

10 November 2011

To:
Ya'akov Ne'eman
Minister of Justice

Re: The Courts Law (Proposed Amendment – Transparency of Procedures to Appoint Supreme Court Justices and the President and Deputy President of the Supreme Court) 5711 – 2011

Dear Sir:

This Sunday, the Ministerial Committee on Legislation is planning to deliberate the proposed bill of MKs Yariv Levin and Ze'ev Elkin, which deals with a procedure for approving candidates for the Supreme Court by the Knesset's Constitution, Law and Justice Committee following a public hearing in which the candidates will be asked their opinions and views.

We call upon the government to oppose this bill, which could undermine the independence of the Supreme Court and the principle of the separation of powers.

The process in Israel for selecting justices is unique, as is known, and carried out by the Judicial Appointments Committee. Not only are political parties not excluded from the Committee, they constitute the largest group in the Committee: four representatives (two ministers and two MKs) as opposed to three Supreme Court justices and two representatives of the Bar Association. Not only that, but the chair of the Committee is the Minister of Justice, who has the authority to set the Committee agenda and dates for convening meetings.

The composition of the Supreme Court should not have to reflect the majority in the Knesset, nor the balance of power in the political arena. The importance of having an independent and impartial judiciary pertains to the fact that its paramount mission is to protect human rights from harm by the political majority. This is particularly necessary with regard to the rights of minorities and disadvantaged groups in society, who lack political power.

Notwithstanding what appears in the explanatory notes to the bill, we are not aware of many countries whose appointment procedures entail a public hearing of candidates before the legislative branch. Indeed, the only case known to us is the one cited in the proposed bill – the United States. Even there, this procedure is used only for the appointment of judges to federal courts, not for the appointment of judges to state courts. The hearing in the Senate Law Committee and the Senate confirmation vote derive from the fact that it is the president who has the authority to appoint federal judges. The hearing, therefore, is a tool for oversight of the executive branch head and the exercise of that authority. In Israel, on the other hand, the appointment procedure is completely different, with legislative branch representatives involved from the outset.

The explanatory notes contend that since appointment to the Supreme Court requires a majority of seven committee members, this gives veto power to the justices, as without the support of at least one justice, a candidate cannot be appointed to the Supreme Court. However, this arrangement was the result of a private members' bill by someone who is today a government minister, and was adopted not long ago by the Knesset. This arrangement can certainly not serve as the basis for the thoroughgoing change proposed in this bill, which would undermine democratic principles and the independence of the judiciary.

It is indeed proper that the composition of the Supreme Court appropriately reflect all strata of the population. Currently there is no representation whatsoever of Mizrahim, and the representation of Arabs and women is far from appropriate. The list of candidates from previous years, which according to your announcement is the basis for the appointment of candidates in the coming meeting of the Committee, would not rectify this situation. These lists are not updated, and it is not clear who among those listed is a realistic candidate. Moreover, the list has only two women candidates, and as far as we know no Mizrahi or Arab candidate.

We therefore call upon the Ministerial Committee on Legislation to oppose the proposed bill. We also urge you to work diligently to broaden the list of candidates to the Supreme Court so that it addresses the need to ensure appropriate representatives in its composition.

Respectfully yours,

Atty. Dan Yakir
Chief Legal Counsel
The Association for Civil Rights in Israel (ACRI)

CC: Members of the Judicial Appointments Committee