



## New Proposed Knesset Bills and Israeli Democracy

### Major bills submitted in the Knesset in the past year that have stirred controversy:

- **Nakba Bill**

In its original form, the bill proposed to criminalize the practice of marking Israel's Independence Day as a day of mourning. It was passed into law by the Knesset in March 2011 in a much amended form, which dropped the criminal sanction.

- **Anti-Boycott Bill**

In its original version, the bill proposed to make calls for boycott against Israel and Jewish settlements in the occupied territories a criminal offense. It was passed into law by the Knesset in July 2011, but the criminal sanction was dropped, though the law still allows punitive damages. A petition against the law has been submitted to the Supreme Court.

- **Media Defamation or Anti-Libel Bill**

The bill proposes to increase six-fold the present limit on compensation for libelous reports. It passed first reading in the Knesset in November 2011.

- **Bill regarding foreign government funding of NGOs**

Originally submitted in the form of two bills, it seeks to limit and tax foreign government funding of Israeli NGOs. To date, discussions on the NGO bill have been frozen by Prime Minister Netanyahu.

- **Bill regarding the vetting of Supreme Court justices by a Knesset committee**

The bill was dropped in November 2011, after being slammed by Prime Minister Netanyahu.

- **Bill aiming at restricting the right of petition before the Supreme Court**

The bill was unanimously voted down by the Ministerial Committee on Legislation in November 2011.

- **Bar Association bill**

The bill proposes to change the composition of the committee that nominates judges for the Supreme Court, giving the ruling coalition increasing representation. **It was frozen in January 2012 by decision of Prime Minister Netanyahu, after sharp criticisms by some Likud ministers and the attorney general.**

- **Basic Law 15: Legislation**

The new proposed legislation allows that only the High Court of Justice (HCJ), composed in this instance of a panel of nine justices<sup>1</sup>, has the power of judicial review. The proposed legislation would also enable a Knesset majority of 65 MKs (out of 120) to temporarily (for a five-year period subject to extension) override such decisions. **A legal memorandum describing the proposed law was distributed by the Ministry of Justice in April 2012.**

The past year has been marked by strong preoccupation, both in Israel and abroad, with a string of bills sponsored in the Israeli parliament by the nationalist right-wing party, Yisrael Beiteinu, of Foreign Minister Avigdor Lieberman and by members of Prime Minister Netanyahu's center-right Likud party as well as some lawmakers from Tzipi Livni's centrist Kadima party. The bills have stirred intense controversy, and claims abound that they are illiberal and infringe the fundamental right of freedom of expression and the independence of the judiciary. Both in Israel and in the Western media, one increasingly hears that Israeli democracy is deteriorating.

It is extremely unlikely, however, that the current assault on liberal rights and freedoms will succeed, and that Israeli democracy will suffer substantial erosion. Israel's liberal democratic

system emerged and developed under extremely adverse conditions, which is remarkable in itself, and is a strong counter-indication to the demise of democracy today. The claims of the imminent collapse of Israeli democracy are not new, and assaults on democratic and liberal values have been successfully repelled in the past. The common assessment and sense is that the Israeli Supreme Court will quash any legislation that is contrary to democratic and liberal norms. Indeed, even before being challenged in front of the Supreme Court, the new proposed bills initiated in the past year highlighted above were in fact frozen, dropped, or severely amended. These outcomes occurred due to the legislative process in Israel, and to the political opposition.

Some of the legislative proposals were dubious from the viewpoint of liberal democratic norms, and several of them clearly violated them. They

seemed to be attacking the legitimacy of certain views and to be targeting left-wing organizations and individuals, the fundamental right to freedom of expression and the general principle of equality and non-discrimination.

One of the first contentious legislative proposals was the so-called "Nakba" bill, which proposed to criminalize the practice of marking Israel's Independence Day as a day of mourning. It was passed into law by the Knesset in March 2011 in a much amended form, which dropped the provision for criminal sanctions. Similarly, the 'Anti-Boycott' bill, which initially sought to make calls for boycott against Israel and Jewish settlements in the occupied territories a criminal offense, was passed into law by the Knesset in July 2011 in a modified version, which abandoned criminal sanctions, though it still allows a legal avenue to pursue punitive damages. In the past several months, two series of Knesset bills have generated particularly tumultuous discussions, both within Israel and overseas. One bill proposed that prospective candidates for Israel's Supreme Court be vetted by a Knesset committee, but it was dropped in November 2011, after being slammed by Prime Minister Netanyahu. Another bill, aimed at restricting the right of petition before the Supreme Court, was unanimously voted down by the Ministerial Committee on Legislation in November 2011. A third bill, the so-called "Bar Association" bill, would have changed the composition of the committee that appoints judges, giving the ruling coalition increased representation. It was frozen in January 2012 by decision of Prime Minister Netanyahu, after sharp criticism of some Likud

ministers and the attorney general. The second series of controversial bills seeks to limit and tax foreign government funding of Israeli NGOs. To date, discussions on the NGO legislative proposals have been frozen by Prime Minister Netanyahu.

The introduction of these bills now follows several socio-demographic shifts that have affected Israeli democratic culture in the past two decades. First, the ultra-Orthodox population has grown more than threefold since 1990, from three percent of the total population to over ten percent today. It is among the Haredim that commitment to civil equality and support of freedom of expression is the lowest.<sup>2</sup> Second, immigrants from the former Soviet Union, who arrived in the past two decades, today represent almost 20 percent of Israeli citizens. Although Russian immigrants are gradually becoming more similar in their views to the general Jewish public in Israel, they are still relatively new to democratic norms and politics.<sup>3</sup> Third, these socio-demographic shifts affect not only the populace, but political elites as well. The controversial bills initiated in the past year have been proposed by lawmakers who are not only responding to their constituencies' expectations but who also believe that the delicate balance between nationalist and liberal values has tilted too far to one side. For example, in the view of some segments of Israeli

**The likelihood of substantial erosion of Israel's democracy is extremely low**

society, certain domestic NGOs have exploited the openness of Israeli society to further an anti-Israel agenda, both within Israel and abroad in such forums as the United Nations and the international media. The bill against foreign government funding of Israeli NGOs is regarded by some as a legitimate law that merely seeks to prevent foreign countries from supporting such organizations and interfering in Israel's internal affairs. It is not dissimilar to the Foreign Agents Registration Act

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(FARA) in the US, which requires any organization whose activities are supported by foreign funding and which act in a political or quasi-political capacity to register as a foreign agent and make periodic public disclosure of its relationship with foreign donors.

The perceived need by some lawmakers to alter the balance between national needs and liberal values through legislation, including legislation aimed at the composition and powers of the Court, also reflects a sense among some circles of the Israeli public and leadership that the Supreme Court has overstepped its role and has allowed, under the rubric of protecting individual rights, a minority to rule over the majority. A 'constitutional revolution' has occurred in Israel over the past two decades. In the landmark 1995 *Mizrahi* case the Supreme Court, presided over by Justice Aharon Barak,

held that the two Basic Laws passed in 1992 had "*supra-legislative constitutional status*" and that, accordingly, the Court may strike down Knesset legislation violating the rights enshrined in the two Basic Laws<sup>4</sup>. The Court broadened judicial review to all twelve Basic Laws in the 2003 *Herut* case<sup>5</sup>. But most significantly, the Israeli Supreme Court has developed a particularly active approach to judicial review, intervening quickly and on a myriad of issues at a constitutional level, in contrast to the tradition of prudentialism that has historically characterized the US Supreme Court.<sup>6</sup>

In the past decades, the activist policies of the Court have generated opposition from across the political spectrum, and not only from right-wing circles as is often assumed—in fact Likud Prime Minister Menachem Begin was one of the strongest supporters of the Court and of Judge Aharon Barak, while the opposite was true for Labor Prime Minister Yitzhak Rabin. But opposition to the Court's judicial activism has increased in the last several years, including within mainstream legal academic circles. Thus, the controversial bills initiated in the past year in the Knesset are part of this dynamic of opposition to the Court. Although, in the 1990s, the most vocal opponents of the Court were the ultra-Orthodox and nationalist factions, who rejected its interventionism in matters either pertaining to religious issues or to the rights of non-Jews, opposition to the Court's judicial activism has spread among wide sections of the Israeli public in the last decade, as a result of controversial rulings on social and defense matters. Although the Supreme Court still outpolls other courts in public's confidence, in 2010 only 56 percent of the general

Jewish public—Jewish citizens excluding Haredim and settlers—retained great faith in the Supreme Court, compared to 80 percent in 2000.<sup>7</sup> Growing opposition to the judicial activism of the Court is one of the main factors contributing to this steep decline.<sup>8</sup>

In April 2012 the most serious attempt at changing the balance of powers between the Israeli High Court of Justice and the Knesset was introduced by Justice Minister Yaacov Neeman. The proposed new Basic Law, a 15<sup>th</sup>, would officially acknowledge HCJ's role in judging the constitutionality of laws, but would give the Knesset the power to temporarily override court decisions (with a 65 MK majority vote). Like all proposed legislation related to the Israeli courts, this instantly became a matter of heated debate. Supporters claim that such an acknowledgment of the Court's power is a de-facto acknowledgment that Israel's Basic Laws function very similarly to an official constitution, others argue that giving the Knesset the power to circumvent Court decisions is hazardous to Israel's liberal democracy. The most serious criticism of the proposed legislation, so far, has come from incoming Chief Justice Asher Grunis. Grunis publicly complained that it was inappropriate to propose such a momentous law without consulting the Court's justices.

Whether this new Basic Law bill can pass the Knesset at this time is far from certain. There are members of the coalition who oppose some of the proposed bill's language and/or some of its details—the most contentious debate relates to the number of Knesset members required to override a Court ruling. More than a handful of

involved observers argue that the proposed 65-vote threshold is too low for them to support the bill. Those seeking an amended version argue that legislation to override the Court might be necessary, but only in cases when there is a more considerable Knesset majority. There are also many MKs who oppose any such remedy, and would vote to defeat Neeman's proposal.

Socio-demographic shifts and the controversy over the Supreme Court's judicial activism (paralleling, to a large extent, controversies in the United States over judicial activism) do not portend the demise of Israeli democracy itself. The presence of strong forces committed to liberal democratic values from the founding years of the State of Israel, despite conditions extremely inhospitable to embedding liberal democracy, is a strong counter-indication to the demise of democracy today. The emergence and development of democracy in Israel was a remarkable achievement. It requires no effort for peaceful and prosperous West European countries, such as Denmark or Norway, to maintain liberal democracy within societies imbued for generations with a democratic political culture and which remain free of violent conflict or its prospect.

Israel came into being and developed under conditions and in an environment decidedly

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adverse to liberal democracy. And yet, it became over the years more of a liberal democracy—rather than less, as often alleged. The first and foremost impediment to liberal democracy in Israel has been the Arab-Israeli conflict. Even in longstanding democracies, violent conflicts or severe threats to the state’s stability and security are likely to lower democratic standards during the time these pressures prevail. But in Israel the state of emergency is chronic and open-ended.

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Moreover, the conflict has important spill-out effects on Israeli society itself. It shapes, and certainly makes even more of a challenge the relationship between the Jewish majority and the Arab minority, which overwhelmingly regards itself as part of the Palestinian people. Furthermore, the composition of Israeli

society militates against the development of a liberal democracy no less than the unremitting Arab-Israeli conflict. The large majority of Israel’s Jewish population originally emigrated from countries deprived of any democratic political culture, and in many cases, characterized by a rather autocratic one. As for the large Arab minority in Israel, it has no other experience of democracy than Israeli democracy itself.

History also reveals that claims of the imminent demise of Israeli democracy are not new. Since

1977, it has been claimed repeatedly that Israel’s democracy is eroding and that some sort of clerical fascism is taking shape. Many warnings were voiced in the late 1970s and 1980s with the ascension to power of the Likud under the leadership of Prime Ministers Menachem Begin and Yitzhak Shamir. The rhetoric of ‘democracy in danger’ was heard well into the 90s. And yet, while many opponents to the policies of the Israeli right were predicting the imminent collapse of Israeli democracy, the country was in fact undergoing an extensive process of liberalization. Israeli democracy is not a formal democracy, but rather, a substantive one. Today, unlike before 1977, the ruling party or coalition in Israel is well aware that it can be voted out of power in the next election. The power of the Knesset as well as the judiciary—first and foremost the Supreme Court, but also the attorney general—has grown much stronger vis-à-vis the executive branch. Civil society and the media are far more developed, vibrant, and influential. Freedom of expression is outstanding, including on issues as sensitive as security. There is every freedom to vilify not only the Israeli government and its policy but also the state and its ideology. In fact, every Zionist sacred cow is today drawn and quartered—particularly so in the academy, media and in the arts. This is not to say that the past decades have been free from any assault on freedom of expression and democracy. During this period, too, nationalistic rhetoric abounded; at its worst it was racist and fascist. Illiberal bills were often submitted to the Israeli parliament and on some occasions, undemocratic administrative decisions and draconian laws were adopted.

But past assaults on democracy by the executive and legislative powers have been repelled, chiefly owing to the intervention of the Israeli Supreme Court. Even long before the "constitutional revolution," the Supreme Court was vigilant in protecting liberal democratic norms through narrowing interpretations of laws limiting those rights and freedoms. For example, according to the terms of a 1985 amendment to the Basic Laws, candidates that reject Israel's right to exist as the state of the Jewish People, or negate its democratic nature, or incite to racism, can be prevented from participating in Knesset elections. The legislation allowed for the disqualification in 1988 by the Central Elections Committee of the extreme-right wing Kach party, led by Rabbi Meir Kahane, a decision that was upheld by the Supreme Court. But at the same time, the Supreme Court opposed all attempts to disqualify Arab parties on the grounds that they oppose Israel's Jewish character. It has overturned in 1988, and then again in 2003 and most recently in 2009, all decisions to ban Arab parties<sup>9</sup>.

If the past is any indication, the Supreme Court will strike down today, as well, any legislation that violates democratic values. It will either interpret it narrowly in a way that does not violate democratic principles, or quash it altogether. Today the Court's ability to strike down such legislation through the power of judicial review is far stronger.

In February 2012, Chief Justice Beinish retired and was replaced by Chief Justice Asher Grunis who was known for his opposition to the Court's judicial activism. Yet, since ascending to the High Court, Chief Justice Grunis has overseen a Court which

that has ordered the government to dismantle the Ulpana settlement in Beit El, and has recently announced one of the most significant decisions in the Court's history protecting the rights of women from discrimination in pay in the workplace. Chief Justice Grunis also has been zealous in defending the prerogatives of the Court in the face of the proposed Ne'eman Basic Law. The appointment, in early January, of four new Supreme Court judges to replace retiring justices represents, taken as a whole, a fair cross-section of Israeli society and ideologies, which may affect the perception of the Court as more balanced in the eyes of the public.<sup>10</sup> Still, any such changes in the composition of the Court are not likely to drastically alter the historical role of the Court as guardian of democratic values.<sup>11</sup>

**The appointment of four new justices, taken as a whole, represents a fair cross-section of Israeli society**

Even prior to Supreme Court intervention, the controversial bills can be fully expected to be adopted in a considerably changed form—if they are adopted at all. The multiple stages of the legislative process in Israel, as in other parliamentary democracies, ensure that there is often a great difference between what is originally submitted and what is eventually passed. A bill that violates freedom of expression as originally submitted may well end up not violating it as adopted. And indeed, while no intervention of the Supreme Court has yet taken place, many of the controversial bills have

already been modified in the course of the various stages of the legislative process, if not abandoned altogether. Attorney General Weinstein sent a letter to Prime Minister Netanyahu regarding the bill seeking to limit and tax foreign government funding of NGOs, in which he warned him that the proposed legislation was unconstitutional and that he would not be able to defend it should it be passed into law and challenged before the Supreme Court. To date, discussions on the NGO bill have

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been frozen by the Israeli prime minister. As for the two most controversial Supreme Court bills, it seems that neither of them will be passed into law, at least in their original form. Prime Minister Netanyahu has come out strongly against the bill on vetting Supreme Court justices in the Knesset, and declared that “There will not be such a law in a government of which I am the head.”<sup>12</sup> The second bill, seeking to limit the right of petition before the Supreme Court, has been unanimously voted down by the Ministerial Committee on Legislation. The anti-boycott bill has been adopted after the criminal sanctions, originally proposed, were dropped, though the law still allows legal petition for punitive damages. It is, indeed, highly problematic from the viewpoint of freedom of expression. Whether an Israeli court would be likely to award punitive damages in such cases is

very doubtful. In any case, a petition against the law has been submitted to the Supreme Court for review.

Second, in the current political climate it is unclear whether elected representatives who initiated the controversial bills in fact intend for them to pass in their original form. In the past months and years, anger has grown among the Israeli public against the fringes of the left that have, for example, cooperated with the UN Goldstone report, or against the extreme leftist organizations calling for a boycott against Israel or collecting evidence against Israeli officers. Some on the Israeli right have, therefore, decided that they should at least appear to be doing something to fend off these radical leftist trends. Proposers (and supporters) of the bills claim that there is an urgent need to establish a better balance between liberal and nationalist values. But submitting draconian bills is also often merely a political tactic intended to score public opinion points, rather than to bring about the changes these bills propose. Lawmakers initiate the bills with an obvious desire to be noticed by the public. Such bills also participate in the ‘game’ of mutual vilification played by both the Israeli right and the Israeli left. While such legislative demonstrations are a negative contribution to Israeli public life, this does not necessarily mean that there is a serious intention to carry the bill all the way to the statute book as proposed.

Even if the controversial bills do not pose a risk of destroying Israeli democracy, the political machinations cause considerable damage to Israel. They cause internal damage to Israeli politics and democratic culture. Specifically, the legislative

process is discredited. Legislation is a serious process and one should never propose a bill that is merely a political demonstration – especially if it is a demonstration of intolerance and contempt for liberal values. The ‘game’ of mutual vilification and demonization between the Israeli left and the Israeli right poisons the public atmosphere. At present, parts of the right (unfortunately, not just the extreme right) are clearly leading the way, but left-wing contributions to this game should not be discounted.

Moreover, the recent controversial bills cause considerable damage to Israel's reputation abroad—not just to its reputation as a democracy, but also to its image as a strong and successful country. It conveys the impression that Israel is a torn state and society, perhaps on the verge of disintegration, and that Israeli patriotism needs to be protected by punitive legislation. A recently published survey of the Israel Democracy Institute shows that as far as the Israeli public is concerned, including the great majority of the left, there is no problem of patriotism.<sup>13</sup> Among Israeli Jews, nearly 88 percent declare that they are proud to be Israelis. 82% of those who define themselves as belonging to the left and, interestingly, 66% of the ultra-orthodox say that they are proud to be Israelis. The number of Israeli Arabs who say that they are proud to be Israelis is much lower than among Jews, but it is nonetheless, much higher than most people would have expected—nearly 53%. That an absolute majority of Israeli Arab citizens are willing to say so is a remarkable achievement under the circumstances, and confirms what many polls, over the years, have indicated—that the Arab public in

Israel is, on average, considerably more moderate, in its attitude toward the state, than its political leadership and its vocal intellectual elite.

Furthermore, the controversial bills and the illiberal rhetoric surrounding them play into the hands of Israel's political adversaries. Many persons and organizations overseas welcome any chance to claim that Israel is only a ‘pseudo-democracy’; the recent legislative fury provides them with ammunition. Apart from the ‘usual suspects’ who are habitually hostile to Israel, some of Israel's strong supporters and defenders have also spoken out and expressed concern. US Secretary of State Hillary Clinton said in a closed forum at the Saban Center in Washington that she is worried and astonished by the legislative initiatives in the Israeli parliament to put restrictions on left-wing organizations.<sup>14</sup> That a high-level US government official, whose long-standing commitment to Israel cannot be questioned, comes to express such comments, even though it seems they were not intended to be on the record, is not a good sign. If these concerns persist, they may cause real damage to US-Israel relations, especially since the sense that Israel and America share common democratic values is clearly *one of the main pillars of the wide support Israel enjoys among the American public.*

**The recent controversial bills cause considerable damage to Israel's reputation abroad – not just to its reputation as a democracy**

Last, but not least, the current attempted assault on democracy is likely to cause damage to the relationship between Israel and the Jewish Diaspora—particularly the American Jewish community, most of which is politically liberal. American liberal Jews, although they may be very critical of Israel’s present government and policies, are fundamentally supportive of the Jewish state, not the least because they take pride in Israeli democracy. Many of them have voiced strong concerns about the recent legislative trends. They stressed that, like for the rest of the American public, commitment to shared moral values and democracy is one of the key elements binding together American Jews and Israel. The perception that Israeli democracy is in danger could lead to a decline in the attachment of liberal Jews to Israel. Some fear that eventually this may contribute to a weakening of the bipartisan support enjoyed by Israel until now, with American conservatives—Jews and non-Jews alike—who will remain staunch supporters of Israel while liberals increasingly distance themselves from the Jewish state. That would be a very undesirable development for Israel, the interest of which is without doubt to be supported by the Jewish community and the wider American public across the political board—by both Democrats and Republicans.

The price of freedom is eternal vigilance - though not exaggerated fear mongering. Democratic

values and norms should never be taken for granted. They are always in danger, liable to be challenged and eroded in various ways. This does not mean that democracy itself, or the overall level of freedom, is in danger. If one wishes to summarize the progress of American democracy in the 1960s, it is clear that, all in all, this was a time of great improvement, particularly as regards the rights of African Americans, but also in other fields. And yet there were constant attacks and violations of democratic norms during this period (not to speak of shrill illiberal rhetoric), many of them hailing from US President Nixon himself in the late 1960s and early 1970s.

To some extent, even obvious rhetorical exaggerations may sometimes be useful in confronting real dangers—but only to a limited extent. Certainly, there were in the past and we witness today some illiberal and undemocratic trends in Israel. Such trends and forces need to be vigorously confronted. The Israeli political and judicial system and the Israeli public provide the necessary resources for this. In the meantime, it is also worth pointing out, once in a while, and particularly as voices claiming the very opposite are so often and so loudly heard, that the existence and development of Israeli democracy has up to now been a remarkable achievement.

## Notes

1 The Israeli Supreme Court currently has fifteen justices, but generally sits in panels of three. The new proposed legislation requires an expanded panel of nine justices for the Court to exercise the power of judicial review.

2 *The Israeli Democracy Index 2011* (Jerusalem: The Israel Democracy Institute, 2011).

3 *The 2009 Israeli Democracy Index – Auditing Israeli Democracy Twenty Years of Immigration from the Soviet Union* (Jerusalem: The Israel Democracy Institute, 2009).

4 CA 6821/93 *Bank Mizrahi v. Migdal Cooperative Village*, 09 November 1995. The two Basic Laws passed by the Knesset in 1992 – Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation – provided for the first time for the protection of fundamental human rights and civil liberties.

5 HCJ 212/03 *Herut v. Chairman of the Central Elections Committee for the Sixteenth Knesset*, 08 January 2003.

6 Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (New Haven, Connecticut: Yale University Press, 1986).

7 Tomer Zarchin, “Study: Faith in court system tumbles among Haredim, settlers,” *Haaretz*, 22 June 2010.

8 There are other factors however, including discontent with the length and complexity of legal proceedings and disappointment in specific court rulings.

9 There are several other examples of the Israeli Supreme Court’s exercising judicial review, both before and after the enactment of the two 1992 Basic Laws. In the 1981 “Agudat Derekh Eretz” case (HCJ 246/81 “*Agudat Derekh Eretz et al. v. Broadcasting Authority et al.*,” July 28, 1981), the Supreme Court invalidated an amendment to the Elections Law, on the basis that it had not been passed by an absolute majority of the Knesset as required in the case of legislation that infringes the principle of equality in elections. A similar ruling was held by the Court in the

1983 Rubinstein case with regard to an amendment to the Elections Financing Law (HCJ 141/82 *Amnon Rubinstein M.K. et al. v. Chairman of the Knesset et al.*, June 16, 1983). The Supreme Court also pronounced a landmark ruling in the 1989 Schnitzer case (HCJ 680/88 *Meir Schnitzer et al. v. The Chief Military Censor et al.*, January 10, 1989), when it imposed substantial legal constraints on the exercise of military censorship according to the 1945 Defence (Emergency) Regulations, judging that “[f]ree expression may not be curtailed unless there is a near certainty that the publication will cause substantial and grave harm to security.” Two more recent examples of the exercise of judicial review by the Court are the 2006 Adalah case (HCJ 8276/05 *Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Minister of Defense et al.*, December 12, 2006) and the 2009 Academic Center case (HCJ 2605/05 *Academic Center of Law and Business et al. v. Minister of Finance et al.*, November 19, 2009), in which the Court held that a legislative amendment was unconstitutional, because it violated several rights enshrined in the 1992 Basic Law: Human Dignity and Liberty disproportionately.

10 The four newly appointed judges of the Supreme Court are Jerusalem District Court Judge Noam Sohlberg; Jerusalem District Court Deputy President Zvi Zylbertal; Tel Aviv District Court Judge Uri Shoham; and the Dean of the Tel Aviv University Faculty of Law Daphne Barak-Erez.

11 The example of the US Supreme Court is a good case in point. The US Supreme Court has indeed changed recently in a stark direction to the right, following the appointment of several conservative judges, and yet the Court has not overturned past liberal decisions on abortion and affirmative action.

12 It is significant that Dorit Beinisch, the outgoing president of the Supreme Court, declared, during the rare visit paid by the prime minister to the Court ahead of her retirement, that she had always believed that Netanyahu would not agree to any legislation weakening the Court: “I knew that (...) your background, world view, and everything you represent would not allow any harm to come to the

*court,*" she said to Netanyahu.

13 "Israeli Democracy Survey 2011" in *The Israeli Democracy Index 2011* (Jerusalem: The Israel Democracy Institute, 2011).

14 Barak Ravid, "Clinton warns of Israel's eroding democratic values," *Haaretz*, 05 December 2011.