

Israel: The Judicial System

By Helen Chapin Metz

The Judiciary Law of 1984 formalized the judicial structure consisting of three main types of courts: civil, religious, and military. There also are special courts for labor, insurance, traffic, municipal, juvenile, and other disputes. Each type of court is administratively responsible to a different ministry. Civilian courts come under the Ministry of Justice; religious courts fall under the Ministry of Religious Affairs, and military courts come under the Ministry of Defense. In the administration of justice, however, all courts are independent and Israelis generally concede their fairness.

Legal codes and judicial procedures derive from various sources. Laws applicable to Israeli Jews in matters of personal status are generally based on the Torah and the halakah. Influences traceable to the British Mandate period include parts of Ottoman legal codes, influenced by the Quran, Arab tribal customary laws, and the Napoleonic Code. In general, British law has provided the main base on which Israel has built its court procedure, criminal law, and civil code, whereas American legal practice has strongly influenced Israeli law regarding civil rights.

The status of the judiciary and the definition and authority of the court structure are spelled out in the Judges Law of 1953, the Courts Laws of 1957, the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law of 1953, the Dayanim Law of 1955 (s., dayan, rabbinical court judge), the Qadis Law of 1961 (sing., qadi, Muslim religious judge), the Druze Religious Courts Law of 1962 (qadi madhab, Druze religious judge), the Jurisdiction in Matters of Dissolution of Marriages (Special Cases) Law of 1969, and the Judiciary Law of 1984. The principal representative of the state in the enforcement of both criminal and civil law is the attorney general, who is responsible to the minister of justice. As was the case during the British Mandate, courts do not use the jury system; all questions of fact and law are determined by the judge or judges of the court concerned, and the system upholds the principle of innocence until proven guilty.

The president, on the recommendation of a nominating committee chaired by the minister of justice, appoints civil courts judges. The nominating committee consists of the president of the Supreme Court, two other justices of the highest court, two members of the Knesset, one cabinet member in addition to the minister of justice, and two practicing lawyers who are members of the Israel Bar Association, a body established in 1961 charged with certifying lawyers for legal practice. The independence of committee members is safeguarded in part by a procedure whereby, except for the minister of justice and the president of the Supreme Court, they are elected through secret ballot by the members of their respective institutions. Whereas the composition of the committee is meant to depoliticize the nominations process, political considerations require the inclusion of at least one religious justice on the Supreme Court, as well as the representation on the nominating committee of Sephardim and women.

The president of the state, on the recommendation of nominating committees, also appoints judges of religious courts, except Christian courts. Nominating committees, chaired by the minister of religious affairs, are organized to ensure the independence of their members and to take account of the unique features of each religious community. Religious courts of the ten recognized Christian communities are administered by judges appointed by individual communities.

Civil and religious judges hold office from the day of appointment; tenure ends only upon death, resignation, mandatory retirement at age seventy, or removal from office by disciplinary judgment as specified by law. Transfers of judges from one locality to another require the consent of the president of the Supreme Court. The salaries of all judges are determined by the Knesset. Judges may not be members of the Knesset or engage in partisan political activity.

Before assuming office, all judges, regardless of religious affiliation, must declare allegiance to the State of Israel and swear to dispense justice fairly. Judges other than dayanim must also pledge loyalty to the laws of the state; dayanim are subject only to religious law. The implication is that Jewish religious law supersedes the man-made laws of the Knesset; where the two conflict, a dayan will follow religious law in matters of personal status. Israel civil libertarians view this as a blemish on the judiciary system because, as Israeli political scientist Asher Arian points out, religious laws "restrict certain liberties taken for granted in other liberal systems."

At the top of the court hierarchy is the Supreme Court, located in Jerusalem and composed of a number of justices determined by the Knesset. In late 1988, there were eleven justices: a president or chief justice, a vice president, and nine justices. The court has both appellate and original jurisdiction. A minimum of three justices is needed for a court session.

The Supreme Court hears appeals from lower courts in civil and criminal cases. As a court of first instance, it may direct a lower district court to hold a retrial in a criminal case if the original verdict is based on questionable evidence, subject to the stipulation that penalties imposed at retrial should not exceed the severity of those originally imposed. In addition, the Supreme Court has original jurisdiction over petitions seeking relief from administrative decisions that fall outside the jurisdiction of any court. In this role, the Supreme Court sits as the High Court of Justice and may restrain government agencies or other public institutions by such writs as habeas corpus and mandamus, customary under English common law. In its capacity as the High Court of Justice, it may also order a religious court to deal with a case concerned with its competence as a religious body, but only on petitions raised before a verdict is handed down. In this regard, the Supreme Court is limited to the procedural question and may not impinge on the merits of the case.

The Supreme Court serves as the principal guardian of fundamental rights, protecting the individual from any arbitrary action by public officials or agencies. It does not have the power of judicial review and cannot invalidate Knesset legislation. It is empowered, however, to nullify administrative rules and regulations or government and local ordinances on the ground of their illegality or conflict with Knesset enactments. As the highest court of the land, the Supreme Court may also rule on the

applicability of laws in a disputed case and on jurisdictional disputes between lower civil courts and religious courts. There is no appeal from its decisions.

The second tier of the civil court structure consists of six district courts located in Jerusalem, Tel Aviv, Ramla, Haifa, Beersheba, and Nazareth. As courts of first instance, district courts hear civil and criminal cases outside the jurisdiction of lower courts. Their jurisdiction includes certain matters of personal status involving foreigners. If the foreigners concerned consent to the authority of religious courts, however, there is concurrent jurisdiction over the issue. The district court at Haifa has additional competence as a court of admiralty for the country as a whole.

District courts also hear appeals from magistrate courts, municipal courts, and various administrative tribunals. Israel's twenty-eight magistrate courts constitute the most basic level of the civil court system. They are located in major towns and have criminal as well as civil jurisdiction. There are a small number of municipal courts that have criminal jurisdiction over any offenses committed within municipal areas against municipal regulations, local ordinances, by-laws, and town-planning orders. The civil court structure includes bodies of special jurisdiction, most notably traffic courts; juvenile courts; administrative tribunals concerned with profiteering, tenancy, and water; and tribal courts specific to the Southern District having jurisdiction in any civil or criminal cases assigned to them by the president of the district court or the district commissioner. Disputes involving management-employee relations and insurance claims go to regional labor courts. The courts, established in 1969, are located in Jerusalem, Tel Aviv, Haifa, and Beersheba. Appeals from the decisions of these courts are made directly to the National Labor Court, located in Jerusalem. Finally, distinct from court-martial proceedings is the military court system, empowered to prosecute civilians for offenses against defense emergency regulations.

Helen Chapin Metz, ed. Israel: A Country Study. Washington: GPO for the Library of Congress, 1988.

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