

First Study Commission Judicial Administration and Status of the Judiciary

Israel

- 1. Does your country's judicial include prosecutors (or equivalent) ? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges ?**

The Judiciary in Israel is independent and immune from any influence or pressure. The Basic Law: Judiciary (part of the Israeli constitution in ststu nascendi) provides that the judge is only subject to the law. In other words, as stated in sec. 2 of the abovementioned law: **"Independence – A person vested with judicial power shall not, in judiciary matters, be subject to any authority, but that of the Law"**.

The Israeli Judiciary does not include prosecutors or their equivalent, but only judges appointed by the one and only authority to appoint judges namely, The Judges' Election Committee.

Prosecutors do not benefit from the guarantee mentioned in section 2 cited above.

- 2. How would you define "judicial independence" in the context of the political and social system of your country today ?**

As to the definition of "**Judicial Independence**" in the context of the political and social system of Israel, I would define the above mentioned immunity as an absolute one, preventing the exertion of any influence, persuasion or pressure on each or every Judge, as assured by statutory, constitutional guarantees.

- 3. Which objective criteria would you identify as indicating that the judiciary of your country is independent and why ?**

The objective criteria identified, in addition to the above cited provisions of the Basic Law, are the following:

- a. There is no possibility to dismiss a judge, except by a decision of a Court of Judges, or by a decision of The Judges' Election Committee by a majority of seven out of the nine members.

The members of the committee are: three justices from the Supreme Court including the President of the Supreme Court; two members of the Israeli Bar chosen by ballot; two members of the Government including, always, the Minister of Justice; two members of the Knesset elected by secret ballot.

The Court of Judges is composed of serving or retired judges appointed by the President of the Supreme Court.

- b. Guaranteed by law, a judge can serve until the age of 70, provided he does not make use of the alternative provided by the law to retire earlier.
- c. The salary of the judge is decided by general provisions by the Financial Committee of the Knesset according to the constitutional provisions (section 10(a) of the Basic Law: Judiciary).

The salaries of the judges and other payments to be paid to them during or after tenure or to their survivors after death, are prescribed by law or by the Knesset Commission empowered by the Knesset on their behalf. According to section 10(b) of the Basic Law, no decision shall ever be passed reducing the salary of the judges alone.

- d. The promotion of a judge is the prerogative only of The Judges' Election Committee (see above).

4. Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why ?

The subjective criteria mentioned in the memorandum of the Study Commission are actually partially objective ones, e.g.

public opinion of independent bodies; regarding the independence of the judiciary as evident and powerful. Subjective indicia would include events or occurrences in which the independence of a certain decision of an individual judge was challenged. There have not been such cases in Israel.

5. If you have to identify the three most important criteria for indication judicial independence in your country, what would they be and why ?

The three most important criteria for indicating judicial independence in Israel are:

- a. The tenure of a judge until the age of 70, as provided by law, unless he retires earlier by his own will.
- b. The promotion of a judge only by The Judges' Election Committee.
- c. The constitutional provision prohibiting salary reduction of the judges only.

The three provisions together with the norm of the Basic Law according to which the judge is only subject to the Law guarantee complete independence.

Judge Michal Rubinstein

Vice president

District Court of Tel Aviv – Jaffa

Israel