible to circumvent the demand for a referendum under ".the guise of a "technical change

Chapter 8 — Comparison between the Current and Proposed Situation

Before dealing with the price and contribution of each party separately, it is necessary to explicitly present the fundamental choice underlying the proposal: it is a proposal that maximizes professional independence and reduces to the point of almost completely eliminating democratic-representative involvement in the appointment of judges. This is a clear improvement in some aspects, but it comes at a real price in other aspects—and there is no way to get the former without .paying the latter. The table and analysis below reflect this honestly, and not just the positive sides

Aspect	The situation today	The Proposed Proposal
Who appoints judges	Mixed Committee: Ministers, Members of Knesset, Supreme Court Justices, Representatives of the Israel Bar Association	An Independent Professional Authority Headed by a Committee of Retired Judges
Basis for Promotion	Separate appointment for each court, mixed considerations and not always overt	Measurable and transparent score: appeals efficiency, structured feedback
Serving as a Supreme Court Justice	Up to Retirement Age (70)	Fixed for 7 years from the date of appointment
Disciplinary Procedure	A Committee for Public Complaints about Judges and a Disciplinary Court within the System	External Court of Retired Judges, Public
The Role of the Government	Two Ministers on the Judicial Selection Committee	There is no role in appointing a single judge
The Role of the Knesset	Two Knesset Members on the Judicial Selection Committee	There is no role in the appointment of a single judge; only in the legislation of the framework
Entry to higher courts	Direct appointment to the Supreme Court or the District Court, without previous judicial experience	Absolutely forbidden; Every judge starts peacefully and advances only according to proven skills
Judgments	The possibility of an unreasoned and substantive ruling under section 79A(a) of the Courts Law	The obligation to give full reasoning in every judgment, including settlement rulings; Full and regular right of appeal
Anchoring the change	Regular Law / Basic Law by a Regular Knesset Majority	Nationwide referendum

For the citizen

:What the offer contributes

- A more transparent appointment process: Each judge has undergone a uniform and well-known training track, and has not been appointed in a "black box" of political agreements
- A professional judge instead of a "protector": In contrast to the current situation, in which appointments are sometimes influenced by connections and acquaintances and not just by skills, in the proposed model, each judge reaches his position through a uniform training track, and advances only according to measurable performance. The citizen gets a judge who has proven himself professionally – not someone who knew the right person
- Fast and responsible procedure: Today, legal proceedings can take many years without any mechanism that obligates the judge to be accountable for it. The Procedural Efficiency Index (Chapter 3 above), which is subject to review and regular publication, creates, for the – first time, a built-in incentive for the judge to manage cases with appropriate speed without infringing on the parties' right to argue, of course
- Justice and equality law: The evaluation indices, uniform training, and central supervision of all courts are intended to ensure that there will no longer be a gap between the justice received by a citizen from the periphery and that received by a citizen from the center of the country. There is no longer any room for the "Buzaglo test" – an unjustified linguistic difference in the system's attitude according to the origin, status, or place of residence of the litigant
- Transparent publication of efficiency data and appeals to each judge may strengthen public trust in the system over time
- Above all, the judge himself is subject to supervision. In contrast to the current situation, in which a judge enjoys broad immunity and can hardly be dismissed, in the proposed model the judge has no built-in protection against constant scrutiny of his work—neither a defense of his actions nor a status quo privilege. A judge who fails professionally or has gone astray can be dismissed, in the procedure described in chapter four above, just as any other public official is required to be held accountable for his or her performance

:What is the price / what could be deducted

- Legal results may change more slowly, because the promotion of judges is contingent on a minimum seniority (7 years in each instance) – a change that takes time

The Judiciary as an Institution

:What the offer contributes

- Prevention of entrenchment: A fixed term in the Supreme Court ensures regular exchanges and prevents the long-term concentration of a single judicial viewpoint
- A uniform and measurable promotion mechanism reduces accusations of protection or political appointments within the system itself
- An external and public disciplinary proceeding may strengthen public confidence that the system is indeed supervising itself

:What is the price / what could be deducted

- Loss of experience and institutional memory: Judges at the peak of their professional maturity are forced to retire at the end of 7 years at the Supreme Court
- The system loses some of its autonomy over the management of its internal discipline, in favor of an external body (even if it is made up of retired judges)

To the judges themselves

:What the offer contributes

- A clear and predictable career path, based on predetermined criteria rather than personal relationships or political identity
- Protection against political interference in appointment or dismissal – No politician can influence the promotion or dismissal of a judge
- A professional certification certificate and a formal training track provide early professional legitimacy that does not depend on ongoing self-proof
- The bonus mechanism for a precedent-setting ruling that has not been reversed makes a courageous and well-reasoned ruling worthwhile from a professional point of view, and not just a "risk to avoid" – a judge who wrote a first-of-its-kind judgment that was adopted, and was certainly properly adopted, will earn real credit points in preparation for his promotion

:What is the price / what could be deducted

- There is still some uncertainty at the moment of writing: the judge does not know in advance whether an innovative ruling will be accepted or reversed, so there remains a certain residual incentive for caution – even if the mechanism significantly reduces it compared to a gross measure of the rate of appeals alone
- A Supreme Court justice knows in advance that his term is limited to seven years – it may create an incentive to be overly cautious towards the end of his term, or alternatively, to worry about his future employment after that

- Efficiency metrics (the rate at which cases are closed) may create pressure to prioritize speed over thoroughness in complex cases

To the Executive Branch (Government)

:What the offer contributes

- Removal of a built-in conflict of interest: A minister or prime minister who is engaged in personal legal proceedings can no longer influence, even indirectly, the identity of the judges hearing their case
- ,Reducing the political-public friction surrounding each individual judicial appointment which could now turn into a coalition-opposition battle

:What is the price / what could be deducted

- The government completely loses any democratic-representative means of influencing the composition of the judiciary – a central argument of supporters of previous reforms was that the elected government lacks an imbalance with an unelected judiciary; this proposal further distances the two branches from each other rather than sacrificed them
- Losing the government's ability to respond quickly to cases in which it believes the judiciary exceeds its authority – any future change will require a referendum rather than a government decision or ordinary legislation

To the Legislative Authority (Knesset)

:What the offer contributes

- The Knesset has ceased to serve as an arena for political struggle over every single judicial appointment, and can turn to other substantive legislation
- Members of Knesset are no longer required to bear public responsibility (and sometimes criticism) for specific judicial appointments whose details they were not necessarily involved in

:What is the price / what could be deducted

- This is perhaps the most fundamental concession in the entire proposal: the People's House of Representatives relinquishes any representative democratic role in the appointment of the state's third branch. Critics will argue that a "fourth authority" — the professional committee — is not elected and is not supervised by any elected body

- A future change in the mechanism itself, even if it is found to be flawed, will require a referendum and will not be able to be carried out through a regular legislative process in the Knesset, making it difficult to quickly correct mistakes

Bottom line: The bill significantly improves the professional independence and transparency of the judiciary, and almost completely removes direct political involvement from it

Chapter 9 — The Attorney General: Professional Appointment and Split from the Head of the Prosecution

Alongside the reform in the appointment and promotion of judges, a parallel arrangement was required for the institution of the Attorney General – an institution that was at the center of the constitutional-public crisis described in Part 1 above, in part because of the way in which it combines two essentially different roles

Appointment of the Attorney General

It should be clarified: The decisive body here is not a separate committee established for this purpose, and it is not the committee for the appointment of the Attorney General, which currently exists according to a government decision. This is the same professional-technocratic committee of the Authority for the Appointment and Evaluation of Judges described in Chapter 1 above (seven retired Supreme Court and District Justices). As part of its ongoing work, this committee will also determine who is the best candidate for the position of Attorney General, as well as who is the best candidate for the position of Chief Prosecutor

- The committee does not locate and does not search for candidates on its own. Its role is limited to selecting the best candidate from a pool of candidates that is brought before it from other parties (such as the Minister of Justice, as detailed below). This is a fundamental difference: the committee judges and arbitrates, but does not recruit
- The committee selects the attorney general, and it is also authorized to remove him from his position in extreme cases – just as is customary today with regard to the power to dismiss the existing committee. The dismissal mechanism itself does not require change
- All the legal advisors in government ministries and the Knesset are professionally subordinate to the Attorney General, as is customary today

This entire process is purely legal-professional, and has no political dimension: its purpose is to ensure that the citizen receives the best possible position, on the basis of the professional judgment of senior colleagues and not on the basis of a political appointment

Splitting the position: The attorney general is not the head of the prosecution

Today, the role of the Attorney General combines two essentially different roles: the legal advisor to the government on the one hand, and the head of the Attorney General (the State Attorney's Office) on the other. This combination sometimes creates internal tension between the two positions, and contributes to the public feeling that one is the basis for decisions of a completely different nature. The proposed model splits between the two roles

- The Chief Prosecutor will be appointed separately from the Attorney General, from within the ranks of the State Attorney's Office, in a purely professional appointment
- Appointment Procedure: The Minister of Justice will recommend three suitable candidates from among the State Attorney's Office, and the Authority for the Appointment and Evaluation of Judges (the same committee described in Chapter A above) will select the appropriate candidate from among the three
- The term of office of the head of the prosecution will be limited to a period of between four and five years
- The head of the prosecution will be prosecuted, in the event of a suspicion of criminal offenses, according to the same rules that apply to a judge: he will be tried before the Authority for the Appointment and Evaluation of Judges, in accordance with the two tracks described in Chapter D above – professional failure, or perversion of justice and corruption including the same level of increased proof and the same denial of rights in the event of a – conviction in the severe track

This split clearly separates between the role of the day-to-day legal counsel to the government – a professional-legal role in essence – and the role of managing criminal prosecutions, which requires completely different considerations and separate public responsibility. Both positions are judged and elected by the same professional-technocratic body, but each is appointed, supervised, and dismissed separately, in a way that reduces the concentration of power in the hands of one entity and strengthens the responsibility of each position separately

Summary of the Judicial Reform

In the deepest sense, this is the way of the people themselves to appoint and remove their judges – not by means of a one-time ballot, but by hundreds of thousands of citizens who come before the court throughout their judicial careers, together with professional citizens lawyers, parallel judges, and court administrators who provide ongoing feedback, and appellate court judges who examine each judgment on its merits. A judge who behaves fairly professionally, and justly will advance; a judge who is not will be sent home

This is not a one-time vote by a single party in a single case (which may, as we have seen, reflect only a result and not fairness), but rather a cumulative judgment by independent and diverse audiences – the general public on the one hand, and the professional legal community on the other

who examine the judge from different angles and over time. It is this multiplicity of independent – sources that makes the system particularly resistant to an attempt by a single party to bias it: no lawyer, parallel judge, or party to the case can determine the fate of a judge alone – a consistent picture is required that repeats itself among thousands of independent evaluators over the years. It is not an infallible system, but it is a system that is very difficult to mislead

The reform proposed in this booklet does not seek to grant power to neither the government nor the court itself, but rather to transfer the decision on the identity of the judges to a professional measurable, and transparent mechanism – in which the only way forward is through proven achievements, and the only way to get down is through proven failure. This is a proposal to restore trust between the public and the judicial system, and to end the cycle of ongoing conflict between the authorities – not by means of one side winning over the other, but by taking the decision out of the hands of both

In addition to its institutional contribution, this reform also has a profound social contribution: since the promotion of judges is completely detached from sectoral, ethnic, or political affiliation, and depends only on measurable professional excellence, one of the arenas in which the sense of polarization between groups in the population has so far been strengthened has disappeared. Together with the proposed change in the electoral system and government (described in the body of the position paper), which shifts the focus of political competition from sectoral identity to regional and personal performance, one overall picture emerges: a transition from a system in which different groups struggle for a piece of the governmental pie, to a system in which all citizens of the country – regardless of religion, race, gender, or national outlook – are measured and serve according to exactly the same criteria. This is a necessary condition for reducing the rifts in the population and building unity, understanding, and mutual consideration among all citizens of the country

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