

REQUIEM TO THE SPECIAL TRIBUNAL – A FAILED ATTEMPT TO RESOLVE THE RELATIONSHIP BETWEEN THE CIVIL FAMILY COURT AND THE RELIGIOUS COURTS

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The Israeli legal system is unique among modern systems of law in that it preserves personal religious law in the area of family law. Another phenomenon which singles out Israeli law from most contemporary legal systems is the dualism of adjudication over matters of personal status. The jurisdiction is divided between civil family courts and courts of thirteen recognized religious communities.

The jurisdiction of the religious courts is exclusive in some matters of personal law – notably marriage and divorce – and concurrent with the family courts in other matters. This arrangement has its roots in the Ottoman era and was preserved by both the British and Israeli legislature.

The British ruler endeavored to set both courts on an equal footing. In order to resolve jurisdictional conflicts between the courts, the Palestine Order in Council – the supreme legislation during the Mandate era – established a Special Tribunal. This tribunal consists of two justices of the (civil) Supreme Court and of the president of the highest religious tribunal. The Special Tribunal is entrusted with the authority to decide "a[ny] question... as to whether or not a case is one of personal status within the exclusive jurisdiction of a Religious Court".

The Special Tribunal was very active during the Mandate era and during the formative years of the State of Israel and decided many conflicts in favor of the religious courts.

The existence of a tribunal superior to the highest State court was met with hostility by the Supreme Court. A multi-stage strategy was created to curtail the jurisdiction of the Tribunal. During the first stage, the lower civil courts were enjoined from referring to the Special Tribunals any matter which had been decided previously by the Supreme Court. At the same time, the Supreme Court refrained from referring genuine jurisdictional controversies to the Tribunal and also supervised references by the religious courts and limited the bodies who are qualified to make such references.

The ultimate war against the Special Tribunal came a few years ago when the civil members of the Tribunal ruled that all tribunals – including the special tribunal – are subject to the rulings of the Supreme Court. This is so since "the hierarchic structure of the courts in Israel places the Supreme Court on top of the normative pyramid just like a conductor whose task is to coordinate among the various musicians in the orchestra".

This precedent completed the conquest of the Special Tribunal by the civil courts and put an end to the experiment of having two equal but concurrent courts – civil and religious – in the area of jurisdiction in family matters.