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Abstract



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The Israel Democracy Institute
4 Pinsker St., P.O.B. 4702, Jerusalem 9104602
Tel: (972)-2-5300-888
Website: en.idi.org.il

To order books:
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ABSTRACT

In the Israeli legal system, in an arrangement carried over to some extent from the Ottoman and Mandatory periods, every religious community recognized by the state is empowered to adjudicate issues of personal status—such as marriage and divorce, inheritance, and adoption—that affect its members. For Jews, the majority of the population, this means the rabbinical courts. Today there are 12 regional rabbinical courts, whose rulings can be appealed to the Supreme Rabbinical Court in Jerusalem. The two chief rabbis alternate as president of the Supreme Rabbinical Court. Between 1948 and 2004 the rabbinical courts were an auxiliary unit within the Ministry of Religions/Religious Affairs. When that ministry was dissolved in 2004, the courts were transferred to the Justice Ministry, only to be returned to the reconstituted Ministry of Religious Services in 2015.

The bulk of the public and academic discourse about the rabbinical courts focuses on normative issues such as freedom of marriage and divorce, the status of women, and refusals to grant a divorce. The present study, by contrast, looks at the rabbinical courts from the perspective of public administration: their provision of services and effectiveness, as well as their adherence to judicial norms, such as following standard procedure,

appropriate behavior by judges (known as *dayyanim*), and respect for the rights of litigants.

The findings indicate that over the last decade and a half there has been a significant improvement in the quality of service provided by the rabbinical courts. For example, until the start of the current century judges' behavior was frequently abysmal; they were apt to show up late for hearings or not show up at all, which caused great harm to the litigants appearing before them. The transfer of the Rabbinical Courts Administration from the Ministry of Religious Affairs to the Justice Ministry, in 2004, and the joint efforts by the Ombudsman of the Israeli Judiciary, the president of the Supreme Rabbinical Court, and the director general of the rabbinical courts, led to severe sanctions against those guilty of such misconduct and an end to such practices. The study also found that during the past decade the duration of divorce cases heard by rabbinical courts has declined, even though there has been no increase in the number of judges, and that the Law for Arbitration of Family Disputes (which took effect in 2016) has been more effective in the rabbinical courts than in the family courts: it led to more compromises and consent agreements between divorcing spouses in the cases heard by the rabbinical courts.

Thus with regard to the provision of services the rabbinical courts seems to be operating at a reasonable level, if not even better. By contrast, their dysfunction as a legal tribunal is widespread; hence the present study focuses on that. It deals at length with the poor standard of the rabbinical courts as compared to other courts with regard to the essential aspects of the legal system, safeguarding litigants' rights, and the judges' conduct, as indicated by a quantitative analysis of the data published by the Judicial Ombudsman. Each year this institution, established in 2002, handles around a thousand complaints about the professional behavior of judges and *dayyanim*, including their conduct of trials. From 2008 to 2019, 32.7% of the complaints about *dayyanim* were found to be justified, as against 16.8% of the complaints about Magistrate's Court judges, 16.1% of Family Court

judges, 13.9% against District Court judges, and 8.1% against the justices of the Supreme Court. What is more, many of the justified complaints about dayanim related to substantive judicial principles: 30% fell into the category of “violation of the principles of natural justice”; 25%, to “delaying the proceedings” (a technical matter). By contrast, taking all other courts together, only 10% of the justified complaints fell into the first category, and 43% into the second category (as noted, a technical matter). Thus it seems that the former judicial ombudsman, Eliezer Rivlin, was right when he stated in his report for 2016 that “the dayanim do not adequately internalize the principles of natural justice and the ethical rules that apply to them.”

A qualitative analysis of the justified complaints found four substantial problems in the operation of the rabbinical courts:

(1) Judicial temperament

In many cases dayanim made inappropriate comments about litigants or counsel, whether in the courtroom or in their written decisions. There were also many cases of disrespectful conduct and a lack of self-control and restraint.

(2) Outside interference in rabbinical court decisions

Over the past decade the ombudsman has identified extremely serious cases in which parties outside the courts—rabbis, community bigwigs, and wheeler-dealers—endeavored to directly influence rulings by dayanim.

(3) Conflict of interest

In quite a few cases, sitting dayanim saw nothing wrong about intervening in cases being heard by their colleagues and that affected them or those close to them.

(4) Failure to respect litigants' right to state their case

There was a common phenomenon of important rulings by rabbinical courts issued *ex parte*, without hearing the other side.

The general impression left by the reports of the Judicial Ombudsman is that in many ways the rabbinical courts operate more like a *shtetl* forum than a legal tribunal. In addition, it is hard to ignore the fact that in quite a few of these serious derelictions, those implicated are senior dayyanim who serve on the Supreme Rabbinical Court or as president of a regional rabbinical court or as president of a panel.

Finally, there is the serious problem that those at the summit of the rabbinical court system are the chief rabbis, who can be seen as elected officials. The same point applies to the regional rabbinical courts as well: two of them are currently headed by incumbent town rabbis. The lack of separation between senior judicial positions and public religious leadership roles creates a number of fundamental problems for the operation of the rabbinical courts.

(1) Dayyanim who express public support for political parties and partisan interests

There are extremely close relations between political parties and sitting dayyanim, and especially Chief Rabbi Yitzhak Yossef, the former president of the Supreme Rabbinical Court and still one of its judges. Rabbi Yossef is in regular and direct contact with politicians of the Shas party and consistently expresses his support for the party and its interests outside the courtroom, whether explicitly or implicitly.

(2) Partisan and political interests that impact the administration of the rabbinical courts

There are signs that, as a result of the close ties between political parties and senior dayyanim, administrative decisions related to the rabbinical courts

(such as the appointment of district court presidents or the head of a three-judge panel, as well as the assignment of dayyanim to a particular place) are influenced by partisan considerations. The very fact that the president of the Supreme Rabbinical Court was elected to the post of Chief Rabbi in a quasi-political campaign and as a result is closely involved with public and political elements raises questions about the considerations that enter into his decisions about professional matters related to the rabbinical courts.

(3) Dayyanim who are involved in public affairs

If they also serve as chief rabbi or town rabbi, senior dayyanim are expected to express their position on public affairs. But this is utterly incompatible with the conduct required of judges.

(4) Workload and Torah scholarship

Those who serve simultaneously as a congregational or town rabbi and as a dayyan bear a very heavy workload that inevitably detracts from their performance in the latter role. In addition, because the law stipulates that the chief rabbis automatically serve as president of the Supreme Rabbinical Court (in rotation), those elected to the post are frequently not qualified for their judicial positions. Of the last six chief rabbis, only one held a certificate of qualification to serve as a dayyan, and only two had practical experience as dayyanim before they found themselves heading the entire rabbinical court system.

In light of these findings, the study has two main recommendations

A. The transfer of the Rabbinical Courts Administration from the Ministry of Religious Services to the Ministry of Justice

All of the powers over the rabbinical courts currently wielded by the Minister of Religious Affairs should be transferred to the Minister of

Justice. Similarly, it is the Minister of Justice who should chair the Dayyan Appointments Committee and accordingly have the authority to recommend that the committee dismiss a sitting dayyan. The minister and ministry that oversee the Rabbinical Courts Administration will be expected to deal severely and be uncompromising in their reaction to especially problematic conduct by dayyanim, and notably activity that involves a blatant conflict of interest or involvement in political and public affairs.

B. A rigid separation of service as dayyan and as community rabbi

This recommendation has three parts, as follows:

(1) The most important point here is dissolving the link between the Chief Rabbinate and the Supreme Rabbinical Court. The chief rabbis should no longer serve ex officio on the court, as president or member, and should function solely in the Chief Rabbinate. The senior dayyan on the Supreme Rabbinical Court should serve as its president.

(2) Individuals should no longer be permitted to serve concurrently as a town rabbi and a dayyan. In addition, dayyanim should not be eligible to sit on the Chief Rabbinate Council and should not be members of the electoral college for the chief rabbis and the Supreme Rabbinate Council.

(3) The power to name the chair of the committees that elect town rabbis should be transferred from the Minister of Religious Affairs to the president of the Supreme Rabbinical Court. In addition, these committees should be headed by a member of the Supreme Rabbinical Court or a retired dayyan, rather than members of regional religious courts as is the practice today.

In the Israeli legal system, every religious community recognized by the state has judicial authority regarding citizens' personal status, such as marriage and divorce, inheritance, and adoption. In this system, the rabbinical courts are the religious judiciary for the Jews in the State of Israel.

Most of the Israeli discourse—both public and professional—on the subject of rabbinical courts deals with normative issues such as freedom of marriage and divorce, the status of women, and refusal to grant a divorce. This study examines the functioning of rabbinical courts from a different perspective—that of public administration through an in-depth examination of two centers of activity: religious services—their efficiency, effectiveness and quality of service; and a court of law—the adherence to judicial norms (including to rules of procedure), the proper conduct of judges and safeguarding of the rights of convicts.

Mixed findings emerge from the study: Along with the improvement of the rabbinical courts in the last two decades in fulfilling their role as providers of religious services, a disturbing picture emerges regarding their functioning as a court of law. A careful analysis of the failures in this matter is the basis for a series of recommendations aimed at changing the course of action of rabbinical courts so that they act in accordance with their status as a court of law in a democratic state.

ARIEL FINKELSTEIN is a researcher at the Israel Democracy Institute and a doctoral student in the Department of Political Science at Bar-Ilan University. His main areas of research are religion and state relations in Israel and local government.