LFA 3151/14

Applicant: A

v.

Respondent: B

Attorneys for the Applicant: Doris Golsha-Netzer, Adv.; Roy Ashkari, Adv.

Attorney for the Respondent: Maxim Lipkin, Adv.

The Supreme Court

Before: Deputy President E. Rubinstein, Justice Z. Zylbertal, Justice D. Barak-Erez

Application for Leave to Appeal the judgment of the Tel-Aviv District Court of March 23, 2014 in FA 21043-02-1311 (Deputy President I. Schneller, and Judges K. Vardi and R. Levhar-Sharon)

Abstract

In a majority opinion (E. Rubinstein D.P. and Z. Zylbertal J.), the Supreme Court held that the family courts may limit the period of payment of spousal support to a woman due to her refusal to accept a *get* [Jewish religious divorce], even in the absence of a divorce order by the Rabbinical Court. As an operative outcome, the appeal was granted, as it was held by majority (D. Barak-Erez and Z. Zylbertal J.,) that, under the circumstances, the court should not have set a time limit for the payment of the Applicant's support.

*Family – Spousal Support – Recalcitrant Spouse
*Family – Spousal Support – Right to Spousal Support

*Family – Spousal Support – An Unemployed Woman
*Family – Spousal Support – Rehabilitative Support

An application for leave to appeal a judgment by the District Court concerning the fixing of a time limit for spousal support awarded the Applicant despite the fact that the Rabbinical Court did not rule that she is a ”recalcitrant wife”. The application was heard as an appeal.

Background: The parties were married to each other for over 35 years. The Applicant was rarely employed outside the home during the marriage, and the Respondent was the sole supporter. The parties have been separated since 2011, and have conducted various legal proceedings related to the separation – divorce proceedings, proceedings concerning the woman's right to support, and proceedings concerning the division of the family assets. Both the Family Court and the District Court believed the Applicant should be awarded support for a fixed period of time. In the course of the proceedings, the Court addressed the question of whether the Family Court could revoke a woman's support due to her "*get* recalcitrance" in the absence of a decision by the Rabbinical Court ordering her to accept a *get*, and in the absence of a positive finding that the couple's marriage had come to an end. What are the considerations that the Family Court must take into account when it is requested to fix a time period for support, or revoke the support of a married woman who it believes is refusing to agree to a divorce for financial reasons?

The Supreme Court (*per* D. Barak-Erez J., Z. Zylbertal concurring with the operative outcome, over the dissenting opinion of E. Rubinstein D.P.) granted the appeal:

In Justice Barak-Erez's view, the principle of comity between courts required the civil court's restraint and thus, in her opinion, as long as the couple's divorce proceeding is pending in the Rabbinical Court, the civil court may not base its ruling on spousal support upon "*get* recalcitrance" in the absence of an appropriate finding by the Rabbinical Court on this issue. Justice Barak-Erez added that this conclusion stems not only from the principle of comity between courts, but also from the Jewish religious law that applies to this case, which dictates that revoking the right to spousal support in a case of a divorce obligation must be accompanied (based on many opinions) with supplemental steps that are under the exclusive jurisdiction of the Rabbinical Court, and which require the active involvement of the Rabbinical Court (entrusting a *get* [Jewish bill of divorce] and the financial obligation required under the *ketubah* [Jewish marriage contract] to a third party).

In her opinion, the means at the disposal of the civil court for addressing the phenomenon of "*get* recalcitrance" deriving from financial motivations, is through awarding "rehabilitative" support under the general principles of the civil law (on the basis of the principles of reliance and good faith.) Of course, since these are "civil" principles, they would also apply, *mutatis mutandis*, to a divorcing man under these very same conditions. In her opinion, it is possible to award rehabilitative support under civil law only where the partner is no longer entitled to support under the personal status law, and this at two points in time: "when before the divorce is granted, there is cause for

revoking support; or after the granting of the divorce has extinguished the right to support." The central factor that must be considered in order to determine wither one of the partners is entitled to rehabilitative support, and its amount, is the prospect for alternative sources of income. Therefore, the questions of the home-based partner's vocational or professional training and work experience, age (including how close they are to the age of retirement), the value of the couple's property and whether it has already been divided, are of importance. On the other hand, considerations of fault as to the responsibility for the separation are not relevant.

As applied to the matter before the Court, Justice Barak-Erez was of the view that the appeal must be granted, and that as long as there is no change in the couple's circumstances, including the circumstances surrounding the proceedings in the Rabbinical Court, the Respondent must continue to pay the Applicant support as decided by the Family Court, without setting a termination date.

As opposed to this, the Deputy President, joined by Justice Zylbertal, disputed Justice Barak-Erez's position regarding jurisdiction. In their view, under the principle of good faith, the civil courts may revoke a married woman's spousal support when they are persuaded that the marriage has effectively ended and that the woman refuses to accept her *get* solely for financial reasons, even in the absence of a finding by the Rabbinical Court that the woman is required to accept the *get*. The Deputy President explained that often the civil court is called upon to make incidental findings that are required for the determination of the issue of spousal support and property matters that are in its primary jurisdiction (section 76 of the Courts Law.) According to the Deputy President, a civil court's finding whereby a woman loses her spousal support for being a "recalcitrant spouse" does not lead to the end of the marriage in the Jewish halakhic sense, and does not conflict with the principle of comity between courts. The Deputy President added that he did not rule out the method proposed by Justice Barak-Erez as to the awarding of rehabilitative support in appropriate cases, however in his view, it is a tool in the Family Court's "toolbox", which is to be used according to the circumstances of the case in order to resolve the issue of alternative sources of income (while noting other tools, such as an unequal division of resources.)

According to the Deputy President, under the specific circumstances of the case at hand, and once the lower courts, including the Rabbinical Court, were persuaded that the marriage had come to an end, and that the Applicant is delaying the divorce only to improve her financial circumstances, the Family Court, and subsequently, the District Court, correctly fixed the period of support payments, and the District Court's approach which met the Applicant more than halfway, is acceptable. Therefore, in his view, the appeal must be denied. At the end of the period set (December 2014), the possibility to extend the period of support payments would be revisited.

Justice Zylbertal, who, as noted, concurred with the view of the Deputy President on the matter of jurisdiction, concurred with the view of Justice Barak-Erez as to the operative result, whereby the appeal must be granted.

In Justice Zylbertal's opinion, the considerations the court must take into account before revoking a woman's support due to "*get* recalcitrance" are, *inter alia*: what is the reason for the refusal – personal vindictiveness or extortion, or a lack of sufficient financial protection for the financially weaker partner upon divorce, and the woman's ability to continue to support herself after the divorce. In this context, the court must examine the woman's ability to secure an income, and to this end, it should also consider her age, her share in the husband's pension, and when she will be entitled to receive her share of those funds.

According to Justice Zylbertal, in the circumstances of this case, it is inappropriate to fix a timeframe for the Applicant's support, both because her delaying of the divorce is not necessarily the result of vindictiveness or extortion, that is – not a lack of good faith that warrants fixing the period of support – and in light of the understandings that characterized the couple's marriage, the Applicant's age (over 50), and her prospects of integrating into the workforce during the short adjustment period left until the partners reach the age of retirement.

It should be noted that, in addition to the above, the members of the panel briefly discussed an issue related to the matter at hand – the possibility of awarding financial compensation in cases of *get* recalcitrance in the framework of a tort suit.

Judgment

15th Iyar 5775 (May 4, 2015)

Justice D. Barak-Erez

1. A married couple are separated and conducting various, related legal proceedings – divorce proceedings, proceedings regarding the women's right to spousal support, and proceedings regarding the division of the family property. Under the circumstances, was the Family Court correct in granting the woman spousal support for a fixed period of time, after which the woman would no longer be entitled to support, even if the couple do not divorce? This is the central issue at bar. Its determination raises additional questions, among them: can the Family Court rule that, for the purpose of deciding spousal support, a woman may be deemed a recalcitrant spouse even if the Rabbinical Court refrained from making such a finding in the course of the divorce proceedings between the parties? To what extent may the Family Court consider the fact that the woman lacks the capacity to earn an income, and may it refrain from awarding her spousal support even if she is entitled to such support under the personal-status law, because the couple are about to divorce, or because the Court is under the impression that the woman is a recalcitrant spouse?

The Factual Background and the Proceedings thus far

2. The Applicant and the Respondent (hereinafter: "the couple" or "the partners") married in 1976. They are parents to three children, and grandparents to eight common grandchildren. Throughout their marriage, the Respondent worked for a large public corporation, while the Applicant ran their household. The Applicant worked outside of the home for only short periods of time. The couple own a house (hereinafter: the house) to which an additional residential unit is attached, and which is still under mortgage (though its amount is currently insignificant compared to the value of the house.)

3. In 2011, a dispute erupted between the partners. About a year and a half before the conflict started, the couple moved into a rental apartment in Holon, and rented out the house they owned, as well as the attached residential unit (which was rented when they resided in the house as well.) In July 2011, as a result of their dispute, the Respondent left the apartment in Holon where the two resided.

4. On August 15, 2011, the Applicant filed suit in the Family Court for support for herself and for the couple's youngest son, who was a minor at the time (FC 24331-08-11). As we will explain below, this was the suit that led to the application at bar.

5. Pursuant to that, several additional suits were filed between the parties. On the same day, the Applicant filed a suit for orders to preserve property rights and for accounts (FC 24358-08-11). On November 16, 2011, the Respondent filed for divorce in the Rabbinical Court, and later filed suit for a division of community property in the Family Court (FC 39732-11-12.) In the course of that proceeding, the Applicant argued that, under the circumstances, the couple's property should be divided unequally, in view of the fact that she lacks any sources of income, and this under the court's authority under section 8(2) of the Spouses (Property Relations) Law, 5733-1973 (hereinafter: the Property Relations Law). On February 24, 2013, the Family Court ruled that if the Applicant wishes to request a remedy of unequal property division, she must file the proper suit. Accordingly, on March 18, 2013, the Applicant filed a suit for resource balancing (FC 33489-03-13,) in which she requested that the balancing of resources deviate in her favor from the principle of equal division (so that she will receive 80% of the community property,) and that it additionally be held that a second apartment that the Respondent inherited from his father is a property subject to resource balancing.

6. On September 27, 2011, the Applicant moved out of the Holon apartment and back into the house. On January 4, 2012, the Applicant filed a suit for reconciliation with the Rabbinical Court, and was granted an order for specific residence in the house.[1]

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[1] Translator's note: An order for "specific residence" is a temporary order issued by a rabbinical court in divorce proceedings, which grants a wife a right of specific residence in the couple's home (thereby, for example, blocking an attempt by the husband to sell the property). The order derives from the Talmudic

7. On December 12, 2012, the Family Court delivered its decision in the suit for support (FC 24331-08-11, Judge J. Shaked). The Family Court held that, in this case, the traditional grounds recognized in Jewish law for ruling that the wife lost her entitlement to support were not proven. However, the Family Court added that it would seem that the partners lead separate lives, they both view their marriage as having reached a crisis, and that the marital relationship between them had "died". The Family Court further held that in this regard that when a "dead" relationship is concerned, there is no justification for preserving it by awarding the woman support. The court also noted that awarding support is subject to the good-faith requirement (referencing LFA 3148/07 *A v. B* (June 13, 2007) (hereinafter: LFA 3148/07)). Therefore, the court held that for the purpose of the proceedings in regard to support, the court should take notice of the Applicant's refusal to divorce the Respondent "artificially, in order to gain advantages in the legal proceedings between them," as well as the fact that the Applicant was deliberately delaying the division of common property in regard to the house (which is valued at about two million shekels), as well as the resource balancing between the couple, by moving into the house and even obtaining an order of specific residence (that was still in effect at the time). The Family Court found that, under the circumstances, obstructing the sale of the house by the Applicant was inconsistent with the good-faith requirement.

8. In ruling on spousal support, the Family Court took into account the Applicant's behavior, on one hand, while also noting her age (over fifty), the fact that she had not worked in more than three decades during the marriage, as well as the family's lifestyle, on the other hand. Against that background, the court ruled that spousal support in this case should be awarded only for a fixed period of time. The Family Court explained that awarding spousal support for a fixed period would ensure legal certainty to both parties so that they might plan their next steps and will be more emotionally and financially free to negotiate and reach an agreement that would end their relationship.

9. After examining the Applicant's expenses, the Family Court ordered spousal support in the amount of NIS 5,650 per month (assuming that she was paying the mortgage on the house), or in the amount of NIS 3,500 (if she was not paying the mortgage), for a fixed period of 24 months from the day the suit was filed, that is until July 15, 2013. Additionally, the Family Court dismissed the Applicant's suit for support of their son, who was a minor at the time the suit was filed, because the claim was not adequately proven, and considering that at the present time he was already serving in the IDF and did not exclusively reside in the Applicant's home.

10. The Applicant appealed the Family Court's ruling on spousal support to the District Court (FA 21043-02-13, Deputy President I. Schneller, and Judges K.

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principle: "She rises with him, but does not go down with him" (*TB Ketubot* 61a, and see *Shulhan Arukh, Even Ha'ezer* 75(2)).

Vardi and R. Levhar-Sharon.) On March 23, 2014, the District Court granted the Applicant's appeal, but only in regard to the date set for the period of support. The District Court held that it was appropriate to fix the period of the Applicant's support, subject to setting a later date for ending the period during which the Respondent must pay it, as detailed below.

11. The District Court ruled against intervening in the amount of the support set by the Family Court, as it was based on factual findings, and limited the discussion before it to the general issue of the possibility of limiting the period of support payment and its resolution in the specific case.

12. The District Court noted that the premise for discussion must be that a woman's support is based on personal status law. At the same time, the District Court reviewed the case-law developments in regard to taking account of the woman's income prospects in deciding the amount of support, as well as the circumstances of the case (including the length of the marriage and the circumstances of the separation), and the approach that the awarding of support must be subject to the principle of good faith and public policy. As a result, the court noted that where there is "*get* recalcitrance" by the woman, this would affect her support, while examining whether this should be reflected in the amount or in denying right to support altogether. The District Court commented that denying a woman support on grounds other than religious law ought to serve as a legal tool for overcoming *get* recalcitrance, and as an incentive for the parties' divorce, similar to the developments that had taken place in regard to tort claims for *get* recalcitrance.

13. The District Court went on to specify the factors that must be taken into account in considering a woman's right to spousal support when she is a "recalcitrant spouse." In doing so, the District Court considered the following factors, without exhausting the list: the primary reason for refusal – is it a result of a desire to continue to receive support, or a result of other proper reasons; the length of the marriage and its quality; the party at fault for delaying the divorce, and the Rabbinical Court's findings in this context; the lifestyle prior to the separation, including the issue of the woman's employment and her ability to secure an income compared to that of the husband; and the issue of whether the property matters between the couple had already been resolved. The District Court emphasized that denying the woman support is not a "penalty" and thus, the court must ensure that she has financial resources even when she is refusing the divorce. Additionally, the District Court emphasized that denying the right to support, or reducing it, is based on the principle of good faith – which is not a "one way street" – and thus the husband's behavior is also important and should be examined from a broad perspective.

14. The District Court addressed the Family Court's finding that, in this case, the woman refuses to arrange the divorce, although the Rabbinical Court did not make such a finding, and decided to intervene in that finding. The District Court addressed that fact that the couple had been married for over 35 years, and the

Respondent is the one who elected to leave the family home. Therefore, this is not a case of *get* recalcitrance, particularly when the Family Court refrained from addressing the circumstances around the husband's leaving. Additionally, the District Court noted that the Applicant was permitted to demand that the property matters be settled before the divorce, and that in light of the fact that there are financial resources of which the Applicant is entitled to part, a situation in which the Respondent enjoys these resources whereas the Applicant must wait for her share is unacceptable. Additionally, it was held, that even were it appropriate to set a limit to the period of support payments, it would have been appropriate to allow the Applicant a longer period in order to get "organized" for the future. This is because the result of the decision by the Family Court could have been that the Applicant would be compelled to agree to any demand presented to her in regard of the financial and property matters.

15. The District Court addressed the fact that the Respondent is expected to retire from his job in several years, and that at that time, the Applicant will be entitled to her share of his pension. On the other hand, the District Court considered the fact that the Respondent's own entitlement to his pension had not yet materialized. The District Court held that it, indeed, would appear that the couple's marriage had come to an end, but this finding alone, and the fact that the Applicant was granted an order for specific residence, are insufficient for denying her support considering the other circumstances. Ultimately, the District Court ruled that the date for the expiration of support would be delayed for a period of three years from the date the Family Court handed down its decision, that is until December 31, 2015, or until the date when the Applicant would start receiving her share in the Respondent's pension rights, according to the earlier of the two.

16. To complete the picture, it should be noted that the order for specific residence awarded by the Rabbinical Court was revoked in its decision of October 14, 2013. The Rabbinical Court noted the civil court's impression that the marital relationship between the partners had expired, and that the Applicant was not interested in reconciliation. The Rabbinical Court recommended that the couple negotiate in order to end the marriage.

17. It should further be noted that on March 12, 2015, decisions were handed down in the two suits filed by the Applicant – for preserving property rights and for resource balancing (FC 24358-08-11 and FC 33489-03-13.) As mentioned, in the course of her suit for resource balancing, the Applicant requested that the property be divided unevenly so that 80% of the property would be handed over to her and only 20% would be awarded the Respondent, under section 8(2) of the Property Relations Law. Additionally, she requested the rights to the apartment that the Respondent inherited from his father. The Family Court was presented with an accountant's report which pointed to two options for balancing the resources between the parties – one based on the current value of the rights, including the pension rights the Respondent had accrued, and the other based on the date the rights are to be realized. Under the latter option, the Applicant would receive most

of the payments to which she is entitled through a monthly allocation of a fixed portion of the Respondent's pension payments, each, once he retires. The Family Court rejected the Applicant's claim that the resources be unevenly divided in her favor, as well as her claim to include the apartment inherited by the Respondent as property subject to resource balancing. In effect, it was held that the resource balancing would be even, according to the second alternative presented in the expert opinion, that is, in accordance with the date the pension rights would actually materialize. The Family Court added that it was under the impression that the Applicant was obstructing the divorce and refused to accept a *get* from the Respondent. As a result, the court held (referencing sections 5(c) and (d) of the Property Relations Law) that for the time being, the Applicant would be entitled to a sum of about NIS 73,000 unconditionally, while the remainder of the sums would be awarded her only later, subject to settling the divorce or any other decision by the Family Court. It was also decided that the Applicant bear the Respondent's costs in the amount of NIS 59,000. The Applicant informed us that she intended to appeal the judgment. Needless to say, we are not concerned with this, and only mention it to complete the picture.

18. We would further add that in the course of the suit for dissolving the common property, and after the Rabbinical Court revoked the order for specific residence, the Family Court ordered to dissolve the community property rights in the house owned by the parties, and appointed the parties' attorneys as receivers (FC 39732-12-11, decisions dated February 24, 2013, February 25, 2013 and April 14, 2013). Additionally, at the parties' request and with their consent, a property appraiser was appointed on March 26, 2014, in order to prepare an appraisal of the house for its sale.

The Application for Leave to Appeal

19. The application for leave to appeal before us challenges the District Court's decision in regard to fixing the period of the Applicant's support. The Applicant focuses her arguments on the fact that the District Court elected, despite the considerations it detailed, to terminate her support at the end of 2015, a date which she maintains is "speculative." According to the Applicant, the District Court's decision raises a fundamental question as to the Family Court's authority to set a fixed period of time for spousal support in order to induce the parties to divorce, a decision which effectively denies the woman support contrary to the personal status law that applies to the parties, and despite the fact that the Rabbinical Court did not find her to be a recalcitrant spouse. In the Applicant's view, this is a novel decision that provides the Family Court with new tools to compel parties to divorce.

20. On the merits, the Applicant maintains that, under the circumstances, her husband must be obligated to pay her support without an end date, and all subject to future developments (including the Respondent's retirement in about five years time). The Applicant emphasized that she was married to the Respondent for over 35

years, during which time she did not work. She argues that she is currently over 56 years old, she is incapable of working and producing her own income, so that her entitlement to support is essential for her livelihood until she begins to receive her share in the Respondent's pension in a way that ensures her continual income.

21. On the other hand, the Respondent argues that the request fails to invoke any special legal issue that warrants granting leave to appeal. He claims that the District Court "was very gracious toward the Applicant", in light of her unreasonable financial demands – demands which he believes hinder the resolution of the conflict by creating an "artificial delay" of the process. The Respondent adds that had the Rabbinical Court panel deciding the case not been substituted, their divorce decree would have been granted long ago.

22. The Respondent additionally claims that the Applicant's conduct and her persistent refusal to accept a divorce in the Rabbinical Court, as well as deliberately delaying the hearings there, in stark contrast to her vigorous activity before the civil courts, should have been considered as bad faith that justifies revoking the support. The Respondent further argues, while addressing the unfolding of proceedings between the parties, that the lower courts examined the proceedings between the parties, as well as the factual circumstances, reviewed extensive evidence and made factual findings in which we should not intervene.

23. On May 5, 2015, a hearing on the Application was held before us. In the course of the hearing, the parties provided updates as to the ongoing proceedings between them in the various courts.

24. For her part, the Applicant insisted that the Rabbinical Court decided, on March 16, 2015, that her actions did not justify ordering a *get*, and rejected the Respondent's request that she be required to divorce. The Rabbinical Court's decision noted that, in accordance with the Applicant's declaration, she is willing to live with the Respondent, and it was possible to end the case with the Applicant's consent to divorce while granting her appropriate and reasonable compensation.

25. During the hearing, the Respondent updated us that, in the meantime, a decision was handed down by the Family Court in regard to the division of property between the parties, in the course of the Applicant's suit for resource balancing. Additionally, the parties updated us that the house has yet to be sold, and that they still await the appraiser's report on the matter.

26. At the end of the hearing, we instructed the parties to submit briefs on the question of whether it is permissible to fix the time period for support during the marriage.

27. On May 31, 2015, the Applicant submitted her brief. In her brief, the Applicant explained that requiring the Respondent to pay support stems from the personal

status law that applies to them, which is Jewish religious law, which obligates the man to support his wife until the end of their marriage in divorce. The Applicant added that there is no obligation for a woman to work outside the home in order to be entitled to support, where she had not worked before and is unable to meaningfully produce an income, as in her circumstances. The Applicant notes further that there are no grounds to deny her support under the personal status law, and neither is there justification in her case to reduce the support or deny it for lack of good faith, which puts her in an impossible situation wherein she will remain without any source of income for several years until she becomes entitled to her share of the Respondent's pension payments. The Applicant further argues that, in principle, there is no decision by this Court that has approved the denial or fixing of the term of support for a woman who is not working, is unable to produce an income, and is completely dependent on her husband for her livelihood.

28. On June 6, 2015, the Respondent filed his brief. The Respondent addressed a husband's obligation for support under Jewish personal status law, but noted that the case-law balances these obligations against the principle of good faith, and created pragmatic rules to suit the changing times. Through good faith, he argued, the courts tend to reduce or deny support in general, and spousal support in particular, when necessary, as was done in this case, where the court is under the impression that the suit for support was designed merely to create "artificial pressure" in the property negotiations between the parties. The Respondent maintained that it is, indeed, common for family courts to fix the period of support, and that this approach can also be found in the writings of halakhic decisors. In this context, the Respondent presented the view of Rabbi Shaul Yisraeli (*Responsa Mishpatei Shaul*, 5) according to which a man is not obligated to support his wife unless she is with him, "and if she leaves, there is no justification for this [halakhic] regulation as all". It was also argued that the District Court's decision is pragmatic and eliminates the need for additional deliberation on the issue of the amount of support and setting the date for its termination, as well as practices of investigations and surveillance of the woman in order to determine the extent of her expenses. The Respondent added that the courts' approach as to fixing the term of a woman's support is rooted in rehabilitative support awarded a common-law wife based on general contract law. It was thus argued that where the religious law discriminates against a man compared to a woman, its discriminatory instructions to this effect must be interpreted narrowly. One way of doing so may be fixing the period for support, as was done in this case. Additionally, it was argued that the approach adopted in the case-law of the family courts is to prevent artificial continuation of the marriage where it no longer exists, and that, in this case, that approach should effectively have led to the denial of support altogether.

Discussion and Decision

29. After hearing the parties' arguments, we are convinced that the law requires granting leave for appeal in this case, and we have decided to hear the application as if an appeal had been filed with the leave of the Court. The issue of fixing the period for a man's support payments to his wife during their marriage is a new question that relates to the intersection between civil family law and the personal status law, as well as the "synchronization" between the decisions of the religious courts (in our case, the Rabbinical Court) and the rulings of the Family Court. In the background, as I will explain below, are additional questions touching on the financial survival of a partner who relies on the marriage in terms of income, considering, *inter alia*, that under Jewish religious law a woman is not entitled to support after the divorce (but without restricting the discussion in this context only to women, as opposed to men, who depended on the marriage in a manner that impacted their ability to produce an income). For the purposes of examining the question before us, I shall begin by presenting the complex tapestry of the relevant legal issues to be determined – some are matters of substantive law and some are matters concerning the jurisdiction of the relevant judicial tribunals.

30. Against this background, I will explore the rules that apply to spousal support, both through the lens of the personal status law that applies to the parties and through the lens of general civil law, all as related to the question of the "division of labor" between the family courts and the rabbinical courts as mandated under current legislation.

The Premise: The Connection between Entitlement to Support and the Marital Relationship under Personal Status Law and the Issues it raises

31. Section 2(a) of the Family Law Amendment (Maintenance) Law, 5719-1959 [13 L.S.I. 73] (hereinafter: the Maintenance Law) mandates: "A person is liable for the maintenance of his spouse in accordance with the provisions of the personal law applying to him." Therefore, the premise for the discussion before us is the personal status as it applies to the parties. In our case, this is Jewish religious law, which closely links the woman's entitlement to support to the marital relationship. As a general rule, only a married woman is entitled to support (subject to considering the income "of her own labor" in setting the amount of support). As opposed to this, after the divorce the woman is no longer entitled to support for herself (and this, as apposed to the maintenance awarded minor children that are, in effect, paid to the woman if the children are in her custody) (see also: Ben-Zion Schereschewsky and Michael Corinaldi FAMILY LAW vol. 1, 291-379 (2015) (hereinafter: Schereschewsky and Corinaldi)). This approach of Jewish religious law binds the family courts as well. This is an important point of departure for the discussion here, although it is not its final destination, as we explain below and considering the need to account for a wide range of principles that apply in the area of family law, including those drawn from civil law.

32. The application of Jewish religious law on awarding support between Jewish partners who married according to Jewish law – which is, as mentioned, the

premise for the current legal situation – may occasionally create difficulties, and even incentives for unfavorable conduct. One of the immediate outcomes may be leaving the woman with no source of income after the end of the marriage, and in certain cases, even beforehand. Apparently, this outcome is not anticipated in the case of a woman who has worked and has been fully integrated into the workforce even during the marriage (and in any event, the amount of support to which she is entitled is often balanced against "her own labor"). However, this outcome is also highly problematic when we are concerned with a woman who, under the "division of labor" between her and her partner, did not participate in the workforce, and possibly has no profession or prospects of becoming integrated into the workforce due to her relatively advanced age (even if she may "formally" seek employment, and without detracting from the duty to combat the phenomenon of age-based discrimination). There is, thus, concern that women who divorce at an advanced age, and who are not integrated into the workforce, would descend into poverty, particularly when the community property amassed over the years is itself modest. As a result, women under these circumstances may refuse to divorce, even when there are no real prospects for the marital relationship to continue. This is because when support is contingent upon the marital relationship, as in Jewish law, divorce is likely to cut off their source of income.

33. The concern about the implications of ending the marital relationship on the entitlement to support for a woman who did not work during the marriage is exacerbated in those situations where the division of property between the parties is yet to be done. Should the woman stop being entitled to support, on one hand, while at the same time not be awarded immediate control over her share of the community property, on the other hand, the difficult outcome may compel her into a situation of no alternative but to unnecessarily waive some of her rights to the community property, in an attempt to achieve a prompt agreement as to the division of property and the ability to realize it.

34. The case before us demonstrates, so I believe, the complexity of the described situation. Of course, *get* recalcitrance – for financial reasons of any others – must not be encouraged, but it is also imperative to provide solutions for one who relied on the relationship and can no longer be integrated into the workforce, or alternatively requires a relatively extended training period in order to do so (for instance, by acquiring a new profession). This applies, of course, *mutatis mutandis*, to male partners who have relied on a relationship in which his partner is part of the workforce and advances in it. Though the personal status law recognizes only a woman's right to support, as I show below, under the general civil law, in the appropriate cases, a man's reliance on the marital relationship may also be considered when granting the proper remedy to facilitate "adjustment" to independent financial existence (to the extent the "division of labor" in the former relationship justifies this).

Jewish Personal Status Law: The Death of Marriage, Obligation to Divorce and the Termination Date for Support

35. As noted, since the point of departure in the case before us is the personal status law that applies to the parties, we must first outline its principles in regard to an obligation to divorce and denying a woman's right to support. In effect, the case before us raises two questions that, while related to one another, must be distinguished from one another. The first question is under which circumstances a woman my be declared a "recalcitrant spouse" even when there are no "classic" grounds for divorce, only because she refuses to divorce despite the fact that her relationship with her husband has reached an end in the sense of "disgust", often described as the "death of the marriage" (see for example, Avishalom Westreich THE RIGHT TO DIVORCE: NO FAULT DIVORCE in JEWISH TRADITION 76 (2014) (hereinafter: *Westreich*)). The second question is what are the conditions to denying a woman's right to support under circumstances characterized as the "death of the marriage." These questions should be addressed briefly – not in order to purport to resolve the religious law disputes regarding them, but in order to understand their scope and their implications to the case before us.

36. *The death of the marriage as grounds for divorce* – as a general rule, there is a dispute among Jewish law decisors as to the whether an irreparable rift between the couple (regardless of the question of fault leading to this situation) justifies obligating a divorce (*Westreich*, 91). There is, indeed, halakhic support for the view that an irreparable rift in a marriage may give rise to a right to divorce, although that view is not universally accepted (*Westreich*, 93.) Such an approach is also consistent with economic concepts of human dignity that guide Israeli law. In any event, as I will explain below, determining this question does not "automatically" impact upon the determination in of the support issue. First, even if the Rabbinical Court decides to order the parties to divorce, it must still decide upon the implications of that decision for the obligation of support. Requiring a divorce may be the "first step" toward revoking the right to support, but such a decision is a separate one, which may involve additional steps such as entrusting the *get* and the *ketubah* to a third party, that is depositing them with the Rabbinical Court for the woman. Second, even in the absence of a decision to require a divorce, it may be appropriate, in certain cases, to revoke the right to support, and this, as well, in a decision that may require additional steps such as entrusting the *get* and the *ketubah* to a third party.

37. *Right to Support in the situation of the Death of a Marriage*: As was already explained, the woman's right to support in Jewish religious law stems from the marriage itself. This right expires when the woman is considered "rebellious" under Jewish law or where she is required to divorce under a "classic" ground for divorce, such as adultery (see: Schereschewsky and Corinaldi, 309). Ordinarily, a woman is entitled to support only when she lives with her husband. When they live separately, the reason for the separation must be investigated (*ibid*., 335). Generally, a woman loses her right to support when she was the one to leave the

home, unless "he was the cause", i.e., she had a good reason to do so (*ibid*., 335, 354-57).

38. The issue of the right to support becomes more complicated in cases such as the one at hand, that is, in the case of the "death of a marriage." The issue is partially related to the issue discussed above – whether the "death of a marriage" is grounds for requiring a *get*. However, as explained, these issues do not fully overlap. Doubts arise, *inter alia*, from the fact that denying the right to support may be seen as undermining the Decree of Rabbeinu Gershom prohibiting divorce without the woman's consent due to the fact that non-payment of support may create economic pressure that would compel the woman to divorce against her will. In this context, Rabbi Elijah Mizrachi's (the *Re'em*) position is well known. According to him, the husband may be exempted from supporting his wife when he could have lawfully divorced her against her will, but is prohibited to do so only due to the Decree of Rabbeinu Gershom. However, this position is considered, in many ways, a minority approach, and many halakhic decisors establish conditions for exempting the husband from paying support in this situation. Thus, for example, according to the view of Maimonides, this is contingent upon the husband depositing the *get* and *ketubah* with a third party. Additionally, Rabbi Herzog wrote, in regard to the approach of the *Re'em*, that "where the court is persuaded that she is responsible for disturbing a peaceful life (although the law does not require her to accept a *get*), and that there is no longer hope for restoring peace in the home, then it is permissible to rely on this approach, along while providing compensation so that she is not left without support, but of course this requires care and prudence and serious review in each and every case, in accordance with the situation and the circumstances." In any event, clearly the basis for releasing the husband from paying support is an authorized finding of the Rabbinical Court that the marriage has come to an end, in terms of a "disgust" claim (though the Rabbinical Court may refrain from deciding on actually requiring a *get*). Such a finding, and a consequent denial of support, usually involves entrusting the *get* and *ketubah* to a third party, acts that require, of course, active participation of the Rabbinical Court (see also: HCJ 7407/11 *A v. Great Rabbinical Court in Jerusalem*, para. 12 (January 27, 2013) and references there. For a detailed account of the approaches in Jewish law regarding support where the woman refuses to divorce, see: Rabbi Meir Batist, *A Woman Obligated to Accept a Get: Has She Lost Her Support?*, 23 TEHUMIN 125 (2003) (Hebrew); Rabbi Moshe Be'eri and Yuval Sinai, *Obligating Support for A Woman Who Refuses a Get*, The Center for Applied Jewish Law (February 9, 2007.) (Hebrew)).

Questions of Jurisdiction: Jurisdiction over Divorce, Jurisdiction over Support and the Relationship between them

39. Questions of jurisdiction must also be examined, alongside the examination of the substantive law, and we must address the dual system of litigation in the area of family law – in the rabbinical courts and in the family courts. As we will see, the

answer to the question before us is, in significant part, as much a result of the division of jurisdiction in family law as of the principles of substantive law that apply in this field.

40. As we know, the religious courts have exclusive jurisdiction over matters at the "core" of marriage and divorce. Family courts, too, hold jurisdiction over other matters in the area of personal status law. For the purposes of the case before us, it is unnecessary to elaborate on the distinctions between the different faiths' religious courts and it is sufficient that we address rabbinical courts' exclusive jurisdiction over all matters regarding marriage and divorce, as regulated by the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953.

41. The Family Court is indeed authorized to hear a claim for a woman's support, but as already discussed above, under the Maintenance Law the decision itself should be a product of the principles of personal status law detailed above, in this case Jewish law. Accordingly, when the Family Court hears a claim for support, it must determine whether there are grounds to end it in accordance with halakha.

42. What, then, must the Family Court do when faced with a claim for support where the husband argues in his defense that he is not obligated to pay because the woman is a "recalcitrant spouse?" The answer is that the Family Court cannot deny the right to support in the absence of an appropriate finding by the Rabbinical Court in the divorce case (this is distinct from the "classic" grounds, such as adultery, which the Family Court can consider independently). Indeed, it would appear that the Family Court may also address questions that are not under its "incidental" jurisdiction, in accordance with its authority under section 76 of the Courts Law [Consolidated Version], 5744-1984, and subject to the Rabbinical Court's authority to find otherwise (CA 634/61 *Makitan v. Makitan*, IsrSC 15 945 (1962); Issachar Rosen-Zvi, CIVIL PROCEDURE 295 (2015) (Hebrew)). However, when the question at the heart of the dispute is whether to revoke the woman's right to support for "*get* recalcitrance" (in the absence of a decision on this question by the Rabbinical Court,) it would be improper for the Family Court to address the issue. First, a claim of recalcitrance is closely tied to the matter of the divorce, which as noted, is under the exclusive jurisdiction of the Rabbinical Court. Therefore, in a case of a claim of recalcitrance, litigation is conducted concurrently in the Rabbinical Court and the Family Court, and thus it must be viewed from the perspective of the principle of comity between courts (see LCA 4982/92 *Tabib v. Tabib*, IsrSC 48(3) 390, 294-95 (1994); HCJ 8497/00, *Feig-Felman v. Felman*, IsrSC 52(2) 118, 134-40 (2003); HCJ 9734/04, *A v. Great Rabbinical Court*, IsrSC 59(2) 295, 303 (2004)). Under this principle, the Family Court should wait for the decision of the Rabbinical Court in the matter. Reciprocal comity requires that as long as the Rabbinical Court believes that a demand for reconciliation by the party wishing not to divorce is sincere and in good faith, and that the time for determining that the marriage has died has yet to come, the civil court should not rule otherwise while the proceeding in the Rabbinical Court is still pending. As noted, considering the principle of comity

between courts is necessary in this situation, since the divorce refusal claim cannot be raised out of thin air without the husband having filed for divorce in the Rabbinical Court. Second, as detailed above, according to religious law itself, denying the right to support in a case of requiring a divorce should be followed (in many opinions) by supplemental steps, such as entrusting the *get* and the *ketubah* amount to a third party. Denying the right to support, as a stand-alone measure, does not, therefore, reflect the religious law.

43. Waiting for the decision of the Rabbinical Court on the issue of divorce obligation is not expected to create any mishaps, considering the temporary nature of a support decision. A decision to award support is always contingent upon changes in circumstances, and a court may be approached repeatedly to decide the support issue in light of changing circumstances. Therefore, the Family Court need not be concerned that it may award support to a woman despite the fact she may be declared a "recalcitrant spouse." If and when this happens, her partner may apply to the Family Court to adjust the support award. The logic of this proposed approach can be illustrated by the reverse situation, as well. Consider a situation in which the Rabbinical Court finds that the woman is required to divorce and she refuses to accept the divorce. Could the Family Court nevertheless find that she is not a recalcitrant spouse and that she is entitled to support under personal status law? Because the negative answer to this question is clear, it ought to be clear that unilateral intervention by the Family Court in findings in regard *get* recalcitrance in order to restrict a woman's support is unacceptable.

44. It should be noted in this regard that the Family Court sought to rely on LFA 3148/07, cited above, as an example of considering recalcitrance when awarding support. However, this decision by my colleague (then) Justice E. Rubinstein, which generally addressed the application of the principle of good faith to issues of awarding support, cannot support this. In that case, it was held that a woman's support may not be increased beyond the rate she was originally awarded in light of changes in her former partner's separate financial circumstances. However, our case effectively concerns the revoking of a woman's support (in the sense of setting a date for their expiration), rather than merely setting their amount. Additionally, invoking the principle of good faith may not be used as a "detour" to waiting for the decision of the Rabbinical Court that is concurrently adjudicating the very same issue.

45. Indeed, we must aspire that the partner delaying the divorce without just cause does not gain the upper hand only because that partner falsely made a reconciliation claim (see also: Pinhas Shifman, ONE LANGUAGE, DIFFERENT TONGUES 122 (2012) (Hebrew)). However, accomplishing this cannot be through limiting entitlement to support while the divorce proceedings are still pending. Of course, a finding by the Rabbinical Court that the woman is required to accept a *get*, insofar as there is such finding, would itself serve as cause for amending the support award. However, as longs as the proceeding in the Rabbinical Court is

pending, and that court believes the time for divorce has not yet arrived, the civil court cannot base its decision on support on a different finding.

The Civil Law: Rehabilitative Support and the Marital Relationship

46. Though this was not articulated in this way in the District Court's decision, the case before us, and similar cases, highlight a real difficulty that repeatedly comes up in divorce proceedings – the disincentive to agree to a divorce when the woman has no independent sources of income, and where, under the personal status law (here, Jewish halakha), divorce would leave her without an income. In effect, the Respondent believes that the Applicant refuses to divorce him only in order to continue to be entitled to support, and it seems the lower courts were under the same impression. The avenue these courts have chosen is problematic in light of the principles detailed above. The lower courts based their decisions on the finding that the Applicant is delaying the divorce only because she wishes to improve her financial situation through the support to which she is entitled as long as she remains married. As noted, the jurisdiction to determine whether this is indeed the case is in the hands of the Rabbinical Court, not the civil court. However, admittedly, the difficulty that the lower courts point out is real.

47. I believe that the way to handle this difficulty is different. It should not take the route of denying the right to support based on a finding that the women is a "recalcitrant spouse" (as longs and the Rabbinical Court has not decided this issue in the course of the divorce proceedings), but rather should be based on the recognition that, in appropriate cases, where a woman is divorced after years of not working outside of the home, she should be entitled to "civil" support with a rehabilitative objective, that is "rehabilitative" support according to general principles of the civil law. Of course, since this is a "civil" principle, this must apply, with the necessary changes, to a man who has divorced and is facing the same conditions, as well. This Court has already said repeatedly that there is a contractual aspect to support, and general principles of fairness and good faith should also be considered on a case-by-case basis. I believe that these are principles that may be taken into account for the purpose of awarding rehabilitative support where, under religious law, the woman does not have a right to support. This would apply to a partner – man or woman – who is left with very limited or no ability to produce an income after the marriage, due to their reliance on the marital relationship and the "division of labor" between the partners during their relationship.

48. The right to an award of "rehabilitative support" (under the principles of reliance and good faith) has been recognized by this Court in regard to partners in a cohabitation relationship that is not subject to regulation by religious personal status law – "common-law" partners (see: CA 805/82 *Versano v. Cohen*, IsrSc 37(1) 529, 531-32 (1983); CA 2000/97 *Lindorn v. Karnit – Road Accident Victims Compensation Fund*, IsrSC 55(1) 12, 33-34 (1999)), or even couples married in civil ceremonies abroad (see: CA 8256/99 *A v. B*, IsrSC 58(2) 213 (2003); HCJ

2232/03 *A v. Tel Aviv Regional Rabbinical Court*, IsrSC 61(3) 496 (2006) [http://versa.cardozo.yu.edu/opinions/v-tel-aviv-jaffa-regional-rabbinical-court]).

49. To date, this Court has yet to recognize the right of spouses married under Jewish law to "rehabilitative support". However, at least *prima facie*, we should not rule out the possibility of awarding support under similar principles of protecting reliance, fairness, and good faith even when the couple is or was lawfully married. For example, consider CA 4590/92 *Kahana v. Kahana* (January 30, 1994) which addressed the matter of a *kohen* who married a divorced woman and was obligated to pay her support even after the Rabbinical Court found, in the course of the divorce case, that the woman was required to divorce (given that the marriage was prohibited).

50. How can this obligation, to the extent that it regards women, be reconciled with their right to support under religious law? I believe that rehabilitative support may be awarded under the civil law only to a woman who is no longer entitled to support under religious law (and, *mutatis mutandis*, to a man, too, as he is not entitled to support under religious law to begin with). This may arise at two possible points in time when the man's duty to pay support expires under Jewish law – either before the divorce is granted but when there is a cause for denying support, or after the divorce is granted, thus ending the right to support. This is consistent with the approach of Jewish religious law – both relevant points in time, whether before the divorce and after it, are occasions where the marital relationship substantively "ends." In effect, awarding rehabilitative support even to a woman who was married under Jewish law (subject to appropriate restrictions, such as where she did not work, or worked only on a limited basis, and considering her anticipated challenges in integrating into the workforce) is consistent with the halakhic system in a broad sense. In practice, the woman's *ketubah* is meant, *inter alia*, to guarantee her means of support at least for a period after the end of the marriage, and when she is no longer entitled to support (after divorce) (see for example: Eliav Shochetman, *The Woman's Status in Marriage and Divorce Law*, WOMEN'S STATUS IN SOCIETY AND LAW 380, 398-401 (Francis Raday, Carmel Shalev and Michal Liban-Kobi, eds. (1995) (Hebrew)). Adjusting this idea to present circumstances (see and compare: LFA 9606/11 *Estate of A (deceased) v. A* (May 20, 2013)) supports awarding rehabilitative support to a married woman who was not integrated into the workforce at all, or only partially so, and where the end of the marriage would make it difficult to integrate into the workforce or where time would be needed to adapt in order to do so fully. Additionally, there are halakhic approaches that support awarding compensation to a woman who divorces, as another means (in addition to the *ketubah*) to provide her a "decent existence" after the divorce, as explained by Menachem Elon in his book (see Menachem Elon, THE STATUS OF WOMEN: LAW AND JURISDICTION, TRADITION AND TRANSITION – THE VALUES OF A JEWISH AND DEMOCRATIC STATE 233-37 (2005) (Hebrew)).

51. As noted above, the question of whether the wife has income potential was already examined by the Family Court for the purposes of reducing the amount of the support awarded her under Jewish religious law (see: Halperin-Kaddari, *Wife Support: From Perception of Difference to Perception of [In]Equality*, 7 MISHPAT U'MIMSHAL 767, 789-91 (2005) (Hebrew); CA 6136/93 *Bikel v. Bikel* (July 6, 1994); CA 5930/93 *Padan v. Padan*, para. 2 (December 22, 1994)). The other side of the coin would appear to be accounting for a situation where the woman has no income potential, and where this fact results, *inter alia*, from her reliance on the marital relationship (as the Court also saw things in the *A* case, at 403). Moreover, the enactment of the Basic Laws, and the recognition that the right to a minimally dignified existence is a derivative right of human dignity, appear to reinforce the legal basis for awarding rehabilitative support as a duty stemming from the general law – regardless of personal status law (though in a manner that is consistent with it, as explained above) – to the extent this is necessary for a minimally dignified existence. Indeed, a divorced woman has no independent right that her former partner ensure her right to a minimally dignified existence. This right is, first and foremost, a right in regard to the state (HCJ 366/03 *Commitment to Peace and Social Justice Society v. Minister of Finance*, IsrSC 60(3) 464 (2005) [http://versa.cardozo.yu.edu/opinions/commitment-peace-and-social-justice-society-v-minister-finance]; HCJ 10662/04 *Hassan v. National Insurance Institute* (February 28, 2012) [http://versa.cardozo.yu.edu/opinions/hassan-v-national-insurance-institute]). However, the factor of guaranteeing a minimally dignified existence should influence the interpretation of support law (as this was already considered in the past for the purposes of limiting the scope execution of a support debt (see and compare: LCA 4905/98 *Gamzo v. Yeshayahu*, IsrSC 55(3) 360 (2001)).

52. Rehabilitative support of this type may reduce the incentive for "*get* recalcitrance" stemming from economic reasons, as well as provide the civil court with an effective tool for considering fairness and good faith. Such rehabilitative support could provide a partial response to the outcome resulting from partners who contributed to maintaining the household possibly finding themselves in a situation where their work has no realizable "market value" (see: Shahar Lifshitz COHABITATION LAW IN ISRAEL: IN LIGHT OF A CIVIL LAW THEORY OF THE FAMILY 332-334 (2005) (Hebrew) (hereinafter: *Lifshitz*)). To a certain degree, the possibility of awarding rehabilitative support is an obvious supplement to accounting for "career assets" in the division of property (see: LFA 4623/04 *A v. B*, IsrSC 62(3) 66 (2007) (hereinafter: LFA 4623/04); HCJ 8928/06 *A v. Jerusalem Great Rabbinical Court of Appeals*, IsrSC 63(1) 271, 280 (2008) (hereinafter: HCJ 8929/06)). Accounting for "career assets" expresses the "advantage" enjoyed by the partner whose work during the years of marriage acquired a special value, particularly where there are clear disparities in income potential because the partner who stayed at home facilitated the working partner's ability to maximize their income potential (LFA 4623/04, at 86). On the other hand, awarding rehabilitative support also reflects, in appropriate cases, the

special "harm" suffered by the partner who exited the workforce and was thus left in a position in which it became difficult to reintegrate into the workforce because of reliance upon the marital relationship and the understandings created within it. Indeed, these considerations may be reflected in the division of property, but that is not always the reality (*Lifshitz*, at 350-51.) Of course, awarding rehabilitative support must also take account of the manner of the property division– to the extent it already has occurred.

53. It is important to emphasize: rehabilitative support is what the title suggests. It is not a permanent entitlement to support, but an entitlement designed to achieve the rehabilitative objective of integration into the workforce – an end that advances dignified existence for the period of "rehabilitation", which reflects the reliance upon the partnered relationship to the extent that the ability to produce an income was compromised. In practice, this may also be expressed as a "transition" until the realization of a different right to an income, for example, from a pension fund. Therefore, as a rule, setting a fixed period for the support payments is possible, and may be required, although under certain circumstances this may be for an extended period, particularly where there is a significant difference between the partner who never worked and the supporting partner, and where the separation is at such a late stage of the partnered relationship that the ability of the partner who stayed at home to produce an income is very low.

54. Therefore these are considerations that must be taken into account when determining whether one of the partners is entitled to rehabilitative support, and what their amount ought to be. The central issue in this context is the likelihood of alternative sources of income. Therefore, the questions of professional training and work experience of the "home-based" partner, their age (including how close they are to retirement age,) as well as the value of the partners' property and whether it has already been divided are important. On the other hand, considerations of fault as to responsibility for the relationship ending should not be taken into account. Generally, the prevalent approach to the property and economic aspect of family law is that it should not be subject to fault considerations (see also: HCJ 8928/06; LFA 7272/10 *A v. B*, para. 24 of my opinion (January 7, 2014)). To this we may add the fact that considering fault may also hinder the rehabilitative purpose of the support award, since it diminishes the abandoned partner's incentive to rehabilitate through integration into the workforce.

55. In theory, one might argue that recognizing the possibility of awarding rehabilitative support will not reduce the phenomenon of "financial" divorce refusal by women in a case in which a woman may attempt to "drag out" the divorce in order to maximize her right to support as long as the marital relationship continues. This is because while recognizing rehabilitative support may address the concern that the partner who did not work during the marriage would be left without any source of income when it ends, it does not negate the fact that a woman is entitled to support under personal-status law as long as she is

married and there are no grounds for denying it, as explained. Rehabilitative support does not diminish this right and thus one might argue that women would attempt to "drag out" the marriage even where they may be awarded rehabilitative support once the marriage is over. Indeed, rehabilitative support does not fully resolve this problem, but I do believe that it significantly reduces it. First, from the moment when there is real "rift" between the parties and the woman no longer lives with her husband (whether by her desire or by his) it is likely she will attempt to return to the workforce or pursue professional training, and the need to do so, in the absence of any obstacle, is part of the good-faith duty imposed by the general law (to clarify, this duty is distinct from the considerations of fault *in the relationship's dissolution*). In this context, the time that has lapsed during which the woman could have attempted to return to work may be factored into the decision whether to extend the "rehabilitative support" (considering her circumstances, including her age and health). Second, recognizing the institution of rehabilitative support may be expected to reduce the incentive for artificial delay of the marriage, which burdens partners in a situation of "rift" (and all the more so for the woman, considering the Jewish law consequences of an extra-marital relationship).

Other Civil Aspects of Divorce Refusal

56. At first glance, the possibility of seeking civil remedies through a tort suit in cases of *get* recalcitrance would appear to raise a tangential question to those under examination (see, for example: FC (Jlem) 21162/07 *A v. B* (January 21, 2010) (hereinafter: FC 21162/07); FC (Krayot) 48362-07-12 *A v. B* (February 28, 2013); FC (Jlem) 46459-07-12 *Z. G. v. S. G.* (August 17, 2014)). As noted, in our case the District Court referred to this practice in order to infer that just as divorce refusal may serve as a cause of action in tort, so the Family Court may consider it for the purpose of reducing (or even revoking) the entitlement to support. In my opinion, this analogy is not at all obvious, and I believe it is misplaced.

57. I shall first note that the question as to when one may prevail in such a suit has yet to be addressed by this Court, and the case before us is not the proper case for discussing it (for the dispute on this matter see: Yehiel Kaplan and Ronen Perry, *Tort Liability of Recalcitrant Husbands*, 28 IYUNEI MISHPAT 773 (2005) (Hebrew); Yifat Biton, *Feminine Matters, Feminist Analysis and the Dangerous Gaps between Them: A Response to Yehiel Kaplan and Ronen Perry*, 28 IYUNEI MISHPAT, 871 (2005)). I shall, therefore, only note that even according to the view that filing a tort suit for *get* recalcitrance does not depend on a prior ruling of the Rabbinical Court "obligating a divorce", this would not ground an analogy that would permit taking the indirect path of denying a right to support that is prescribed by Jewish law, without an authorized decision by the Rabbinical Court as to the "death of the marriage". There are several reasons for distinguishing the two types of suits, as I shall explain below.

58. In my opinion, the primary reason for distinguishing between the cases is that the right to support ordinarily concerns the ongoing maintenance of the woman entitled to support. Therefore, revoking it may affect her ability to survive in the most basic sense, as earlier explained. A decision to revoke entitlement to support is an extreme act when compared to awarding compensation for *get* recalcitrance (which, in any event, is subject to the rules governing execution of judgments, which condition enforcement upon ensuring that the party concerned be left with the means for existence). Moreover, denying the right to support may leave the woman destitute, and thus lead to "surrendering" to accepting a divorce in order to survive. On the other hand, taking the opposite step of increasing the support amount paid by the man (even in the absence of a divorce obligation by the Rabbinical Court) would necessarily be limited by laws restricting enforcement so as to ensure the right to a minimally dignified existence, as held in the *Gamzo* case. The result may, therefore, be asymmetrical for men and women.

59. Another, more formal but not unimportant reason for the distinction derives from the fact that tort suits for *get* recalcitrance are adjudicated exclusively under civil law, in accordance with the tests of the tort of negligence, and in any event, the matter is given to the exclusive jurisdiction of the civil courts. On the other hand, determining issues of support is contingent on the marital relationship and draws upon religious law.

From the General to the Particular

60. In light of the legal principles detailed above, I am of the opinion that the appeal should be granted.

61. First, the District Court (and prior to that, the Family Court) was guided by considerations of preventing "*get* recalcitrance", but did so without positively determining that the Applicant is required to accept a *get*, and this while a parallel proceeding on the matter of the divorce was pending before the Rabbinical Court, which holds exclusive jurisdiction over the matter. A woman's right to support cannot be revoked merely for considerations related to the subject matter of divorce refusal, without a positive finding of the Rabbinical Court that the woman is required to accept a *get*. It must be either one or the other – if the woman is a recalcitrant spouse in the sense that the Rabbinical Court found her to be required to accept a *get*, or it is found that the marriage has come to its end and the *get* and her *ketubah* amount were deposited for her, with all that implies, then she is not entitled to support under religious law. Or, if she is not a recalcitrant spouse, there are no grounds for revoking her support under religious law and neither can it be set for a fixed period of time at this point.

62. Indeed, it would appear from the Regional Rabbinical Court's decision to revoke the specific residence order, as well as from its most recent decision, which was presented before us, that the Rabbinical Court was also under the impression that the marriage between the parties has, to a large extent, come to an end. However,

the Rabbinical Court refrained to find as such, and also refrained from finding that the Applicant was required to accept a *get*. Instead, the Rabbinical Court sufficed in recommending that the partners reach an agreement between themselves. Of course, such findings are dynamic, and to the extent that the Respondent is able to persuade the Rabbinical Court that his wife is a recalcitrant spouse, this finding would have clear implications as to her entitlement to support, as well.

63. In our case, no "classic" ground was found, in the words of the Family Court, for revoking the Applicant's support under religious law (see para. 17 of its opinion). The District Court did not find otherwise, but only wished to take into account, *inter alia*, the fact of the woman's "recalcitrance", although it noted that under the circumstances this was not "recalcitrance" that immediately leads to revoking the right to support. The District Court addressed additional considerations that are relevant to the "rehabilitation" of the marital relationship and the extent of her fault in ending it. I do not believe that these findings can stand. As explained above, to the extent that at this stage there are no grounds under religious law to deny the Applicant's support (and even more so in light of the most recent decision of the Rabbinical Court presented to the Court) – she is lawfully entitled to it. In addition, to the extent that it be held in the future that the Applicant is not entitled to her support under religious law (and I do not, of course, take any position in this regard), then it would also be necessary to explore whether she must be awarded rehabilitative support, under the principles outlined, and as a result of a concrete examination of the woman's prospects for securing an income. Indeed, the District Court noted that in setting the amount of support, a court must consider various factors, including whether the woman would have sources of income. The District Court even stated that one of the rationales for the award is affording the Applicant a reasonable period of time to prepare for the future. However, in applying this principle, it did not clarify to what extent the time it set might facilitate the woman's ability to secure an income when that period of time comes to an end.

64. As noted, after the delivery of the District Court's decision regarding support, which this proceeding concerns, a decision as to the division of the community property was also handed down, which was presented to us. The Respondent may, therefore, wish to argue that the community property at the woman's disposal would serve as her source of income. However, this argument must be examined on its merits, and we cannot make the desired assumption. What matters for our purposes is that when the decision regarding support was delivered, there still was no decision regarding the property, and its outcome could have left the Applicant with no source of income. On the merits, the consideration of the woman's share of the community property for the purposes of her ongoing income must factor in the date of sale of the house, the expected sale price to be received, and other information, while examining the woman's living expenses during the time she may remain without a source of income, and the fact that she relied on the partnered relationship with her husband and the "division of labor" in that framework.

65. Under these circumstances, I would propose that my colleagues decide that the Family Court's decision as to fixing the period of the support be reversed, and that to the extent that there is not change in the couple's circumstances, including the circumstances relating to the proceedings in the Rabbinical Court, the Respondent continue to pay the Applicant's support in accordance with the Family Court's decision, without setting a time for the payments' expiration.

66. I wish to end my opinion by expressing hope that despite the conflict between the parties and the great pain they have inflicted on one another, they may find the strength to ultimately conclude all the proceedings between them, which at the end of the day, benefit neither of them.

Afterward: Between the Principle of Good Faith and the Rules of Jurisdiction

67. At this stage, after completing my opinion, I have received the opinion of my colleague Deputy President E. Rubinstein. My colleague believes that fixing the term of the support awarded a woman by reason of "recalcitrance" should be permitted even without an appropriate ruling by the Rabbinical Court, on the basis of the required application of the good-faith principle. He further explains that such decisions may "encourage" the parties to reach agreements and end the marriage. I wish to disagree in this regard, although, of course, I do not dispute the general statement that the principle of good faith should appropriately apply to an adjudication between parties in the area of family law, just as it must apply to any other issue.

68. Indeed, there can be no dispute that the principle of good faith is an overarching principle of Israeli law, and rightly so. Additionally, I concur with my colleague that the principles of fairness and decency can also be found in the fundamental principles of Jewish law itself, and that is encouraging. However, as I explain below, the dispute between us does not concern whether the principle of good faith obligates the parties and the trial court, but other questions – how it ought to be implemented, and primarily which court does Israeli law entrust with ruling on the question of the death of the marriage, and what are the consequences of that finding for personal status law?

69. Given that in the matter of the parties' before us two parallel proceedings are pending – both in the Rabbinical Court and in the Family Court – I do not believe that we can accept a situation wherein the Family Court issues a ruling concerning recalcitrance that is inconsistent with the rulings of the Rabbinical Court on this very same issue. Insisting on the principle of comity between courts, a point whose importance my colleague, too, emphasizes, is not consistent with conflicting rulings on this matter on an issue that is at the core of the Rabbinical Court's jurisdiction, and while this issue is yet pending before it.

70. My colleague explains that the special care that the Rabbinical Court exercises in regard to recalcitrance must be taken into account. My view is different. The Family Court cannot impose sanctions under the Rabbinical Courts (Enforcement of Divorce Judgments) Law, 5755-1995, against the husband where it is persuaded that he is a recalcitrant spouse in the absence of the proper finding by the Rabbinical Court, regarding which the Rabbinical Court also exercises great care. Similarly, there is no place for the Family Court to deviate from the Rabbinical Court's position to the detriment of women in matters of support. Otherwise, we may undermine the delicate balance upon which the division of jurisdiction in Israeli family law is founded.

71. Even on the merits, I do not believe that the principle of good faith is directed, in this case, at setting support for a particular period of time. My colleague bases his position, *inter alia*, on the set of incentives that influences women's conduct during divorce proceedings, and points to the contribution of the position he expresses in his opinion to promoting compromise between the parties. This is but one possibility. However, a no less reasonable possibility is that of "pressuring" a woman who has no independent sources of income to agree to divorce under unfair conditions, only because of her concern over becoming truly impoverished. We must remember that the procedural equality between the couple when one has a steady income and the other lacks a steady income is a fictional equality, and in this sense, the proverbial sand in the hourglass runs out unilaterally to the woman's disadvantage.

72. The response to my colleague's concern about divorce "extortion" by the woman may be found in other proceedings of a civil nature. This solution is preferable because it does not involve putting existential pressure on a woman left without a steady income, but rather allows for appropriate "recalculation" after the fact, to the extent it is needed.

73. Should my opinion be accepted, I would propose that the appeal be granted as stated in paragraph 65 above, and that the Respondent bear the Applicant's costs in the amount of NIS 20,000.

Deputy President E. Rubinstein:

1. I have carefully read my colleague Justice Barak-Erez's comprehensive opinion. Her opinion presents weighty questions for consideration, however, at the end of the day, I cannot concur in her opinion as to the outcome of this case, although the idea of rehabilitative support she discusses is appealing. Should my opinion be heard, the District Court's decision – which, in essence, took the same route as the Family Court – would be upheld. I shall restate the gist of the matter, as my colleague presented the details of the proceedings. We are concerned with a couple who married and lived together for 35 years, after which they separated

and proceeded to sue each other. Over the years, the husband (the Respondent) worked continually at a regular workplace, carrying pension benefits, whereas the Applicant worked at home and managed the household. She worked out of the home for only brief periods of time. I shall not go into the issues of property described by my colleague, as we are here concerned with the issue of support. The Family Court believed that in light of the Applicant's refusal to divorce in order to gain advantages in the property proceedings, and for considerations of good faith, support must be set for a fixed period of time that would take all the factors into account. The period set was for two years from the date of filing the suit in 2011. The District Court noted that refusal of a *get* affects support, but that in this case the Rabbinical Court has yet to decide on the issue of recalcitrance, and the personal status law applies. Thus the support was set for three years from the date of the Family Court's decision (December 12, 2012) or until the day the Applicant begins receiving her share of the Respondent's pension, according to the earlier of the two. Hence the application, and it should be noted that we tried unsuccessfully to lead the parties to a compromise.

Support for Fixed Periods

2. My colleague believes that as long as there are no grounds under personal status law to revoke a woman's support, it must be awarded as her legal right. Indeed, in her view, it is incorrect for the Family Court to revoke a woman's support when the Rabbinical Court refrained from finding that she is a recalcitrant spouse in the course of the divorce proceeding.

3. Indeed, as my colleague also noted that, under personal status law, only a married woman is entitled to support. This rule binds the Family Court, which follows personal status law in matters of support (section 2(a) of the Family Law Amendment (Maintenance) Law, 5719-1959; B. Schereschewsky and M. Corinaldi, FAMILY LAW – NEW, REVISED AND EXPANDED EDITION, vol. 1 (2015) 291-92) (Hebrew), yet, as my colleague carefully explained: "This approach of Jewish religious law … is an important point of departure for the discussion here, although it is not its final destination, as explained below and *considering the need to account for a wide range of principles that apply in the area of family law, including those drawn from civil law*" (para. 31) (emphasis added – E.R.). One of these – and one of the most important – is the principle of good faith.

4. Our law recognizes the principle of good faith as a "'royal, multi-faceted provision" (HCJ 1683/93 *Yachin Plast v. National Labor Court*, IsrSC 47(4) 702, 708 (1993) (*per* Barak J.) which casts its net over the different areas of law (CA 2070/06 *Equipment and Construction Infrastructures Ltd. and Others v. Attorney Yaakov Greenwald – Receiver* (2008)). The principle of good faith is a flexible legal rule, and the court may fill it with content and meaning, and determine whether any particular act deviates from it or complies with it (CA 467/04 *Yitach v. Mifal Hapayis* (2004)). In this regard, President Barak's well-known statement in (CA 6339/97 *Rocker v. Solomon*, IsrSC 55(1), 199 (1999) is apt: "The principle

of good faith establishes a standard for the behavior of people who are each concerned with their own interests. The principle of good faith holds that protecting one's own interest must be fair, and considerate of the justified expectations and proper reliance of the other party. Person-to-person, one cannot behave like a wolf, but one is not required to be an angel. Person-to-person, one must act like a person" (at 279).

5. In CA 10582/02 *Ben Abu v. Hamadia Doors Ltd.*, (2005) (hereinafter: the *Hamadia Doors* case) I was presented with the opportunity to address the moral aspect of the principle of good faith:

> I will admit without shame that, in my view, the subject of good faith crystallizes moral principles into the law. As Justice (emeritus) Professor Itzhak Englard said in his lecture *The Principle of Good Faith in Israeli Civil Law*: "There is basis for the view that the aspiration for comprehensive application of the principle of good faith is also based on the desire to incorporate moral values into human relations, including in the commercial field" (lecture in a judges' conference in Paris, June 2004, p. 2)… in CA 1662/99 *Haim v. Haim*, IsrSC 56(6) 295, 340, Justice Strasberg-Cohen wrote that the "theoretical foundation for the doctrine of estopple, like the principle of good faith, is rooted in principles of decency and morality," and she quoted Professor G. Shalev (*Promise, Estopple, and Good Faith*, 15 MIHSPATIM 295, 313 (1989))… I cannot but concur with these words of truth, and under section 61(2) of the Contracts Law, they extend over the entirety of private law…" (para. 15).

It should be added that "good faith" is not a common term in Jewish law (although linguistically, the origin of the term "good faith" [*tom lev*] is in the language of the Bible – "In the integrity of my heart [*tom lev*] and clean hands" (Genesis 20:5)). In his paper *Comments on the Draft Civil Code, 5771-2010, in light of Jewish Law* (2011) [Hebrew], Dr. M. Wigoda explains that our Sages recognized three other principles that reflect different aspects of the principle of good faith: "Do what is right and good", "one is compelled not to act in the manner of Sodom" (one is compelled not to abuse a legal right), and the rule of "lacking faith" (originally this phrase referred to reneging on a promise, and later referred more broadly to reprehensible conduct due to a moral flaw, as opposed to breeching an explicit lawful duty); see also Moshe Silberg, SUCH IS THE WAY OF THE TALMUD (1964) (chapter 7, pp. 97*ff.*) [Hebrew]). Dr. Wigoda explains that: "these rules are perceived both as general standards that create certain duties, and as principles that control the entirety private law" (pp. 4-5.) Additionally, according to the commentator to Maimonides' MISHNE TORAH, Rabbi Vidal of Tolosa (Spain, 14th century) (*Laws concerning Neighbors* 14:5): "And thus [the Torah] said, and you shall do the good and righteous, meaning that one must conduct well and honestly with people, and it was not proper in this matter to command details as the Torah's commandments are eternal and for all time and apply to every matter and issue, and one is obligated to do so, but the attributes

and conduct of people change with the times and the people. The Sages wrote some useful details under these rules, some are absolute rules and some preferred and ways of piety, and this is all said by them." See also the *Hamadia Doors* case (para. 16), particularly as to how the principle of good faith is reflected in the principle "what is hateful to you do not do to others," and as Hillel the Elder said "this is the entire Torah, and the rest is commentary, go study" (BABYLONIAN TALMUD, Shabbat 31a); and also see there one of the questions by which a person is judged by the heavenly court – "did you deal faithfully?" To summarize, good faith is a central legal and moral principle that must interpreted and applied according to the circumstances of the case, and must not be forgotten.

6. In CA 32/81 *Tzonen v. Stahl*, IsrSC 37(2) 761 (1983) then Justice M. Elon first applied the principle of good faith to spousal support obligations: "Although it is a statutory obligation, it has a contractual nature and it is rooted in the marital relationship, which is itself – by nature and at its core – a contractual relationship" (at 771). In LFA 3148/07 *A v. B* (2007) (hereinafter: LFA 3148/07) in which the Applicant petitioned to increase her support due to the improvement in her partner's financial circumstances, I noted:

> As a general rule, the court must consider not only whether a change in support should be considered under personal status law, but also how awarding increased support as requested would influence the entirety of the relationship, for better or for worse, *and particularly whether it is requested in good faith*. In our case, therefore, there is no reason to intervene in the decisions of the lower courts, which addressed the entirety of the relationship between the parties… [para. 6(4)) (emphasis added – E.R.)].

It should be noted that LFA 3148/07 concerned a decision not to increase spousal support, whereas our case concerns revoking it, and see my colleague's comments in paragraph 44. Put simply, in these situations the court must exercise exponentially more caution on a legal and the human level. And yet, I believe our words are apt in these situations as well.

7. Considering the principles of personal status law under which a woman may be denied her right to support, the family courts have reached the conclusion, under general civil-law principle of good faith, that even if the personal status law obligates the husband to continue supporting his wife, in the case of a long separation and a marriage that has effectively ended ("a marriage on paper") it may be appropriate to relieve the husband of the obligation to pay support. The family courts did so where they were satisfied that the woman's objection to the divorce stemmed from her interest in support, and believed it was a "ruse":

> To summarize things thus far – only when we are concerned with a long separation will the court carefully consider the matter before it from all angles, and scrutinize its circumstances and root causes.

> This examination is broad, comprehensive, and multifaceted. However, the court will not easily stray from the primary duty that Jewish law imposes on the husband to pay his wife's support, and make recourse to the possibilities for relieving him of that fundamental responsibility. The court will also consider who is to blame for the separation, whether there is a real chance for reconciliation between the parties, whether the Rabbinical Court required a divorce or merely recommended it, whether the Rabbinical Court ruled as to reconciliation, who is refusing the divorce and whether this refusal is merited, whether all the property issues between the parties have been resolved, and other factors. After the court has gathered the relevant facts, it must attempt to examine them through two lenses, one is the lens of the essence of the law as it is reflected in halakhic decisions and its interpretation under the civil law, and the other, that of the heart of the law, that is, the principle of good faith, a principle which can take the sting out of the law and reconcile it with logic and common sense… [FC (Fam. Petach Tikva) 51689-11-12, *I.L. v. E.L.* (2013) para. 28) (Judge Weizman); see also FC (Krayot) 11495-11-08, *A v. B* (2010); FA 765/05 (Jlem) *A v. B et al.* (2006) and many others].
>
> And also see that decision in regard to the need to strike a balance between personal status law and "applying moral norms stemming from the principle of good faith, which also have a place in Jewish law" (para. 18).

Clearly, the principle of good faith, which covers all areas of life and applies to relationships between strangers in one-time contractual relations, certainly holds an important place when two individuals who decided to join their lives together wish to end their relationship. I believe that a different conclusion would lead the Family Court to do a disservice to this area of the law, by encouraging the continuation of a marriage that has ebbed, by the artificial means of continuing spousal support in a case of "a marriage on paper."

8. However, this reflects one – fundamental -- aspect of the problem. Of course, I am aware that in many cases the woman is left without a source of income after the marriage ends (R. Halperin Kaddari, *Wife Support: From Perception of Difference to Perception of [In]Equality*, 7 MISHPAT U'MIMSHAL 767 (2006) 767, 773) (Hebrew)), and of the concern about the consequences of the end of the marriage for the woman's entitlement to support when she has not worked outside the home during the marriage – and I would emphasize: did not work *outside of the home*, as the common term "did not work" does an injustice to a woman who worked, sometimes to exhaustion, in performing household tasks – increases when the division of property between the couple is yet to be completed. These situations were common in past generations, and even though today there are very many couples where both partners work outside the home for purposes of income

and for purposes of self-fulfillment, there are still couples, as in our case, where the woman did not work outside of the home for years, or hardly did so, and often, even when she did work, it was limited and her professional advancement was hindered due to the demands of child raising. Nevertheless, it is hard to accept denying the Family Court the option of encouraging the parties to negotiate, with its understanding of the complex dynamics of life, and its practical experience with cases of the sort (to complete the picture regarding the background for *get* recalcitrance by a man, and Jewish law's solutions, see: HCJ 6751/04 *M. S. v. Great Rabbinical Court of Appeals*, IsrSC 59(4) 817 (2004) and the amendment to the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953 (Amendment 1 of Section 11 of the Rabbinical Courts (Enforcement of Divorce Judgments) (Temporary Provision) Law, 5755-1995, as well as Yehiel S. Kaplan, *Punitive Maintenance as a Solution to the Plight of the Wife of the Recalcitrant Husband*, 10 HAMISHPAT 381 (2005)). The solution to the difficulty my colleague describes, which I do not take lightly at all, is provided by the law in the authority granted the court under section 8(2) of the Spouses (Property Relations) Law, 5733-1973, to make an unequal division of assets, along with the additional powers it provides. This is expressed in the Explanatory Notes to the Spouses (Property Relations) (Amendment 4) Law, 5769-2008:

> Section 8 of the Law establishes that under special circumstances that justify it, the competent court may decide that the balancing of the assets of the partners will not be carried out by means of an equal division between them, but according to a different equation. It is proposed to make clear that in determining such a division, the competent court also factor the future assets of each of the partners (such as goodwill, professional degrees, professional experience, and workplace tenure) and the income prospects of each of them (section 5(2)). *In western countries, there is a growing trend in legislation and jurisprudence of considering the financial gaps between the spouses in proceedings for the division of community assets, inter alia, when awarding one-time or periodic compensation to the weaker partner. Often, these gaps are a result of one partner forgoing their professional development and the consequent income prospects in order to allow the other partner to do so* (see Shahar Lifshitz, *On Past Assets and Future Assets and the Philosophy of Marital Property*, 34(3) MISHPATIM 627 (2005), primarily p. 728*ff*. (Hebrew)) [(emphasis added – E.R.) (Spouses (Property Relations) (Amendment 4) (Earlier Balancing of Assets), 5767-2007, *H.H.* 163)].

Moreover, the current state of the law allows partners who did not earn an income – mostly women – to share the pension that their partner receives upon retirement, as in this case, which has great significance.

It should be noted that in our matter, the court (FC 24358-08-11 and FC 33489-03-12) did not find it appropriate to rule in that manner, despite the Applicant's request, for its own reasons. I shall address the issue of rehabilitative support below.

9. My colleague further explains in her opinion that it is inappropriate for the court to consider the matter of *get* recalcitrance, which is given to the exclusive jurisdiction of the Rabbinical Court. She emphasizes – and this is undisputed – that the situation must be must be viewed from the perspective of the principle of comity between courts, and that it is difficult to accept that in a situation in which the Rabbinical Court believes that the reconciliation claim by the party who does not wish to divorce still stands and that ordering a *get* would be inappropriate, the Family Court should rule otherwise. The principle of comity is undisputedly a central principle of our system (HCJ 8578/01 *Haliva v. Haliva*, IsrSC 56(5) 634 (2002)), and the civil courts are scrupulous in that regard, and we need not address the complex questions of *res judicata*. I am the last to take comity between courts lightly. However, the rabbinical courts have halakhic concerns regarding the matter of a *get*, which is an extremely complex subject ("Rabbi Judah said in Samuel's name: One who does not know the peculiar nature of divorce and betrothal should have no business with them" (BABYLONIAN TALMUD KIDUSHIN 6a), and they should, of course, be respected. But the civil court sees a broader picture in the financial matters. The Family Court has jurisdiction over issues of support, and it is required to adjudicate under personal status law. It is only logical that in that framework, weight will be given to the general principles of the civil law, as well. Moreover, the courts are often called upon to make incidental rulings that are necessary for deciding upon the support issue (section 76 of the Courts Law (Consolidated Version), 5744-1984). It should be further noted, and this may be the main point, that a finding as to the lack of likelihood for reconciliation ("the death of the marriage") does not imply a halakhic obligation to divorce, and the lack of a divorce obligation does not mean there was good faith. The possibility for reconciliation, or the lack thereof, is determined by examining the entirety of the relationship between the parties over the years, as we can also see in our matter (see the decision of the Rabbinical Court (Rabbinical Court Judges Rabbi Domb, Rabbi HaLevi, and Rabbi Zer) of October 14, 2013, where the court noted that "it seems the Respondent's goal is that she have a whole house rather than a peaceful home"). Indeed, the Family Court handed down its decision on December 12, 2012, about ten months before the Rabbinical Court's decision, and at the Applicant's request, the Rabbinical Court initially attempted, as is usually the case, to explore the possibility of reconciliation.

10. My colleague reminds us (in para. 36) that, in cases in which the Rabbinical Court has orders a *get*, revoking the right to support may be accompanied by supplementary steps such as entrusting the *get* and the *ketubah* amount to a third party. The issue of entrusting the *get* is generally relevant in the case of a recalcitrant husband, while the matter of the *ketubah* is, of course, highly relevant

to the general proceedings as to property. My colleague ably reviewed the halakhic literature on the topic of "the death of the marriage." In my view, the question before us is whether to maintain the moribund marriage through "artificial respiration" merely because of the property dispute. In general, I do not believe that the doors of the family courts are barred when the Rabbinical Court, for its own considerations, has yet to rule on ordering a *get*, while the Family Court is persuaded there are no prospects for the marriage, although appropriate caution should be exercised. The Family Court holds jurisdiction over the subject of support, and in considering the overall picture, there is no reason for it not to see the couple as it truly is, where the *get* is clearly serving as a "property weapon".

11. In this case, under the circumstances described – and given that the lower courts, including the Rabbinical Court, were, in fact, under the impression that the marriage had reached its end and that the Applicant was delaying the divorce in order to improve her financial situation – I am of the opinion that the Family Court was correct in its decision, as was the District Court, to award support for a fixed period of time. Therefore, the approach of the District Court, which took further steps to accommodate the Applicant, is acceptable to me.

Rehabilitative Support

12. My colleague proposes awarding rehabilitative support in cases where the partner is no longer entitled to support under personal status law, and this at two possible points in time: "either before the divorce is granted but when there is a cause for denying support, or after the divorce is granted, thus ending the right to support" (para. 50). I am not certain whether the term "rehabilitative support" is appropriate, and perhaps "bridging support" is preferable where the support is meant to bridge the period remaining until retirement. This mechanism is primarily rooted in the desire to assist the partner (in the majority of cases, the woman) when she lacks independent sources of income, and where there is reliance on the partnered relationship. I agree with my colleague's holding that "in appropriate cases, where a woman is divorced after years of not working outside of the home, she should be entitled to 'civil' support with a rehabilitative objective, that is 'rehabilitative' support according to general principles of the civil law." (para. 47); this on a case by case basis, including examining the partner's possibility to integrate back into the workforce, and the entire property arrangement between the couple.

13. The basis for awarding rehabilitative support where they were not agreed upon in advance is, as my colleague noted, as well, also to be found in the principle of good faith, which attributes to the couple a normative intent as to support (LCA 8256/99 *A v. B*, IsrSC 58 (2) 213 (2003)). In appropriate cases, I believe that this is even consistent with the spirit of section 8 of the Spouses (Property Relations) Law, which – as noted – seeks to grant the court flexibility in balancing resources and to deviate from the principle of equal distribution prescribed by the law. This

can be seen, in my view, as an attempt to achieve "real equality" as opposed to "formal equality." Indeed, when we are concerned with "rehabilitative support" we are not concerned with a permanent entitlement to support, but rather with an entitlement designed at rehabilitation until another entitlement to income materializes, while considering the factors of good faith and fairness in this regard, as well.

14. In addition to the cases referred to by my colleague in regard to partners who are not "regulated" by religious law, the family courts have, on more than one occasion, awarded rehabilitative support to partners married in accordance with Jewish law. For example, in FC (Haifa) 7282-12-09 *A v. B* (2011), support was awarded after the couples' divorce (before the issue of the community property and its division was decided) in light of the woman's financial dependence on her partner after 28 years of marriage, during 16 years of which she managed the household. Also see FC (Krayot) 11495-11-08, mentioned above, where it was held that the right to support would be for a fixed time in light of the principle of good faith and in order not to perpetuate a "marriage on paper". It was held that should the parties divorce beforehand (thus *prima facie* extinguishing the obligation for support under personal status law), the woman would be awarded rehabilitative support. In practice, this mechanism facilitates a divorce where the relationship has died, while granting the woman support for an additional period of time. To a certain extent, it could be said that we are concerned with semantics, that is, with a formula designed not to cause friction with the Rabbinical Court, but its goal is to achieve the same material outcome that the lower courts reached in our case, although by a different path.

15. I do not rule out this manner of awarding support in appropriate cases, however, in my opinion, it is a tool in the Family Court's "toolbox" that should be used in accordance with the circumstances, in order to solve the matter of alternative income. However, I fear this method does not always solve the cases of "dragging out" a moribund marriage by artificial means, in order to achieve economic advantages, and I am not certain that it leads to more attempts to integrate into the workforce than before.

16. It would not be superfluous to note that support under the personal status law is clearly to be paid when the husband is the recalcitrant spouse, and further discussion of this matter would, indeed, be superfluous.

17. And now to the case before us. With all due respect, I disagree with my colleague's statement in paragraph 63. At the end of the day, once I have not seen fit to bar the way to the civil courts considering the "clinical death" of the marriage, I see no flaw in the position of the lower courts here, including the District Court's fixing of support for a relatively extended period of time. It is entirely possible that the District Court's ruling is what prompted reaching a decision as to the property.

18. In concluding, I would note that I will not address the issue of tort claims in cases of recalcitrance, which raise significant questions (FA (Tel Aviv) 46631-05-11 *A v. B* (2014); FC (Jlem) 1748/06 *A v. B* (2011); FC (Jlem) 6743/02 *K. v. K.* (2008)), though I, with all due respect, and with proper concern for the issue of a "coerced *get*" [*get me'useh*], which is often at the basis of such disputes (due to the fear that the husband's consent to the divorce was a result out of concern about tort damages rather than his free will), believe the path to compensation should not be barred. In this context, also see the Professor A. Radzyner's enlightening article, "*The Essential Thing is not the Study, but the Deed": Get Procedures after Tort Claims and the Policy Respecting Publication of Rabbinical Court Judgments*, 44(1) MISHPATIM 5 (2105). It should be noted that, according to this article, a *get* can be granted even after compensation is paid. I believe that a decision to revoke support is no more harsh than a decision finding that a recalcitrant husband is a tortfeasor and a nuisance, and liable for compensation.

19. In closing, I think it appropriate to briefly address my colleague Justice Erez-Barak's response. I fear that I do not agree with presenting the matter as a binary dichotomy between the jurisdiction of the Rabbinical Court in matters of divorce and the jurisdiction of the Family Court in matters of property. The Family Court, in adjudicating matters of property, which are undisputedly within his primary jurisdiction by default, sees the picture before it in the matter within its jurisdiction (that is, matters of property) and must render judgment. It does not consider factors of halakha, and does not end the marriage in the halakhic sense. However, it is not required to grant one of the partners, be it the husband or the wife, a perpetual key. Surely, my colleague has no intention of presenting the Family Court or the District Court as insensitive to distress of the male or female partner who has no source of income, or to the rights of women. And indeed, this is not the case in general, nor is it the case before us. The Family Court, like the District Court, as fair courts, will know how to navigate in the appropriate cases, and properly examine good faith in matters of property before reaching a decision. The Rabbinical Court's jurisdiction stands and is respected. Finally, as for the comments by my colleague Justice Zylbertal, I believe his concern as to the possibility of filing tort claims for *get* recalcitrance, which he wishes to put at center stage, should not be taken lightly. His reasons for disputing our colleague Justice Barak-Erez's distinction between suits for fixing periods of support for recalcitrance and tort suits for recalcitrance are essentially acceptable to me.

20. In conclusion, in light of the above, should my opinion be heard, the District Court's decision would be upheld, and support would be paid until the date set. At the end of that period, it will be possible to reexamine the situation between the parties, and whether there might be any justification for rehabilitative support on the basis of a new request.

21. After reviewing the opinion of my colleague Justice Zylbertal, and having been left in the minority as to the operative outcome, I would suggest that, at the end of the day, the gap between my colleagues' positions as to the outcome and my own

is not so wide. My colleague Justice Barak-Erez proposes that the Respondent continue to pay the Applicant's support as decided by the Family Court, without determining a termination date, whereas, in my opinion, the situation ought to be revisited at the end of such period – this coming December of 2015, when the possibility for extending the period of support may be considered. In any case, as my colleagues are in the majority in this matter, the operative outcome is according to the opinion of my colleague Justice Barak-Erez.

Justice Z. Zylbertal:

1. I have carefully read the compressive, thorough opinions of my colleagues Justice D. Barak-Erez and Deputy President E. Rubinstein. I will begin by stating that in the disagreement between my colleagues, I concur with the outcome arrived at by Justice Barak-Erez, whereby the appeal should be granted as set out in paragraph 65 of her opinion. Nevertheless, as will be explained below, I cannot concur with all the principled findings that led my colleague to that outcome, and I concur with the opinion of the Deputy President on the main point of dispute between my colleagues.

2. The discussion here may be divided into two primary issues: the first, on which my colleagues are divided, is the *question of jurisdiction* (or, at least, how it is exercised). Is the Family Court permitted to revoke a woman's support without a prior decision by the Rabbinical Court requiring that she accept a *get*, and without a positive finding that the couple's marriage has come to an end? My colleague Justice Barak-Erez's position is that the principle of comity between courts calls for restraint by the civil court, and therefore, in her opinion, as long as the divorce proceedings are pending in the Rabbinical Court, the civil court cannot base rulings as to *the issue of support* on "recalcitrance" in regard to the *get* in the absence of an appropriate finding by the Rabbinical Court on this issue. Justice Barak-Erez added that this conclusion results not only from the principle of comity between courts, but also from the Jewish religious law that applies in our case, according to which revoking a right to support in a case where a *get* has been ordered must (in the opinion of many) be followed by supplementary steps that are within the exclusive jurisdiction of the Rabbinical Court, and that require the active involvement of the Rabbinical Court (entrusting the *get* and the *ketubah* amount to a third party.)

   The Deputy President disputes Justice Barak-Erez's position on the matter of jurisdiction. His position is that the civil courts may revoke a married woman's support when they are satisfied that the marriage has effectively ended and that the woman refuses to accept her *get* only for financial reasons, even in the absence of a finding by the Rabbinical Court that the woman is required to accept the *ge*t. The Deputy President explained that the civil court often makes incidental

findings that are required for determining the issue of support and the property matters under its primary jurisdiction (section 76 of the Courts Law [Consolidated Version], 5744-1984). In the Deputy President's view, the civil court's finding that a woman must lose her support because she is a "recalcitrant spouse" does not lead to the end of the marriage in the halakhic sense, and does not deviate from the principle of comity between courts.

3. My colleagues' positions are well reasoned and internally consistent, and each expresses important (sometimes conflicting) principles that are necessary for a functioning legal system. Still, my position is that a broader perspective as to the unfortunate phenomenon of "*get* recalcitrance" tips the scale in favor of the Deputy President's position, and thus, on the fundamental issue in question, I join his opinion. I will explain my conclusion below.

4. Both the Deputy President and Justice Bark-Erez briefly discussed an issue that is tangential to ours – the possibility of being awarded monetary compensation in cases of *get* recalcitrance through a tort suit (see paras. 56-59 of Justice Barak-Erez's opinion, and para. 18 of the Deputy President's opinion.) Indeed, in recent years, various legal and halakhic means have been explored in order to contend with the harsh phenomenon of *get* recalcitrance, including the option of filing a tort claim against the recalcitrant party. In this context, Justice Barak-Erez's position on the jurisdiction issue, as presented above, may – by a possible analogy – lead to the outcome that it will not be possible to award tort damages against a recalcitrant spouse in the absence of a positive finding by the Rabbinical Court requiring the husband to deliver a *get*. Justice Barak-Erez considered this possibility in noting:

> In my opinion, this analogy is not at all obvious and I believe it is misplaced… There are several reasons for distinguishing the two types of suits, as I shall explain below.
> In my opinion, the primary reason for distinguishing between the cases is that the right to support ordinarily concerns the ongoing maintenance of the woman entitled to support…A decision to revoke entitlement to support is an extreme act when compared to awarding compensation for *get* recalcitrance…Another, more formal but not unimportant, reason for the distinction derives from the fact that tort suits for divorce refusal are adjudicated exclusively under civil law, in accordance with the tests of the tort of negligence, and in any event, the matter is given to the exclusive jurisdiction of the civil courts. On the other hand, determining issues of support is contingent on the marital relationship and draws upon religious law.

5. With all due respect, in my view, the distinction my colleague proposes is not problem free. I fear that her position may seal the fate of tort claims against recalcitrant spouses in the absence of appropriate findings by the Rabbinical Court, and this despite my colleague's clarification that such an analogy is

misplaced. Below, I will attempt to explain why I believe that such an analogy is possible, as well as the problems posed by the reasons for distinguishing between the two claims that my colleague addressed, and why, in my opinion, such a distinction is inappropriate.

At the end of the day, both in regard to tort claims and support claims, the civil court will be called upon to determine whether one of the partners is a "recalcitrant spouse." This issue, which goes directly to the issue of the state of the couple's marriage, is subject, as noted in my colleague's opinion, to the exclusive jurisdiction of the Rabbinical Court. It can be further assumed that when a support suit (as in our case) or a tort claim for *get* recalcitrance is filed in the civil court, a parallel divorce proceeding is pending in the Rabbinical Court, such that the principle of comity between courts applies equally to both types of claims. Therefore, it is not impossible that establishing my colleague Justice Barak-Erez's position as binding precedent whereby the civil court may not determine that the woman is a "recalcitrant spouse" in the absence of a finding to that effect by the Rabbinical Court would, in practice – and without persuasive reasons for distinguishing the two types of claims – lead to an analogous conclusion with regard to tort claims for *get* recalcitrance. In other words, in the absence of a finding by the Rabbinical Court that the man is required to issue a *get*, it will be impossible for the civil court to find that the husband is recalcitrant and order that he pay compensation in a tort action. In this context it should be emphasized that rabbinical courts are very cautious, for their own reasons, in regard to ordering a man to deliver a *get*, and it often takes many years from the beginning of the conflict and the filing of the divorce suit until the Rabbinical Court orders that the issuance of a *get* is required. It should also be noted that the family courts, which have been hearing tort claims for *get* recalcitrance in recent years, vacillated on this issue, but it would appear that the prevailing approach allows them to grant such claims (under the tort of negligence) even in the absence of "*get* obligation" by the Rabbinical Court (see: FC (Jlem) 46459-07-12 *Z. G. v. S. G.* (August 17, 2014) para. 51). As noted, I fear that accepting my colleague's approach, and its resulting application to the parallel case of tort claims against "recalcitrant spouses" as well, would lead to a change in the current state of the law regarding such claims, which is, in any event, somewhat vague, and will seriously undermine the possibility of employing one of the central tools for combating this wrongful phenomenon.

6. Justice Barak-Erez, who is aware of the possible ramifications of implementing her position in regard to tort claims for *get* recalcitrance, made it clear that she believes that the analogy above is misplaced, and even provided two reasons for her distinction between the types of claims. In doing so, my colleague attempts to alleviate the concern for the undesirable consequences of her position in the context of the general fight against the phenomenon of *get* recalcitrance to which I referred. However, as I will explain below, I do not believe that there is any real justification for the distinction proposed by my colleague. Moreover, I believe the proposed distinction may lead to a lack of coherence and legal consistency, and

create different laws for recalcitrant husbands and recalcitrant wives. Therefore, I am unable to agree with my colleague's fundamental position, as well as with the attempt to restrict that position so that it would apply only to limiting the periods for the payment of support in response to *get* recalcitrance, as opposed to tort claims in which the civil court must consider which of the parties is the recalcitrant spouse. I shall explain my position.

As noted, my colleague gave two reasons for a distinction between suits for limiting the period of support due to *get* recalcitrance and tort suits for *get* recalcitrance. The first and central reason is that a decision to revoke a woman's support is a harsher act in comparison to awarding compensation for *get* recalcitrance. Therefore, as I understand it, her position is that the civil courts must not be granted authority to revoke a woman's support without "speed bumps" of sorts, or threshold requirements, in the form of the Rabbinical Court's order requiring the issuance of a *get*, because of the severe consequences of such a decision. On the other hand, as the argument goes, awarding compensation for *get* recalcitrance would not render the recalcitrant spouse impoverished or in a state of existential distress, and thus my colleague is willing to permit the civil courts to rule on this matter even without "speed bumps" or other moderating mechanisms. With all due respect, I cannot agree. Indeed, a decision to deny support to a woman who for years relied on her husband's income may have a dramatic effect on her life and bring her to a state actual poverty. Therefore, my position is that clear rules must be established as to the circumstances under which it may be possible to revoke a "recalcitrant" woman's support, so that reducing women to poverty will not be possible (see, for example, my position in regard to fixing the support of the Applicant at bar, below.) We must assume that the family courts will act responsibly in regard to the issue of revoking a woman's support, and will rule in accordance with the guidelines that will be established in the case-law as to the circumstances in which a woman's support may be revoked for being a "recalcitrant spouse." I shall further comment that even under my colleague's approach, revoking support from a "recalcitrant wife" would be possible after the Rabbinical Court orders her to accept a *get*, so that the harsh outcomes of revoking the support would not be fully prevented, but only delayed until after the Rabbinical Court hands down an appropriate decision. I do not see much point in this. A decision to deny a woman support for "recalcitrance", whether it is given before the "*get* obligation" by the Rabbinical Court or after it, must, in any case, be made very carefully, with consideration for the reason for the recalcitrance, the woman's prospects of supporting herself, and the understandings between the couple throughout the marriage (and on this – in detail – below). Therefore, I do not share my colleague's position that the harsh consequences of revoking support of the recalcitrant spouse warrant a distinction between such a suit and a tort claim for recalcitrance. In my view, a finding whereby a civil court may revoke a woman's support only after she is required to divorce by the Rabbinical Court is merely delaying the inevitable, but it does not offer a real solution for concerns about reducing the recalcitrant woman to a state of poverty. Below, as noted, I will discuss the considerations that the civil court

must weigh before reaching a decision with such dramatic consequences, and this, I believe, would provide a real response to the concerns my colleague has raised.

The second reason my colleague mentioned for distinguishing between suits for denying a woman's support and tort claims for "*get* recalcitrance" is based on the fact that tort claims are adjudicated exclusively under civil law, and that jurisdiction over them is granted only to the civil courts. As opposed to this, according to Justice Barak-Erez, ruling on the matter of support depends on the marital relationship and draws upon religious law. Here, too, I am not persuaded that the distinction my colleague proposes will indeed be possible, inasmuch as the tort cause of action – the *get* recalcitrance – is itself dependent upon religious obligations and norms stemming from the applicable religious law, and it may not be viewed as a classic, "pure" civil tort claim, as my colleague implies.

I would further add that the distinction proposed by my colleague between the two claims – that claims to revoke a woman's right to support would require a positive finding of the Rabbinical Court requiring a *get*, but that such a finding would not be required in tort claims against a recalcitrant spouse – may be interpreted, and with some justification, as an improper distinction between the law applicable to recalcitrant husbands and the law applicable to recalcitrant wives.

7. In conclusion, though it is clear from my colleague's opinion that, in her view, there is no place for an analogy between her general position on denying support and the tort claim for *get* recalcitrance, I believe that such an analogy is possible and even warranted, and I do not find it proper or possible to distinguish the two cases. Therefore, although this consideration is beyond the scope of this case, I saw fit to emphasize it and bring it to center stage as a primary consideration for joining the position of the Deputy President on the issue of jurisdiction. As stated, the fundamental positions of my colleagues are possible, in my view, in terms of their logic and the important values that each expresses. Therefore, in determining which of the two is preferable, and with a broad perspective as to their future ramifications, I find that Justice Barak-Erez's position strikes a hard blow that significantly restricts the powers of the civil courts when dealing with the difficult phenomenon of *get* recalcitrance. Therefore, and as it is possible in our legal system, as extensively detailed in the Deputy President's opinion, my position is that the civil courts are authorized, in principle, to revoke the support of a "recalcitrant woman", even in the absence of an explicit ruling by the Rabbinical Court requiring her to accept a *get*. Therefore, as stated, my position on the issue of jurisdiction is as that of the Deputy President.

8. The second question that should be discussed after determining the matter of jurisdiction, is what considerations the court must contemplate before revoking a woman's support due to "*get* recalcitrance", and whether, under the circumstances of this case, fixing a time period for the Applicant's support was proper.

Indeed, we must assume that leave for appeal on a "third incarnation" would not have been granted were this issue adjudicated *on its own* and independently from the jurisdiction question, because it seemingly does not raise an issue of public or general importance that goes beyond the matter of the direct parties to the proceedings (LCA 103/82 *Haifa Parking Lot Ltd. v. Matzat Or (Hadar Haifa) Ltd.*, IsrSC 36(3) 123 (1982.)) Leave to appeal was granted in our case because of the public and general importance of the *jurisdictional question*, discussed above. Having concluded that the Family Court is authorized, in principle, to fix a time period for a woman's support due to "*get* recalcitrance" even in the absence of a positive finding by the Rabbinical Court, the fundamental question that was the reason for granting leave to appeal is decided, and it is held that the lower courts' ruling was within their competence. Therefore, we could have stopped here and upheld the District Court's ruling without further intervention into the operative, concrete matter before us. This is the path that the Deputy President adopted in reaching the conclusion that support should be paid to the Applicant until the date set by the District Court (that is until December 31, 2015). The Deputy President added that, at the end of that period, it would be possible to reconsider the situation between the parties, and whether there is justification for awarding rehabilitative support on the basis of a new motion. On this point, my position diverges from that of the Deputy President. I believe that once leave for appeal was granted on the fundamental question, and once a comprehensive, in-depth discussion into the case at hand was conducted, the door is now open to consider the additional questions the case raises, including the matter of the actual application in the circumstances before us. Moreover, as will be explained below, this question, too, has fundamental, broad consequences that go beyond the particular matter of the parties (on the broad jurisdiction of appeals courts over family court decisions, see Chemi Ben Nun and Tal Havkin, THE CIVIL APPEAL 568-71 (3rd ed., 2012) (Hebrew)).

9. What, then, are the considerations the Family Court must consider when it is called upon to fix the period for support or revoke the support of a married woman merely because she is delaying the divorce and refusing to accept her *get* for financial reasons?

I have noted above that the phenomenon of *get* recalcitrance is wrong and severe. It exploits the *get* – which is a "ticket" out of a failed marriage – as a bargaining chip for extortion. Often male partners refuse to release their wives from a marriage in which they are no longer interested, and condition their consent on financial demands and compromises in which the women partners forgo their property rights. In my opinion, this wrongful and painful phenomenon requires that we find legal and halakhic tools that would respond to the plight of those who for many years (often – their fertility years) beg for the possibility to end a marital relationship which they do not wish to continue, and for the possibility to move on to a new relationship.

10. Though I present this phenomenon in a gender-based manner, clearly when the woman refuses to accept a *get* and allow the husband to end the marriage and go on with his life in order to compel him to forgo his property rights or for sheer vindictiveness, the matter is just as serious. Parenthetically, I would note that, nevertheless, the distress of women who are refused a *get* is more extreme than that of men, primarily because a married woman may not start a new family with another man (that is "move on with her life" without a *get*) without her new children being considered *mamzerim* [bastards] in the eyes of Jewish halakha. Married men do not face this problem, and the may go on with their lives and raise new families without the having the cloud of halakhic "bastardy" hanging over the heads of their future children.

11. In light of all this, it is clear why, in appropriate cases, the Family Court must be allowed to deny incentives to recalcitrant men and women who act out of a lack of good faith (to put it mildly). However, in my opinion, the matter at hand is not among those cases, at least not obviously. We must distinguish between recalcitrance that is rooted in personal vindictiveness or extortion, and recalcitrance that is rooted in the absence of adequate financial protection for the financially weaker party in a divorce. It seems that when the support guaranteed to a woman who, as in our case, managed the household for decades and never integrated into the workforce or acquired a vocation or profession, is absolutely stopped upon divorce (without simultaneously providing a solution for her financial distress in the division of property), she must not be condemned for refusing to divorce due to her economic dependence on her husband. Surely, this is not analogous to the more difficult case of a "*get* recalcitrance" which, as noted, involves extortion and vindictiveness (Shahar Lifshitz, *Family and Property Relations: Challenges and Tasks subsequent to the 4th Amendment of the Property Relations Law*, 1 HUKIM 227, 243 (2009) (Hebrew) and see the references there; and also see the end of section 5A(d) of the Spouses (Property Relations) Law which mandates that "the refusal of the applicant [for balancing resources – Z. Z.] to waive rights to which they or their children are entitled by law, shall not be deemed an absence of good faith").

12. Indeed, there are currently many legal tools designed to contend with the financial distress of the "home-based" partner and the inequality in the ability of partners to produce income when the division of labor during the marriage was the "traditional division." A significant number of these tools were mentioned, in one way or another, in the opinions of my colleagues, as well. These include, for example, "rehabilitative civil-support," which was discussed at length in the opinion of Justice Barak-Erez, as well as the possibilities for an unequal balancing of resources, for division of human capital and resources, and compensation for career losses. Indeed, as a general rule, the court adjudicating the end of the couple's marriage has a full "toolbox" that is meant to bring about a just outcome, as well as the economic protection of the "home-based" partner after the divorce.

13. Sadly (and this is regretfully typical of proceedings between partners due to the split jurisdictions in the area), the picture before us at this point is only very partial and limited. The full picture of the couple's assets and its division has not been presented to us, and the parties did not present arguments on the issue of balancing the assets between them or the division of non-monetary assets such as human capital or career assets. Although the Family Court did decide on the issue of the division of assets between the couple (and denied the woman's request for an unequal division in her favor), the Applicant informed the Court that she intended to appeal that decision (and we were not informed as to whether any appeal was actually filed). In any event, there is not doubt that in the absence of many relevant details as to the Applicant's ability to maintain herself after the divorce, it is extremely difficult to reach a just outcome on the matter of support in and of itself. That being the case, and although we are unable to "complete the task", neither are we free to absolve ourselves of it [ETHICS OF THE FATHERS 2:16]. We must, despite our frustration, determine only the issue before us solely on the basis of the facts and arguments of which we are aware.

14. Before us is a couple that, until the dispute between them erupted, were married for about thirty-five years, raised three children, and lived a shared, full life together that included shared vacations and a warm relationship (see para. 31 of the District Court's decision). Over the course of the marriage, the Applicant hardly worked outside of the home, and she is currently over fifty years old. In other words, during all of her adult life, the Applicant relied on the income of the Respondent, her husband, and did not acquire a profession or professional experience through gainful employment. It is therefore understandable why, when the dispute between the couple began, the Applicant became concerned about the implications of a future divorce for her financial circumstances and daily survival, and why she filed a suit for support. Similarly, it is understandable that as long as the entirety of the couple's financial relationship and division of property has not been settled, and lacking any secure, stable source of income, the Applicant refused to divorce and forgo the support to which she is lawfully entitled. Thus, I do not find that the Applicant's delay of the divorce necessarily proceeds from extortion or vindictiveness, and it is entirely possible that the refusal to divorce before a final determination as to the division of the property between the couple derives from a concern over coming out of the divorce process having lost everything and without financial support.

    To all the above we must add the fact that the Respondent is expected to retire relatively shortly (and in any event, in the next few years), and there is no dispute that the Applicant will be entitled to pension rights accumulated until the time of the rift. In other words, effectively the matter of the Applicant's entitlement to support concerns only a short period of time, which is a "transitional period" of sorts, until the Respondent retires and she receives her share in his pension rights.

15. This being the case, my position is that, under the circumstances of the case, in light of the Applicant's age (which is not very far from retirement age) and her

limited prospects of integrating into the workforce, gaining experience and earning a satisfactory income during the short time left until the Respondent's retirement, setting a fixed period for her support would not be appropriate. The District Court noted that one of the rationales for fixing the term of support was to allow the Applicant a reasonable amount of time to prepare for her future. However, as my colleague Justice Barak-Erez noted, in applying that principle the lower court did not explain to what extent the term it set (about three years from the date of the Family Court's decision) is supposed to serve the woman's ability to produce an income when that term comes to its end.

We must bear in mind that requiring the Applicant to go out and attempt to integrate into the workforce may be an excessive burden in view of the short period of time she would be able to work before both parties reach the age of retirement. Above all, and this must be emphasized, after many years of common effort in maximizing the couple's assets (including, the Respondent's ability to produce an income), it would be unjust that the Applicant be the one to bear the primary financial costs of the divorce, and it would be unfair that her quality of life and financial security be compromised while the Respondent continues to enjoy a high salary and the lifestyle to which he has been accustomed. Requiring a woman in her fifties to integrate into the workforce within three years (for any job? for any pay?) only because her husband decided that he wishes to end the marriage between them is unreasonable. And it should further be emphasized that the Respondent's decision to divorce the Applicant is a legitimate decision, in and of itself, but it does not allow shirking the responsibility stemming from decades of understandings that led to the current state of affairs. Therefore, my position is that, in the case at hand, the term of the Applicant's support must not be fixed as long as she does not receive her share in the Respondent's pension rights.

16. As noted, this finding relies upon an incomplete picture of the facts and data related to the division of property between the couple. Therefore we should make it clear that this determination would not permit the Applicant to "double dip". If it be decided in any of the other proceedings conducted between the partners that she is entitled to any periodic payments that represent her share in the Respondent's monthly salary (in the form of civil support, an unequal division of resources, career assets, and the like), it will be appropriate to set off the payment of support, which is designed to realize the very same goal.

17. In light of the above, we would again make it clear that there may indeed be cases in which the civil court would be authorized to fix a woman's support for a set period, even in the case of a woman who did not work outside the home for many years. For example, a woman facing a long period of time until the age of retirement may acquire a profession, gain experience and stand on her own two feet financially within a reasonable adjustment period (the length of which would depend on the concrete circumstances). During the adjustment period, the woman would be entitled to her support (or to a similar amount through one of the other legal tools at the court's disposal), until she realizes her income potential. There is

also great significance to the nature of the relationship during the years of marriage, and primarily to the question of whether the man encouraged his wife to manage the household and thus forgo acquiring a profession or higher education, or whether he did all he could to facilitate her personal and professional development, and it was she, contrary to his wishes, who chose to stay at home. These considerations are relevant and must be taken into account by the Family Court when adjudicating a request to fix the period of support for a woman who has no independent sources of income.

18. Before concluding I would emphasize that I am not ignoring the concern that a decision not to set a fixed time for the Applicant's support may become an incentive for her, and for other woman under similar circumstances, to continue to refuse to divorce. Nevertheless, we cannot ignore the fact that negotiations between the parties over a future settlement are not conducted in a vacuum. The parties know that if they do not arrive at an agreement, the compulsory arrangement the court will establish will be in accordance with the relevant legal rules. Therefore, it may be assumed that husbands – like the Respondent in our case – who foresee a high probability of being obligated to pay their wives' support (or another financial obligation that would reflect the future support of their wives through one of the other possible legal tools) would conduct the negotiations over the division of property accordingly. To the extent that the negotiations for a settlement between the couple would include a proposal for periodic or fixed payment of equivalent value to the woman's support payments, and the woman would still maintain her refusal to divorce as an extortionist or vindictive tactic, the court may take this into consideration and fix the period of her support, and thus somewhat mitigate the concern over incentivizing wrongful refusal.

19. In conclusion, on the fundamental question at issue in this application for leave to appeal, I concur with the position of the Deputy President: the family courts may fix the term of support for a woman by reason of *get* recalcitrance, even in the absence of an order by the Rabbinical Court requiring a *get*.

However, my position is that under the circumstances of the case at hand, fixing period of the Applicant's support would not be appropriate, both because her delay of the *get* in not *necessarily* a result of wrongful vindictiveness or extortion, that is, we are not concerned with a lack of good faith that would justify setting a time limit for support, and in light of the understandings that characterized the couple's marriage, the Applicant's age and her prospects for integrating into the workforce during the short adjustment period left until the partners reach the age of retirement. Therefore, under the circumstances of this application for leave to appeal, I concur with the operational outcome of my colleague Justice Barak-Erez, as detailed in paragraph 65 of her opinion. The case is remanded to the Family Court to rule on the matter of support in accordance with the Rabbinical Court's updated decision and in accordance with the considerations outlined above. Until a further decision by the Family Court, the Respondent shall

continue to pay the Applicant her support as decided, without fixing a date for the termination of payment.

The Appeal is granted in regard to the operative outcome, as stated in paragraph 65 of the opinion of Justice D. Barak-Erez. The Respondent will bear the Applicant's costs in the amount of NIS 20,000.

Given this 23rd day of Heshvan 5776 (November 5, 2015)