

# Unraveling the impact of the "Judicial Reform" on Israeli courts

## What is the "Polish Salami Slicing Tactic" and how does it tie into the "Judicial Reform"?

The "Salami Slicing Tactic" witnessed in Poland, is now being used in Israel to gradually erode democracy one bill at a time. As part of the "Judicial Reform", the coalition government introduced four bills, each designed to effectively dismantle the checks and balances within Israel's system of government. The first "Judicial Reform" law revoking the Reasonableness Doctrine was enacted on July 24, 2023. Three additional bills of the "Judicial Reform" are still pending: (1) appointments of "subjugated judges"; (2) politicizing and weakening ministerial legal advisors; and (3) implementing an "Override Clause" to enable the Knesset to revive unconstitutional laws struck down by the Supreme Court. Additionally, the coalition government has prepared a series of 225 bills with a cumulative effect that would profoundly impact human rights and alter Israeli democracy.

## What is the "Hungarian Protocol" and how does it relate to the Israeli courts?

The "Hungarian Protocol" means the five stages of dismantling democracy, as was done in Hungary: (1) undermining judicial independence; (2) disrupting elections procedures; (3) controlling the media; (4) limiting the rights of individuals, minorities, LGBTQ+ and women, and using religious coercion; and (5) restricting freedom of speech in academia and the arts. The Israeli government is simultaneously pursuing all five areas of the Hungarian Protocol. The first stage of the Israeli "Judicial Reform" already targets the independence of the courts, and if successful, would

open the door for implementing the other four steps, which are already in the making (via the 225 Knesset bills in various stages of legislation).

## Would the "Judicial Reform" restore the balance between the branches of government in Israel?

In Israel, separation of power is already weak because the government (executive branch) has majority votes in the Knesset (legislative branch) and therefore controls the Knesset. If the government takes control of the judiciary, the separation of power will be breached and effectively, all three branches will become one. This would contradict the premise of a democratic regime and could lead to tyranny of the majority and endanger human rights and the rule of law.

## Do judges in Israel appoint themselves?

Contrary to deceptive claims, the process of appointing Justices to the Supreme Court was amended in 2008 as part of the "Gideon Sa'ar Reform" which granted veto power to the coalition over appointments of Supreme Court Justices. Out of the current 15 Justices, 14 were appointed post-2008, based on an agreement between representatives of the government (primarily led by Netanyahu), the Knesset, the judiciary, and the Israel Bar. The current system ensures a balanced approach, resulting in professional and diverse judicial appointments.

## Why can't politicians appoint judges, as in other countries?

Israel lacks crucial checks and balances found in other democracies, such as a constitution, a bill of rights, and formal protection of equality and freedom of speech.



Photo: Chen Leopold

With a government-controlled unicameral legislature, no separate elections or veto power to the head of state, and absent a federalist structure, regional elections, or accountability to international courts, the Israeli Supreme Court serves as the sole check on government power. Therefore, it is crucial that judicial appointments are not politicized. Additionally, PM Netanyahu has a severe conflict of interest in this matter, since the Supreme Court will ultimately hear the appeal regarding multiple charges of criminal corruption for which he is currently standing trial.

## How diverse is the Israeli Supreme Court?

Since Justice Menachem (Meni) Mazuz's early resignation in April 2021, the Mizrahi sector had been represented on the Supreme Court by Justices Canfi-Steinitz and Elron. Religious Zionism is overrepresented. Arab citizens and former Soviet Union immigrants (each group comprising 20% of the population) are underrepresented (only 6% representation of each). Ultra-Orthodox Jews (13% of the population) and Ethiopian immigrants (2% of the popula- ▶

tion) are not represented. Women (50% of the population) are underrepresented (only 40% representation in the court). **While fully representing Israel's diversity in a Supreme Court comprised of 15 Justices is challenging, recent decades have shown significant improvements in pursuing diversity.** However, the proposed "Judicial Reform" does not genuinely prioritize enhancing diversity, but rather serves a political agenda and personal allegiances.

### What happens if the Supreme Court Strikes Down the law revoking the Reasonableness Doctrine?

The law revoking the Reasonableness Doctrine passed in July, despite overwhelming expert opposition and mass protests. This law exempts the government from judicial scrutiny for extremely unreasonable administrative decisions. On September 12, 2023, an unprecedented 15-Justice Supreme Court panel will review petitions challenging this law's constitutionality.

Some coalition members have indicated they will not abide by a ruling overturning the law, and Prime Minister Netanyahu has refused to commit to obey the court's decision. **If the government ignores the Court's decision it could plunge the nation into a constitutional crisis, forcing public officials, including security leaders, to pick sides between the government and the Supreme Court. This would be detrimental to the fate of Israeli democracy.**

### What is the composition of the Supreme Court?

Justice	Year appointed	Expected retirement	Prime Minister	Did you know?
Esther Hayut	2003	10/2023	Sharon	Appointment supported by Elon (far right) and Yahalom (Religious Zionist). Retires in October 2023
Uzi Vogelman	2009	10/2024	Netanyahu	Appointment supported by Ariel (Religious Zionist) and Ardan (Likud)
Yitzhak Amit	2009	10/2028	Netanyahu	Appointment supported by Ariel (Religious Zionist) and Ardan (Likud). Projected Chief Justice in 2023 (under the current Seniority system that exists per the decades-long custom)
Noam Sohlberg	2012	01/2032	Netanyahu	Considered liberal on socio-economic issues and conservative on human/civil rights issues. A West Bank resident. Projected Chief Justice in 2028 (next in line following Justice Amit)
Daphne Barak-Erez	2012	01/2035	Netanyahu	Considered liberal on both socio-economic and human/civil rights issues. Next in line for the Chief Justice position following Justice Sohlberg.
Anat Baron	2015	10/2023	Netanyahu	Considered liberal
David Mintz	2017	05/2029	Netanyahu	Considered conservative on both socio-economic and human/civil rights issues. A West Bank resident
Yosef Elon	2017	09/2025	Netanyahu	Considered conservative. Parents immigrated from Iraq
Yael Willner	2017	09/2029	Netanyahu	Considered conservative. Religious Zionist
Ofer Grosskopf	2018	10/2039	Netanyahu	Considered conservative on socio-economic issues and liberal on human/civil rights issues
Alex Stein	2018	10/2027	Netanyahu	Considered conservative. Born in the former Soviet Union
Gila Canfy-Steinitz	2022	10/2028	Bennett	Considered conservative. Parents immigrated from Morocco. Married to former Likud minister (Steinitz)
Khaled Kabub	2022	03/2028	Bennett	First Arab-Muslim justice (prior Arab justices were Christians)
Yechiel Kasher	2022	06/2031	Bennett	Considered conservative
Ruth Ronnen	2022	11/2032	Bennett	Considered liberal

