



House of Commons
CANADA

Subcommittee on the process for appointment to the Federal Judiciary of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

SMFJ • NUMBER 010 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Monday, November 21, 2005

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Chair

Mr. Richard Marceau

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• (1535)

[Translation]

The Chair (Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ)): My name is Richard Marceau.

The Chairman speaks in Hebrew.

[English]

Thank you for taking the call.

Professor Itzhak (Isaac) Zamir (Former Justice of the Supreme Court of Israel, Former Attorney General of Israel, As an Individual): You are very welcome, and it's a great surprise, but do you expect me to speak Hebrew?

[Translation]

The Chair: *The Chairman speaks in Hebrew.*

[English]

Mr. Justice, the way we were trying to do this is that we would like you to maybe explain to us, in ten minutes or less, the Israeli system, and then each of us will have about seven minutes for questions and answers.

Is that okay with you?

Prof. Itzhak (Isaac) Zamir: Yes, that's fine.

Shall I start?

The Chair: Okay, you're on.

Prof. Itzhak (Isaac) Zamir: The Israeli system of appointing judges is prescribed in detail by basic law. There is one procedure and machinery for appointing all judges, in all instances, from the legislative courts up to the Supreme Court. According to our law, the appointment is formally made by the president of the state, but the president of the state is actually a figurehead and has no discretion; the decision is actually taken by a special appointment committee for judges, and the president then carries out the decision of that committee.

What is of great importance is the composition of the appointment committee. By law it is composed of nine members. Three of the nine are Supreme Court justices—the president or chief justice of the Supreme Court, and two other justices elected by the Supreme Court. They serve for a term of three years. Two other members of the committee are representatives of the bar; they are elected by the

national council of the bar for a term of three years. These make up five out of the nine members of the committee. The four other members are politicians, two of whom are ministers, that is to say, members of the cabinet. One of them is the minister of justice, and he or she—presently she—is the chairperson of the committee. The other minister is appointed by the government. Then, in addition, there are two members of the legislature, who are elected by a plenary of the legislature. The tradition is that one member comes from the coalition and the other member comes from the opposition. The legislature decides by a majority, and very often they decide unanimously.

The procedure is the following. When there is a vacancy, it is publicly announced, and every qualified person can present himself as a candidate. All persons who present themselves as candidates are examined by a subcommittee, a screening committee, of the appointment committee. They go through the file, the personal details and letters of recommendation, and interview the candidates.

Now, formally, not every name comes before the appointment committee. The power to bring forward a name for discussion before the appointment committee lies with the president of the Supreme Court, the minister of justice, and three members of the committee.

The subcommittee is composed of three members, who examine all candidates and disqualify candidates who they think are not really suited or are not as qualified as other members.

• (1540)

Those who pass this stage of screening are usually asked to participate in a special course for candidates, which lasts about a week. It is administered by our Institute of Judicial Training of Judges, which is associated with the Supreme Court. It is meant, during that week, to examine and find out who the best candidates are. Their files of recommendations come back to the subcommittee, which then brings all those files and all those names to the appointment committee, which takes the decision. This is, in brief, the procedure.

The Chair: Okay. Is there anything else to add?

Prof. Itzhak (Isaac) Zamir: There are many details. Another important thing to us is that the appointments committee that makes the decision doesn't take the final decision. It comes to the preliminary decision; let's put it that way. All the names of the candidates who are to be discussed with the committee are made public for at least 21 days before the committee takes its decision. Every person is entitled to approach the committee, to write to the committee, to make comments or objections, and to bring forward some facts or details about the candidate. Then the appointments committee considers all the candidates and takes into account all comments or remarks put forward by the public, so at least in this respect, there is a kind of public participation in the process.

The Chair: Okay. Thank you.

Prof. Itzhak (Isaac) Zamir: You're welcome.

The Chair: Would you be ready, Mr. Justice, for questions?

Prof. Itzhak (Isaac) Zamir: Yes.

The Chair: The first one to ask you questions is Mr. Rob Moore. He's with the Conservative Party of Canada. He has seven minutes for questions and answers.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you for your presentation, Mr. Justice.

You mentioned that the committee making the decision does not make a final decision. How much weight is put on the decision of the committee, and how does that work with the final decision? Would it be extraordinary or out of the ordinary for a final decision to be made that was not in keeping with the committee's decision?

Prof. Itzhak (Isaac) Zamir: Do you mean the subcommittee?

Mr. Rob Moore: Right.

Prof. Itzhak (Isaac) Zamir: In most cases I would say that the recommendation of the subcommittee is accepted by the committee's vote. Now, I must say that the subcommittee, in a way, represents the plenary, because the subcommittee is composed of three members. The chairman is one of the justices; of the two other members, one is a member of the legislature and the other is one of the representatives of the bar, so the decision is really balanced. They've gone into the material; they've interviewed the candidate; generally speaking, the committee respects the recommendation.

Mr. Rob Moore: The interview process is one of the things we're discussing here. We've had different witnesses discussing the appropriateness of an interview process for potential nominees. What value do you feel is to be gained through the interview process?

We've also had discussion on the appropriateness of some types of questions, questions that might lead one to a conclusion on how a particular nominee would decide a case. Can you provide some input not only on the value of the interview process, but also on what types of questions seem to work in your situation? What types of questions are most beneficial? Are there any questions that are out of bounds, or that would be inappropriate to ask the nominee in your context?

• (1545)

Prof. Itzhak (Isaac) Zamir: To start with, the interview is not public. It's just the subcommittee and the candidates, the nominees.

There were a great number of candidates and the interview lasted something like 20 minutes for each candidate.

I've served on that committee for a number of years, and personally, I don't assign much weight to the interview. I don't think it's very important. It may be important in some extreme cases—when you can see that the candidate doesn't have a legal temperament or a judicial temperament, that he's an extreme personality—but those cases are very few. In other cases, in the ordinary cases, there are some questions that are considered to be inappropriate, and those are questions that concern political association or views of nominees. The interviewers are actually, first of all, to be impressed by the person: you can see him as a judge on the bench. Second, the interview is to find out how he is as a lawyer, what is his knowledge, and how he would deal with certain legal issues, whether he has a good legal mind and expresses himself well. That's the main purpose of the interview.

Mainly, the committee assigns weight to the personal details, the history of the nominee, and the recommendations. This is on your point of a practising lawyer. The committee also considers a promotion of judges from one instance to another, and then there is a lot of material, because with a judge you know exactly how he has performed. With a practising lawyer, he brings forward certain recommendations, but the committee itself approaches people who are supposed to know him, judges who have an opinion, and asks for their opinion. This carries most of the weight with a subcommittee.

Mr. Rob Moore: Thank you.

The Chair: Thank you, Mr. Moore.

We will go now to Monsieur Lemay, but you'll have a translator.

[Translation]

Mr. Lemay, for seven minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good day, Mr. Justice.

I'd like to have a clear understanding of how your system works. Are candidacies reviewed by two committees before someone is appointed to the bench, that is by one committee that verifies whether the candidate meets all of the requirements, and by another that interviews the candidate?

[English]

Prof. Itzhak (Isaac) Zamir: Not really. There is one committee, the appointment committee, which, as I mentioned, is composed of nine members, and a subcommittee, which is composed of three members of the appointment committee. The first recommendation is given by the subcommittee, which also interviews the nominee. Then, as I said, the nominee participates in a special course and all the material—the recommendation of the subcommittee and the evaluation of the instructors in the course—is brought to the appointment committee, which takes the decision. But first it gives the general public an opportunity to comment upon the suitability of the nominee.

•(1550)

[Translation]

Mr. Marc Lemay: Is this procedure followed solely when appointing justices to Israel's Supreme Court or does it apply as well to all judicial appointments in all jurisdictions?

[English]

Prof. Itzhak (Isaac) Zamir: All justices, all judges. In theory, there is no difference in the procedure between judges of inferior courts and justices of the Supreme Court. Only the candidates for the Supreme Court are actually well known. Israel is a small country. Thus, our candidates for appointment to the Supreme Court, usually are not interviewed. The members of the appointment committee know them well already. They are well-known figures, not only to the Israeli legal community, but also in Israel at large.

[Translation]

Mr. Marc Lemay: Mr. Justice, you stated that when a position becomes vacant, a public announcement is posted. Is that announcement published in the newspapers or in the Bar journal? Where does the public notice appear?

[English]

Prof. Itzhak (Isaac) Zamir: We advertise in the official gazette, but this is not really important, because in practice—that's in theory—a person who'd like to be a lawyer or who'd like to be appointed a judge can always, anytime, put forward his candidacy as a nominee. There is a certain section within the administration of the code that accepts their application and builds up the file, and it is considered when there is a vacancy. So the announcement for the vacancy is the formal, official step, but not of practical importance because, as I said, any person can bring himself as a candidate anytime. It is being done regularly.

[Translation]

Mr. Marc Lemay: Are the interviews done in public or are these proceedings confidential?

[English]

Prof. Itzhak (Isaac) Zamir: They're confidential. Usually they're carried out by the subcommittee in camera. It's not public.

[Translation]

Mr. Marc Lemay: Thank you very much.

[English]

Prof. Itzhak (Isaac) Zamir: You're very welcome.

The Chair: Now we will go to Mr. Joe Comartin, from the New Democratic Party, for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Justice Zamir, for being with us. We've taken quite some interest in some of the information we've had about your process. It seems to be somewhat unique in the common law jurisdictions or the ones coming out of England.

Let me ask you, with regard to the judges being moved from the lower courts to the superior court and even to the appeal or Supreme Court, is that customary? And if it does happen, do they have to go through the same committee in order to achieve this promotion?

Prof. Itzhak (Isaac) Zamir: Not to the Supreme Court, because once every few years there is a vacancy on the Supreme Court, and the candidates are well known. It's only rare that the candidates are asked to appear before the subcommittee. The committee sends the facts from the reports the cabinet makes to come before the subcommittee.

On the other hand, judges from the inferior court who are candidates for promotion in the second instance are cleared before the committee.

•(1555)

Mr. Joe Comartin: Are they interviewed again at that time?

Prof. Itzhak (Isaac) Zamir: I'm not absolutely certain about that.

Mr. Joe Comartin: Is it common for there to be promotions from the inferior court to the superior court?

Prof. Itzhak (Isaac) Zamir: Yes, most judges are being appointed to the court of first instance, and then they are promoted. Only in exceptional cases—though not very rare—people are appointed directly to the district court, which is the second instance, or to the Supreme Court.

For instance, I was appointed directly to the Supreme Court. I didn't serve as a judge in a lower instance. For instance, it's quite common, although not the rule, that a person who has served as attorney general and didn't serve probably as a judge will be appointed after he leaves the position of attorney general because it is an apolitical position, a professional position. The attorney general is the chief legal officer, but he's apolitical and independent. It's almost like a judicial function. So he may be appointed from the position of attorney general to that of a justice of the Supreme Court. But in most cases, most members of the Supreme Court are generally appointed in the first instance, then after a number of years they are promoted to the second instance, and then to the Supreme Court.

Mr. Joe Comartin: In terms of the process you're using now to appoint judges, how long have you been using that, and are there any proposals to change it?

Prof. Itzhak (Isaac) Zamir: We introduced the system shortly after the establishment of the state. That is to say, about 53 years ago. It has worked, in our opinion, very well. About five years ago, there were some suggestions that the procedures and the machinery should be reviewed, and the appointment committee established a special subcommittee, which I chaired, to examine the system. We came forward with recommendations to leave the system as it is, to improve it here and there in detail, but to leave the system as it is.

As I said, it has worked very well, and I think it has made for a very good apolitical, independent judiciary. But in recent years there have been some calls, mainly from members of the legislature, to amend the system. Some of them are not happy with some decisions of the court, which they think intervenes in matters that should be left to the government or the legislature. Therefore, there have been several bills to change the composition of the appointment committee so that the political element is stronger: there would be more politicians on the committee. But so far, all such bills have failed.

Mr. Joe Comartin: Is the report that you issued a public report?

Prof. Itzhak (Isaac) Zamir: Yes, absolutely.

Mr. Joe Comartin: Can you tell us the title of it and in what year it was done?

Prof. Itzhak (Isaac) Zamir: It was done in April 2001, and it's written in Hebrew. I don't think it's available in the English translation, but you can easily get it in Hebrew and have it all translated there or read it in Hebrew. It's about a hundred pages in total, with many recommendations, but on matters of difference, not matters of principle.

● (1600)

Mr. Joe Comartin: I have just one more question, and it is about the training that the judges get. We had some information about this, but it wasn't very complete, and I know you made a couple of points about that. For any training the judges are put through, is it before they're appointed, or is there some done after they're appointed as well?

Prof. Itzhak (Isaac) Zamir: There's no training before the appointment. There is a course in which they're asked to participate—actually, they must participate—and it goes on for a week. But that's not training; it's actually an examination. They go and spend a week in some country hotel, and they're examined through simulations and discussions, things like this. This is a special program, which has been composed by experts, and is only meant to assist the appointment committee in taking their decision.

Once they're appointed—and they're appointed judges of the first or second instance—we have an institution for judicial training. They go through a course that trains them as judges; it's a special course on the the profession of the judge. This is for judges who have just been appointed.

All judges then have a kind of custom training. They spend at least a week every year in special training to update themselves on new subjects, new laws, and things like that. But this has nothing to do with the appointment process.

The Chair: Thank you.

We are now going to somebody from the government party.

Mr. David McGuinty, for seven minutes.

Mr. David McGuinty (Ottawa South, Lib.): Thank you very much for joining us, Mr. Justice Zamir.

I'd like to put a couple of short and pointed questions to you.

Can I just recap something? First of all, Israel does not train judges separately through any kind of magistrate program, as does, for example, France.

Prof. Itzhak (Isaac) Zamir: No, it's basically like the English system.

Mr. David McGuinty: Are you a former elected official or politician yourself?

Prof. Itzhak (Isaac) Zamir: Can you say that again, please?

Mr. David McGuinty: Are you a former elected official or politician yourself?

Prof. Itzhak (Isaac) Zamir: No. Personally, I served for many years as a law professor and dean of a law school. I am apolitical. I have my political opinions, but I've never been associated with any political party. I was appointed Attorney General of Israel, and I

served as Attorney General—I'll say it again, it's a professional position, not a political position—for about eight years. I went back to the university for a number of years, and then I was appointed a justice of the Supreme Court.

Mr. David McGuinty: How many political parties are there in Israel today? I understand you may have a new one next week.

Prof. Itzhak (Isaac) Zamir: There are too many. I don't know, there may be something like nine or ten. There are some very small parties.

Mr. David McGuinty: How many former politicians or political actors are there on the bench in Israel today?

● (1605)

Prof. Itzhak (Isaac) Zamir: None.

Mr. David McGuinty: There are none?

Prof. Itzhak (Isaac) Zamir: There may be one who many years ago was a political deputy mayor in a small town.

Mr. David McGuinty: Why was there a need to amend the system some three or four years ago?

Prof. Itzhak (Isaac) Zamir: Could you say that again, please?

Mr. David McGuinty: I understood you to say that three or four years ago the Israeli government felt a need to amend or improve the system of appointment of judges.

Prof. Itzhak (Isaac) Zamir: The reason was that some members of the legislature didn't like the policy of the court. They accused the court of being too liberal, too activist, and intervening too much in the decisions of the government and the legislature. They wanted to influence the composition of the Supreme Court. They thought they could do it by changing the composition of the appointment committee. There was some political pressure to introduce certain changes, and because of this pressure, this committee was appointed to examine the system.

Mr. David McGuinty: In your experience, then, Mr. Justice Zamir, how many other countries practise the same process as Israel?

Prof. Itzhak (Isaac) Zamir: I don't know whether there is any country. What I note is that more and more countries, also in the Commonwealth world, have recently established a kind of advisory committee. With the process in England, it was the case for centuries that the Lord Chancellor appointed the judges. Recently they have established a committee, which is composed of barristers and other public figures, to advise the Lord Chancellor. I think there is something like this going on in Canada too.

So this is a tendency in some countries, but I think this system originated in Israel, and I don't know that it exists in any other country.

Mr. David McGuinty: In your experience, Mr. Justice Zamir, do you know much about the Canadian judiciary?

Prof. Itzhak (Isaac) Zamir: Not much. I know just a little bit. I know you face a problem now; that you are discussing a change. From what I know, the Minister of Justice actually.... I know there is some representation on the Supreme Court of certain provinces and so on, but basically I think the Minister of Justice takes the decision. Maybe the Prime Minister or the government makes the appointment, but it is, I think, the Minister of Justice who actually takes the decisions. Or am I wrong?

Mr. David McGuinty: From a general perspective, in your experience, is the Canadian judiciary considered to be a strong judiciary?

Prof. Itzhak (Isaac) Zamir: Yes. I can speak about the Canadian Supreme Court. It has a very good reputation.

Mr. David McGuinty: Thank you very much, Mr. Justice Zamir.

Prof. Itzhak (Isaac) Zamir: You are welcome.

The Chair: Now, for seven minutes, we have Mr. Garry Breitkreuz of the Conservative Party.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you, Mr. Zamir, for your help in determining what we are going to do with our judicial appointment system.

I want to follow up what my colleague from the Liberal Party was asking you. One of the concerns we have here in Canada is that politics sometimes enters the process when we decide what candidates to select. Does politics influence in any way what candidates are recommended? Does whether a candidate supports certain political views impact on their suitability? You talked about the composition of the committee reviewing candidates; some of them may have political views. Are questions ever asked during interviews about a candidate's political views? Do you find out or try to determine whether they've contributed money to a certain political party? Does that affect their suitability?

Could you comment on these things?

Prof. Itzhak (Isaac) Zamir: Something I should mention is that the majority of the present committee is composed of professional lawyers. The politicians who are members are in the minority. They could have acted as politicians and promoted candidates for the Mizo who are known to support policies of a certain party. But the tradition in the present committee for over 50 years has been that the politicians on the committee haven't really acted as politicians. They haven't tried to support candidates who sympathize with their political platform. And political questions are never asked by members of the committee.

• (1610)

Mr. Garry Breitkreuz: Just to be clear, do judges sometimes support certain political parties?

Prof. Itzhak (Isaac) Zamir: Not publicly, no; it never happens—absolutely not. If a lawyer is known to be associated with a political policy, he won't be appointed a judge. We think it is of the utmost importance that what we call the judicials or judges would be apolitical, not associated in public opinion with any political party. Judges never express an opinion on political issues.

Mr. Garry Breitkreuz: Okay. I just want to go on to another matter.

One of the concerns many people in Canada have is fostering respect for the law. In your process, do you try to determine or do you look at the record of a judge to see if he has been lenient? By that I mean has he imposed light sentences for serious crimes and violent offences, rather than heavier sentences for such crimes? How does this affect what candidates are recommended?

Prof. Itzhak (Isaac) Zamir: First of all, of course, it doesn't affect the appointment of the practising judges. It's only expressed in

theory in the promotion of judges, right? You speak about promotion of judges, yes?

Mr. Garry Breitkreuz: Yes.

Prof. Itzhak (Isaac) Zamir: I don't think there have been such cases. You know, a judge is evaluated on the basis of his work generally speaking. I don't recall any case in which a specific judge was known to be particularly lenient, so it hasn't been a problem in Israel; it hasn't been an issue.

Mr. Garry Breitkreuz: It's not an issue. Okay, thank you.

My last question is that we have a situation here in Canada that sometimes judges may use our Constitution and Charter of Rights to order Parliament to rewrite some of the laws. In fact, property rights were not included in the 1982 Charter of Rights. This has allowed some judges to disregard centuries of common law.

Do you have a similar situation in Israel? I realize that you don't have centuries of common law, but is there a concern that judges may overrule and give the Knesset direction in some of the laws they pass?

Prof. Itzhak (Isaac) Zamir: With us it's a new phenomenon. Our Supreme Court declared, for the first time, its power to invalidate the law about ten years ago. Since then it has happened four times, and in all of those cases, only sections of relatively minor importance were invalidated by the court.

Nevertheless, our legislature dislikes this power of the court. It is not used to it yet, and our public is hardly used to the power of the court to exercise judicial review over laws enacted by the legislature. It's a process that has just started, and naturally the members of the legislature don't like any of it.

Mr. Garry Breitkreuz: I really thank you very much for your answers. Thank you.

Prof. Itzhak (Isaac) Zamir: You're very welcome.

The Chair: Mr. Justice, this is the chair again. I have a couple of questions for you.

One is about diversity. Israel is a very diverse country, with Ashkenazim, Sephardim, 18% or 19% Arabs, and the important Jewish population. Does ethnic origin come into play when judges are chosen, to make sure that the bench is representative of the very diverse Israeli population one way or another?

• (1615)

Prof. Itzhak (Isaac) Zamir: The answer is in the positive. We don't speak of the court as being representative, but we do speak of the court as being reflective, that it reflects society.

Now, our policy—and this, I can say, is our official policy—is that the main consideration is the quality and the personality of the nominee. But once a person is considered qualified to be appointed as a judge of the first or second court, or the Supreme Court, then there is an attempt to appoint judges so that the court will be reflective. For instance, the Supreme Court was severely criticized by the Israeli public for years because there was no Arab on the court. There were Arabs in lower courts, in the first and second instance, but not on the Supreme Court. The Supreme Court had said that it wanted an Arab judge on the court. And when the right candidate was put forward, he was appointed a justice of the Supreme Court.

We make it a point that on all courts—but also on the Supreme Court—there are some religious judges and judges of oriental origin, and things like that. The court, by and large, reflects the main sectors of the population.

The Chair: The other question, before I pass the microphone to Mr. Comartin again, is this. There were accusations—and you mentioned that earlier—of ideological bias thrown at the courts, mainly the Supreme Court. I guess the latest example of that is the decision regarding the law of return and non-Orthodox conversions made abroad, whether they would allow the people who are converted by non-Orthodox rabbis to become Israeli citizens.

Besides the accusations of ideological bias that were made at the court, have there ever been accusations of political interference in the appointment process since you put into place that system you described to us?

Prof. Itzhak (Isaac) Zamir: No. You can say generally that the judiciary in Israel is apolitical; it's independent. The only accusation of the court is that it interferes too much in decisions of the government and legislature and that it interferes in a certain way. That is to say, its policy is a liberal policy, and many on the right wing and in certain religious sectors dislike this policy in the decisions of the courts.

The Chair: Thank you.

Mr. Comartin.

Mr. Joe Comartin: Justice Zamir, I know you've said you don't place a lot of emphasis on this, but in the course of the interviewing, are any of these issues raised, that the courts have been overly liberal? There have been those kinds of accusations made by the political side. Are the candidates ever asked about their orientations, not as to party affiliation but as to whether they're on the liberal or conservative side of these issues?

Prof. Itzhak (Isaac) Zamir: Not in my personal experience. I can't speak for all subcommittees and so on, but I don't think so.

At present there is—how should I put it—tension or even a battle going on between the president of the Supreme Court and the Minister of Justice concerning a certain candidate. It's a woman, a professor of law, who also lectures a lot and writes in papers and is known to advocate different policies in the court. She argues that the Supreme Court should narrow its intervention in decisions of the government and legislature, that it should restrain itself. There is a kind of public struggle going on with this issue at present, and it's the first time it has occurred in Israel. It's an exception.

•(1620)

The Chair: Thank you, Mr. Comartin.

We'll have two last rounds, Mr. Justice, and then we'll let you go.

Mr. McGuinty.

Mr. David McGuinty: Mr. Justice Zamir, I'd like to go back to the question of political involvement in Israel. Can you tell me roughly how many lawyers there are in Israel today?

Prof. Itzhak (Isaac) Zamir: We hold the world record. I think it's more than 30,000. Proportionally we have more lawyers than any other country in world.

Mr. David McGuinty: There are more than 30,000 and at least ten active political parties.

Prof. Itzhak (Isaac) Zamir: Yes, about that.

Mr. David McGuinty: How many judges are there at the first-, second-, and third-instance courts?

Prof. Itzhak (Isaac) Zamir: All in all, there are about 550 judges. On the Supreme Court there are 15. I should mention that while it's a big number, the Supreme Court for constitutional matters and administrative matters often sits as the court of first instance. It accepts petitions from the public in the first instance, so it deals with many cases, and it has 15 judges. I think that district courts, of the second instance, have something like 150 to 200, and the magistrates courts something like 350 to 400.

Mr. David McGuinty: So there are roughly 550 sitting judges, over 30,000 qualified lawyers in Israel, and 15 on the Supreme Court, and you're telling the committee there is not a single judge in Israel who has been involved with a political party?

Prof. Itzhak (Isaac) Zamir: I couldn't tell you about the 550 judges. I think there is one judge on the Supreme Court who many years ago served as deputy mayor in a small town, and that's the only exception. Many years ago he served for, I think, maybe 15 years or so as a judge of a district court, and he was absolutely unconnected to any political activity or group.

Mr. David McGuinty: So if I'm a young law student in Israel, am I to understand when I commence my legal studies that being involved in a political party will preclude my opportunity for sitting on the bench?

Prof. Itzhak (Isaac) Zamir: It would make it almost impossible if you were a political activist. It's all right if you are a member of a political party; nobody asks, nobody knows. But if you are a politician—let's put it that way—the chances you will be appointed a judge are very slim. I think you won't be appointed.

Mr. David McGuinty: Now I understand, because I think I've just understood you to say that there are judges who sit on the bench in Israel who are former members of political parties.

Prof. Itzhak (Isaac) Zamir: No.

•(1625)

Mr. David McGuinty: Not one?

Prof. Itzhak (Isaac) Zamir: No. There is no question of your being a member of Parliament, of course, but when you're appointed a judge, nobody asks you what your political views are and whether or not you are a member of a political party. That's something for you yourself and nobody knows it. But if you are a politician by profession and you are active in political life, this may preclude your appointment to the bench.

Mr. David McGuinty: So you make a distinction, then, in Israel in terms of the extent to which a lawyer is involved in political activities.

Prof. Itzhak (Isaac) Zamir: Absolutely. There's no problem in having a certain political view or being a member of a political party. There's no problem with that.

Mr. David McGuinty: If you provide a donation, Mr. Justice, or you actively fund-raised 20 years ago when you were a young lawyer, does that preclude you from going to the bench?

Prof. Itzhak (Isaac) Zamir: No. If you are at present or if you are publicly known to be associated actively with a certain party, this may preclude your appointment, but if you were an activist 30 years ago or 10 years ago, no. It may be a consideration, I don't know, but that's a different story. I'm speaking about someone who is at present or has recently been active in political life; this will probably prevent his appointment as a judge.

The Chair: Thank you very much, sir.

There's a last question, and then we'll let you go.

Mr. Gary Breitkreuz, again from the Conservative Party.

Mr. Garry Breitkreuz: Thank you.

Again, I appreciate your comments. I have in front of me an article from the *Jerusalem Post* from three or four days ago. I'm just going to give you the gist of the article, in case you haven't seen it.

Apparently, after the last set of primary elections, the president of the Supreme Court, Aharon Barak, began to quite severely criticize one of the people who was to be nominated for the Supreme Court, Ruth Gavison. He made quite an attack upon her. I read in the article that about half of the judicial appointments are controlled by Mr. Barak. Usually before there is an approval made or before a candidate's name is made public, he has to have some kind of input into whether they are suitable.

The article concludes, and this is where I would like your comments:

When one wonders why it is that Israel's right-wing governments have been implementing leftist policies for the past decade, one need look no further than the imperial Supreme Court for the answer. Until the court's monopoly on power is broken, the public can hold no hope that its will as determined at the ballot box will be followed by its elected representatives. Indeed, until the judiciary is brought to heel, it is open to question whether Israel can be considered a democracy at all.

How do you feel about those comments?

Prof. Itzhak (Isaac) Zamir: First, I did mention that in the last few years the court has been criticized, and I mentioned the background to that. The case you mentioned, that of Professor Gavison, is the case I was referring to when I said there was tension, actually a struggle, between the justice minister and the president of the court over this nomination of Professor Gavison. As I said, this is an exception, the first time such a conflict has come out in the open.

Now, what you read reflects the opinion of not only the person who wrote this article—and I haven't seen it, as I don't usually read the *Jerusalem Post*—but of certain sectors or members of the public and so on that the court has too much power, that the court intervenes too much. It usually comes, as I said, from right-wing religious persons, not from the liberal centre or the left wing. When they speak of the court, they tend to accuse the president of the court, Barak, of being responsible for the position of the court. It isn't true—it's not a one-man court—but that's how many people put it, that he's responsible for the position of the court. And as I said, many people dislike this position.

Mr. Garry Breitkreuz: I appreciate your comments. Thank you.

The Chair: Mr. Justice, that's all for us. Is there anything else you'd like to add before we sign off?

Prof. Itzhak (Isaac) Zamir: Not that I can think of.

The Chair: Then *toda raba*, and *laila tov*.

Prof. Itzhak (Isaac) Zamir: *Laila tov*. Thank you very much. I wish you all the best.

• (1630)

The Chair: Thank you.

[Translation]

Thank you very much.

The meeting is adjourned.

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