



## **123<sup>rd</sup> Session of the Human Rights Committee**

**2-27 July 2018**

### **Reporting to the List of Issues Prior to Reporting**

**State under Review: Israel**

**Submitted: 10/5/2018**

## **Human rights violations with respect to the access to justice in the Ecclesiastical Courts**

This report is submitted by 'Kayan' – Feminist Organization. Kayan is an NGO, established in 1998 by a group of Arab women with the goal of acting together to create social change, to improve the status of Arab women, and increase their active participation in society.

**Director:** **Rafah Anabtawi**

Contact Details: 118 Arlozorov St. Haifa 33276

Tel. (+972) 4 866-1890

Fax. (+972) 4 862-9731

This report was prepared by the students **Natalie Shatokhin** and **Nomi Weiss** under the supervision of **Att. Souria Bishara** of the International Human Rights Clinic, the Faculty of Law of the Hebrew University of Jerusalem.

Contact Details: [souria.bishara@mail.huji.ac.il](mailto:souria.bishara@mail.huji.ac.il)

## **Table of Contents**

Introduction	3
Jurisdiction of Religious and Family courts – An overview	4
1. Ecclesiastical Court Fees	5
A. High Fees	6
B. partial Publication of Court Rules on Fee Exemptions and Discounts	6
2. Insufficient Publication of laws and regulations governing the legal proceedings in the Ecclesiastical courts	7
3. Non-Publication of legal decisions and lack of Transparency	7
The Legal Framework	9
Conclusion and Recommendations	9

**Words: 2818**

This report is submitted by 'Kayan' – Feminist Organization. Kayan is an NGO, established in 1998 by a group of Arab women with the goal of acting together to create social change, to improve the status of Arab women, and increase their active participation in society.

Kayan envisions a secure and just society free of gender-based discrimination, in which Arab Palestinian women in Israel enjoy full and equitable opportunities for self-actualization, and take a leading and active part in society through realizing their individual and collective rights. Kayan strives towards consolidating an active, systematic, nationwide feminist movement that actively effects social change through contesting the root causes of gender-based discrimination, defending and promoting the rights of women, and ensuring their integration in decision-making positions in general. The organization's Legal Department focuses on increasing Palestinian women's<sup>1</sup> access to Justice, advancing their legal status and ending rights violations against them within the legal and judiciary institutions by means of free legal aid,<sup>2</sup> the raising of awareness and advocacy. As such, Kayan's legal department has gained first-hand experience and knowledge about the religious courts in Israel, and the Ecclesiastical Courts in particular.<sup>3</sup>

## **Introduction**

In the State of Israel, the legal issues of marriage and divorce are under the exclusive jurisdiction of the Religious Courts whereas other legal issues pertaining to personal status such as distribution of property and child custody, are under parallel jurisdiction of the Religious and Civil Family Courts.<sup>4</sup> The Religious Courts apply religious law in their rulings and form a separate legal framework from that of the general court system of Israel.

---

<sup>1</sup> Palestinian women citizens of Israel.

<sup>2</sup> Kayan's legal department represents clients in religious court rooms, civil courts and vis-à-vis employers and State institutions in the domains of personal status, sexual harassments and women's rights in the workplace.

<sup>3</sup> For more information about Kayan's legal department, visit Kayan's website at: <http://www.kayanfeminist.org/legal-work>.

<sup>4</sup> Rabbinical Courts Jurisdiction act (Marriage and Divorce) (1953); The Druze Religious Courts act (1962); The King's Order-in-Council of 1922-1947, Article 54(1) and (2)

This report focuses on Israel's abstention from taking measures, including the enactment of appropriate legislation, to ensure that religious courts in Israel guarantee equal access to justice and equal protection of the law to those who are subjected to their jurisdiction. In particular, the report focuses on the **Ecclesiastical Courts** that unlike other religious courts in Israel enjoy full autonomy with respect to the setting of procedures that guide the courts and the parties of the dispute throughout the legal proceedings.

Due to the full autonomy of the Ecclesiastical Courts regarding issues pertaining to marriage as well as the absence of regulation and supervision by the State, the Ecclesiastical Courts abuse their status in a variety of ways denying access to justice as well as equal protection of the law from those subjected to their jurisdiction.

### **Jurisdiction of Religious and Family Courts – An Overview**

There are two parallel legal systems governing family law in Israel: a religious legal system that consists of independent courts for each of the 13 religious communities recognized by Israel<sup>5</sup> and a civil legal system in the form of the Court of Family Matters (“**The Family Court**”) established by the Family Court Law of 1995.

The religious courts, and the Ecclesiastical courts among them, have been given jurisdiction in matters of personal status of spouses of the same religious group, and currently hold exclusive jurisdiction in all matters of marriage and divorce.<sup>6</sup> The Ecclesiastical courts have also been given exclusive jurisdiction in matters of wives' alimony, while regarding matters related to personal status – like the distribution of property as mentioned above – they are given parallel jurisdiction to that given to Family Courts.<sup>7</sup> Although the Ecclesiastical courts (like other religious courts in Israel) are subject to the judicial review of the Supreme Court of Israel in ultra vires cases (where the Courts overstep their authority) or in cases where the decisions are wrongful, harm social norms and matters of justice,<sup>8</sup> the involvement of the Supreme

---

<sup>5</sup> The Rabbinical Courts with jurisdiction over the Jewish community; the Sharia Courts with Jurisdiction over the Muslim community; the Druze Courts with jurisdiction over the Druze community and separate courts of each of 10 recognized Christian denominations.

<sup>6</sup> Rabbinical Courts Jurisdiction (Marriage and Divorce) act (1953); The Druze Religious Courts act (1962).

<sup>7</sup> Family Matters Court Act, 1992. [**Family matters court act**]. According to King's Order-in-Council of 1922-1947, article 54(2) the Ecclesiastical courts' jurisdiction over personal status matters that fall within the parallel jurisdiction category is subject to the consent of all parties involved.

<sup>8</sup> Basic Law: The Judgment, 1984, art 15(d)(4); H CJ 8638/03 *Amir v. The Great Rabbinical Court*; Kayan - Feminist Organization, *The Ecclesiastical courts in Israel*, 2012, Written by Shirin Batshon,

Court is extremely minimal in real life, both because the Supreme Court in fact respects the religious courts' autonomy, and because many people choose to forgo the long and arduous process of seeking justice through the Supreme Court even when they have a just claim.

In addition to the minimal involvement of the Supreme Court, and in contrast to other religious courts that are subject to supervision by the State, the Ecclesiastical courts enjoy full independence. Thus, they set the rules of procedure that govern the legal proceedings, they set the fees for each and every legal proceeding and make procedural and substantive decisions regarding the cases brought before them. However, most of these legal activities are unpublished and unreported. Even the fees, the substantive laws and the addresses of each court are not published in any organized way.

It is our claim that the Ecclesiastical courts abuse their autonomy in a way that violates basic human rights, while the State – through its non-involvement policy – violates those same human rights protected under the ICCPR, CEDAW, and many human rights charters, particularly the right to equal enjoyment of all civil and political rights.<sup>9</sup>

### **1. Ecclesiastical court fees**

Opening a case before the Ecclesiastical courts, filing an appeal or an application - all involve the payment of litigation fees to the court. The State has enacted regulations with respect to the manner and procedures in which such fees should be paid to other religious courts, such as the Sharia and Druze courts<sup>10</sup> that operate under the auspices of the Ministry of Justice and are financed and monitored by it. However, the State refrained from enacting similar regulations for the payments of fees in the Ecclesiastical courts that continue to enjoy full autonomy concerning court fees. The autonomy given to the courts and the non-regulation policy of the state together led to a flawed outcome, expressed mainly in unreasonable high fees compared with other

---

available at: <http://www.nasserlaw.net/UserFiles/file/כנסיות%20דין%20בת%20גייר.pdf> [Batshom, Hebrew]

<sup>9</sup> The International Covenant on Civil and Political Rights, art 26 [ICCPR]. Israel signed the ICCPR on 19.12.1966 and ratified the convention on 3.10.1991. See: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) [ICCPR]

<sup>10</sup> The sharia court fees, see: <https://goo.gl/og59MK>, the druze court fees, see: <https://goo.gl/vhrUhd>

religious and civil courts, and non-publication or insufficient publication of fees, discounts and exemption procedures of fees.

### **A. High Fees**

Only some of the Ecclesiastical courts publish, in writing and only within the court itself, their own procedures and policies regarding fees, while others have not established such procedures and do not publish the fees applicable for the different proceedings.<sup>11</sup> The lack of accessibility, transparency and uniformity results in collecting different fees for similar legal proceedings in similar Ecclesiastical instances. In addition, the fees in the Ecclesiastical courts are extremely high compared to the rest of the religious courts. To illustrate the gap, the fees for opening a divorce case in the Sharia court is around 236 NIS; in the Rabbinical court it's between 450-750 NIS, while in the Orthodox<sup>12</sup> Ecclesiastical court the fee can be as high as 8000 NIS and in the Catholic Ecclesiastical court, where there are no divorces, the cancellation of marriage fee is around 4000 NIS.

It should be noted that the Shari'a and Druze courts form part of the Ministry of Justice and both publish the cost of litigation fees on the Ministry of Justice's website.<sup>13</sup>

### **B. Partial publication of Court Rules on Fee Exemptions and Discounts**

Kayan's experience with representing women in divorce cases before the Ecclesiastical courts<sup>14</sup> shows that in certain circumstances the courts accede to applications for discounts or exemptions from payments of fees. However, The Courts have no written guidelines or regulations regarding the criteria for discounts and exemptions. Even if they do have such criteria, they don't publish it, or publish it only within the court itself, thereby denying the general public access to it.

Thus, those who wish to bring a claim before the Court may be unaware of their right to submit an application for a discount or exemption from payment of the fees.

---

<sup>11</sup> Batshon, Supra note 8.

<sup>12</sup> The majority of the Palestinian Christian citizens of Israel are part of the Orthodox Church where divorces are allowed.

<sup>13</sup> The ministry of justice website (<http://www.justice.gov.il/Units/BetDinDroziLerorim/Pages/Hipush-Piski-Din.aspx>), (<http://www.justice.gov.il/UNITS/BATIDINHASHREIM/Pages/Hipush-Piski-Din.aspx>).

<sup>14</sup> Batshon, Supra note 8.

The high sums and the fact that there are no clear regulations regarding exemptions or discounts based on clear criteria have negative implications on women, and Arab Christian women in particular.

## **2. Insufficient Publication of laws and regulations governing the legal proceedings in the Ecclesiastical courts**

The majority of the Ecclesiastical courts in Israel do not make public or accessible the laws, regulations and rules that they rely on in their judgements and opinions. These legal instruments are crucial not only to the parties (or potential parties) of the proceedings, but also to the attorneys who represent the parties in court or wish to advise them before turning to the court. In addition, the Orthodox Ecclesiastical courts (that the majority of the Palestinian Christian citizens of Israel are subject to their jurisdiction) not only keep the laws, regulations and rules unpublished and inaccessible, they also do not have a version of all the relevant laws and procedures translated to Arabic; rather, some of the most relevant laws such as the law of procedure of the Orthodox courts are issued only in Greek. Thus, these laws are in fact not accessible to the vast majority of the population under their jurisdiction. It is hard to find a convincing explanation for the keeping of laws and regulations in the dark.

In contrast, the Druze religious court, for example, maintains a website under the Ministry of Justice's website where it publishes the laws and the laws of procedures as well as the opinions of the court that reflect its legal rulings on the main legal issues (subject to the concealment of personally identifiable information).<sup>15</sup> The fact that the Christian citizens of Israel do not have access to the same amount of information regarding the procedures they are to expect, constitutes a religious discrimination, that is a breach of both international and national law.

## **3. Non-Publication of legal decisions and lack of Accessibility**

The Ecclesiastical courts in Israel do not make their legal decisions public. In fact, the citizens subject to the jurisdiction of the Ecclesiastical courts may be clueless: They have no access whatsoever not only to all the laws applicable in the courts but also to the legal history, literature or previous rulings of the courts.

---

<sup>15</sup> See the Druze Religious Court's website under the Ministry of Justice at:  
<http://www.justice.gov.il/Units/BetDinDroziLerolim/Pages/Hipush-Piski-Din.aspx>

The concept of accessibility and publicity of Court rulings, procedures, precedents etc. is one of the major pillars of democracy, due process and fair trial. In the words of Jeremy Bentham, one of the most important philosophers of political theory:

“In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only as proportion as publicity has place, can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice.”<sup>16</sup>

This principle is anchored in several international covenants, such as the ICCPR (Article 14), the UDHR (Article 10 states that “everyone is entitled in full equality to fair and public hearing”) and has been recognized as equally binding in criminal and civil proceedings, in the European Convention on Human Rights, article 6, and in many countries’ constitutions and legal systems.

The Israeli Courts Act<sup>17</sup> authorizes the minister of justice to determine the procedures of every hearing that takes place in the judicial system, including the civil legal system and the religious legal system altogether. However, no such regulations have been legislated as yet.

Regarding the civil legal system, the Knesset has enacted regulations about the proper procedures of the civil and criminal courts, among them regulations of the publication of judicial decisions.<sup>18</sup> However, in the religious legal system, there is only one law that has been enacted: “Regulations Regarding the Procedures of Jewish Courts in Israel”<sup>19</sup> that refers solely to the Jewish Religious Court. This law describes the proper course of litigation in court but does not refer to publication of decisions at all. The discretion when and how to report the courts’ decisions or rationales is given solely to the Judges of the Jewish Courts, who should explicitly instruct to publish the decisions when they see fit to do so.

Regarding all other religious groups in Israel, there are no regulations whatsoever on publication or transparency. In practice, however, since 2014, the Druze Religious Courts as well as the Shari’a Courts have been publishing their decisions, but they, like the Jewish courts, do so sporadically and when they see fit to do so.

---

<sup>16</sup> Quoted in *A G (Nova Scotia) v MacIntyre* [1982] 1 SCR 175, 183 (Dickson J)

<sup>17</sup> Israel, courts act 5744-1984 art. 21

<sup>18</sup> Israel, courts act 5744-1984 art. 68(a)

<sup>19</sup> Family matters court act, *supra* art 6.

## **The Legal Framework**

Israel has ratified the International Covenant on Civil and Political Rights (ICCPR). The convention defines a basic premise of ensuring equal rights to men and women to the enjoyment of all civil and political rights (article 3).

In Article 14, the Covenant states that any judgement rendered in a suit of law should be made public except when concerning matrimonial disputes. However, in article 24 of the GC 19, the Committee clarified that it is necessary to ensure that several requirements are met in religious courts, in order to allow them to be recognized. Thus, it is required that the judgements of these courts be validated by state courts and can be challenged by the parties concerned in a fair procedure. In addition, article 29 of the GC clarifies that the exclusion of the public from the legal reasoning and rulings **is only allowed to the extent strictly necessary**.

The full Autonomy given to the Ecclesiastical Courts in Israel and the non-involvement policy of the State have created fertile soil for human rights violations of the rights protected under the ICCPR. We ask the Committee to include in its LOIPR the issue of “Measures taken to guarantee transparency, equality, fairness and access to justice in the religious courts, **and in particular the Ecclesiastical courts**” in order to ensure an appropriate and serious report by the state on these critical human rights issues and so as to help bring them to light.

## **Conclusion and Recommendations:**

The fact that there is no legal framework that ensures access to the inner workings of the Religious Courts, particularly the Ecclesiastical courts, creates a serious democratic breach. The failure to make the content of the court’s laws, rulings and regulations available to the public constitutes a serious denial of basic human rights. We therefore recommend that the Civil and Political Rights Human Rights Committee include in the List of Issues Prior to Reporting the Following issues:

Measures taken to guarantee transparency, equality, fairness and access to justice in the religious courts, **and in particular the Ecclesiastical courts**;

Measures taken to guarantee that the fees paid to the **Ecclesiastical courts** are equal to or proportional to those paid in other religious and civil courts;

Measures taken to guarantee that **all religious courts** make public the laws, regulations, addresses, details of contacts, rulings and decisions (subject to the concealment of personally identifiable information of the parties).

We are aware that article 14 of the covenant, as mentioned above, excludes matrimonial disputes from the general requirement of full transparency. We are also aware of the fact that the state of Israel does not apply the legal equality of men and women directly to matters of marriage and divorce,<sup>20</sup> and yet, we believe that the situation as it is constitutes a violation of Human Rights that is not legitimate even with these reservations, and that it is necessary to clearly define the scope and the meaning of the autonomy of the courts.

Kayan is interested in submitting a shadow report that will fully present the claims made above and would like to request that these issues be included in the List of Issues prior to reporting for the Committee's 123<sup>rd</sup> session.

---

<sup>20</sup> International covenant on civil and political rights add. 13, 1998, see:  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstH%2foObOxUwMXnkLHyNtuD6lkeuEWefvZMuhJIUDtsCd5CNF8XjGiP334RYJibIxIE1p0LtvAY3ebRvUIXcDNyFSIW%2bCNwLGvIXImNvnUaah>