

Petitioners:           **1. Batya Kahana Dror**  
                              **2. "Mavoi Satum" Association**  
                              **3. Na'amat Movement of Working Women and Volunteers**  
                              **4. WIZO Women's International Zionist Organization**

v.

Respondents:           **1. Minister of Religious Services**  
                              **2. President of the Great Rabbinical Court**

**The Supreme Court sitting as High Court of Justice**

(Aug. 15, 2017)

*Before: Deputy President (Emeritus) E. Rubinstein, Justice U. Shoham, Justice M.*

*Mazuz*

Petition for a decree nisi

*Israeli Supreme Court cases cited:*

- [1] HCJ 2671/98 [\*Israel Women's Network v. Minister of Labor and Social Affairs\*](#), IsrSC 52(3) 630 (1998).
- [2] HCJ 8134/11 *Moshe Asher, Adv. and Acct. v. Minister of Finance, Dr. Yuval Steinitz* (Jan. 29, 2012).
- [3] HCJ 6407/06 *Doron, Tikotzky, Amir, Mizrahi, Advocates v. Minister of Finance* (2007).
- [4] HCJ 153/87 [\*Shakdiel v. Minister of Religious Affairs\*](#), IsrSC 42(2) 221 (1998).
- [5] HCJ 953/87 *Poraz v. Mayor of Tel-Aviv-Jaffa*, IsrSC 42(2) 309 (1988).
- [6] HCJ 3856/11 [\*Anonymous v. Supreme Sharia Court of Appeal\*](#) (2013).

- [7] HCJ 1892/14 *Association for Civil Rights in Israel v. Minister of Public Security* (June 13, 2017).
- [8] HCJ 453/94 [\*Israel Women's Network v. Government of Israel\*](#), IsrSC 48(5) 501 (1994).

Attorneys for the Petitioners: Adv. Gali Etzion; Adv. Irit Gazit, Adv. Batya Kahana-Dror

Attorneys for the Respondents: Adv. Avinoam Segal-Elad; Adv. Yonatan Zion-Mozes

## **J U D G M E N T**

### **Deputy President (Emeritus) E. Rubinstein:**

1. The petition before us addresses the procedure for selecting the Director of the Rabbinical Courts, while focusing on the possibility that a woman be appointed to the position.

#### *Background and Chain of Events*

2. In recent years, this Court has addressed the issue of the procedure for appointing the Director of the Rabbinical Courts in a series of petitions that requested one thing: Permitting the selection of a woman to the position, either by interpreting sec. 13 of the Dayanim Law, 5715-1955<sup>1</sup> (hereinafter: the Dayanim Law or the Law), under which the Director of the Rabbinical Courts is appointed, as permitting women to apply for the position, or by overturning that section of the Law for alleged unlawful infringement of a woman's constitutional right to equality.

3. Section 13 of the Dayanim Law states:

- (a) The Minister shall, with the consent of the President of the Great Rabbinical Court, prescribe in regulations or in

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<sup>1</sup> A *dayan* (pl. *dayanim*) is a rabbinical court judge – ed.

administrative rules, as applicable, the administrative procedures of the Rabbinical Courts, and shall appoint one of the dayanim or a person who is qualified to be elected as a Municipal Rabbi, to be responsible for their performance; the appointment under this subsection of a person who is qualified to be elected as a Municipal Rabbi is subject to the approval of the Appointments Committee.

(b) The appointment of a Director of the Rabbinical Courts who is not a dayan shall not require a public tender, and he shall be regarded, for the purposes of section 17 and the Holders of Public Office (Benefits) Law, 5729-1969, as a dayan.

Thus, the section provides that the Director of the Rabbinical Courts can be one of two: a dayan of a Rabbinical Court, or a person who is qualified to be elected as a Municipal Rabbi whose appointment was approved by the Committee for the Selection of Dayanim. The qualifications for election to the position of a Municipal Rabbi are set out in regs. 4 and 5 of the Jewish Religious Services (Election of Municipal Rabbis) Regulations, 5767-2007 (hereinafter: the Regulations or the Religious Services Regulations), which state as follows in this regard:

4. The following are qualified to be elected as a Municipal Rabbi:

(1) A person who presides or presided as a dayan or a person who possesses a valid certificate of ordination pursuant to the Dayanim (Conditions for Ordination and Procedures) Regulations, 5716-1955, and is qualified to be appointed as a dayan;

(2) A person serving or who served as Chief Rabbi of the Israel Defense Forces;

(3) A person serving or who served as a Military Rabbi of a Command or a Corps, and was ordained as a rabbi by the two Chief Rabbis of Israel, and the Chief Rabbinate Council decided that he is qualified to serve as a Municipal Rabbi;

(4) A person who has a valid certificate from the Chief Rabbinate Council attesting that he is qualified to preside as a Municipal Rabbi (hereinafter: a "Certificate of Qualification").

5. (a) The Chief Rabbinate Council shall grant a Certificate of Qualification to a person who meets the following requirements:

- (1) His lifestyle and character befit, in its opinion, his status as a rabbi in Israel;
- (2) He passed examinations in Talmud and Jewish law decisors. These examinations shall be prepared in writing, by a committee of three or more rabbis appointed by the Chief Rabbinate Council;
- (3) He signed an affidavit that he shall fulfill any decision of the Chief Rabbinate Council.

(b) If the Chief Rabbinate Council is convinced that a person is an outstanding scholar who is proficient, *inter alia*, in all of the Jewish laws related to the fulfillment of the position of Municipal Rabbi, it may exempt him from the examinations stated in sub-regulation (a)(2), provided that the Chief Rabbis of Israel were among those who voted in favor of the exemption...

The proper interpretation of these legislative provisions, and its implications for the possibility of women standing for the position of Director of the Rabbinical Courts are the focus of the petition. We shall now summarize the relevant facts and the proceedings before this court.

4. Resolution 1154 of the 32<sup>nd</sup> Government regarding "Limiting the Tenure of Senior Officials in the State Service" was adopted on December 27, 2009. The resolution set a four-year term limit upon the Director of the Rabbinical Courts, with an option of a four-year extension. Thereafter, on June 11, 2010, the Dayanim Appointment Committee decided that Rabbi Eliyahu Ben Dahan – who had then served as the Director of the Rabbinical Courts for 21 years – would finish his term in office on August 11, 2010 (hereinafter: the Committee's Decision).

5. Following the Committee's Decision, a petition was filed with this Court on July 29, 2010 (HCJ 5720/10 *Ruth and Emanuel Center for the Advancement of the Status of Women v. Minister of Justice*), that petitioned for remedies in regard to the procedure for appointing the Director of the Rabbinical Courts, and primarily that this Court construe sec. 13 of the Dayanim Law as permitting a woman to be appointed to the position, or alternatively, that it declare the provision void due to its alleged unconstitutionality. On August 17, 2010, the petition was denied *in limine* (Justices A. Grunis, M. Naor, and U. Vogelman) as premature, because the ramifications of sec. 13 for the appointment of a woman as Director of the Rabbinical Courts had not yet been addressed by the appointing authorities.

6. In the interim, on August 15, 2010, the then presiding Minister of Justice – who was then responsible for appointing the Director of the Rabbinical Courts – appointed former Great Rabbinical Court Dayan Rabbi Shlomo Dichovsky as the acting Director of the Rabbinical Courts. On March 1, 2011, with the consent of the President of the Great Rabbinical Court, and with the approval of the Dayanim Appointment Committee, Rabbi Dichovsky was appointed permanent Director of the Rabbinical Courts, until August 15, 2014, and he held that position for that period.

7. On January 6, 2011, an additional petition was filed with the Court (HCJ 151/11 *Ruth and Emanuel Rackman Center for the Advancement of the Status of Women v. Minister of Justice*), arguing that the procedure for appointing Rabbi Dichovsky suffered material defects that justified its cancellation. The petitioners reiterated their requests for the same remedies in regard to sec. 13 of the Dayanim Law, with the purpose of promoting the appointment of a woman to the position of Director of the Rabbinical Courts. The petition was denied on December 27, 2011 (Justice (Emer.) E. Levy, and Justices H. Melcer and Y. Danziger), primarily on the grounds that in view of Rabbi Dichovsky's appointment as permanent Director of the Rabbinical Courts, the petition had become theoretical. There was no dispute as to his suitability to the position and no material flaws were found in the procedure for his appointment.

8. On May 8, 2014, towards the end of Rabbi Dichovsky's term as Director of the Rabbinical Courts, Petitioner 1 – the Director General of the Mavoi Satum Association, which addresses the matter of Israeli women who are denied a *get* [Jewish writ of divorce] and *agunot* – submitted her candidacy for the position of Director of the Rabbinical Courts. On August 14, 2014, after no consensus candidate had been found to replace Rabbi Dichovsky, the Minister of Justice charged the Director General of the Ministry of Justice, Adv. Emi Palmor, with the administrative responsibility for the administration of the Rabbinical Courts.

9. The present petition was filed on December 2, 2014, requesting that the Court to instruct the Respondents to refrain from appointing a permanent Director General of the Rabbinical Courts until sec. 13 of the Dayanim Law is amended in a manner that will permit women to contend for the position. Alternatively, identical remedies to those requested in the two previous petitions with regard to sec. 13 of the Law were requested, so that women, including Petitioner 1, would be allowed to "genuinely contend" for the position of Director of the Rabbinical Courts. An interim order instructing to refrain from appointing a Director of the Rabbinical Courts pending the judgment in the petition, was also requested. A few days later, before the procedure of appointing a permanent Director of the Rabbinical Courts was completed, the Knesset

dispersed (see: Dissolution of the Nineteenth Knesset Law, 5775-2014). Elections for the twentieth Knesset were held a few months thereafter.

10. Following the elections, the 34<sup>th</sup> Government adopted Resolution no. 180 (hereinafter: the Resolution) on July 5, 2015, in the framework of which the responsibility for the Rabbinical Courts was transferred from the Ministry of Justice to the Ministry of Religious Services. Additionally, authority under the Dayanim Law, including the appointment of the Director of the Rabbinical Courts, was also transferred to the responsibility of the Minister of Religious Services (hereinafter also: the Minister). Three days after the Resolution, on July 8, 2015, the Minister of Religious Services appointed Adv. Rabbi Shimon Ya'acobi, who had served as legal advisor to the Rabbinical Courts for many years, as Director of the Rabbinical Courts by a temporary appointment for a period of three months. At this point it should be noted, with no offence intended to Rabbi Ya'acobi, that his appointment violated the State's undertaking to the Court of December 15, 2014, that the Court would be notified of any intention to appoint a Director of the Rabbinical Courts (see the decision of Justice D. Barak-Erez of December 16, 2014). In light of the procedural defects in Rabbi Ya'acobi's appointment, the State informed the Court, on July 23, 2015, that his appointment is to be deemed void. However, eventually, and with Court's consent and encouragement, as shall be explained below, the State retroactively ratified the acting appointment for a period of four months, with the approval of the Dayanim Appointment Committee. In practice, due to the prolongation of the proceedings, Rabbi Ya'acobi continues to serve as acting Director of the Rabbinical Courts, with the Court's consent, until the present day.

11. Returning to the matter at hand, we held four hearings on the petition. Prior to the first hearing, which took place on July 27, 2015, the State gave notice that, in light of the sensitivity of the matter, it has not yet succeeded in formulating its position regarding the Petitioners' arguments. In our decision at the end of the hearing, we instructed the State to inform us as to its position by September 20, 2015. We also suggested to its representatives that given the need for an appointment, and in view of the prolongation of the proceeding and the absence of a Director of the Rabbinical Courts, it consider appointing Rabbi Ya'acobi as a temporary Director of the Rabbinical Courts, subject to a conflict of interest arrangement. As noted, this suggestion was adopted by the State. It should further be noted that the case was addressed, in part, together with H CJ 6691/14, in the different context of appointing dayanim to the Great Rabbinical Court, however on August 1, 2016, that petition was dismissed by consent as its objectives were exhausted.

12. In its response, which was filed – following postponements – on November 12, 2015, the State argued that the petition should be dismissed. It explained that, in the opinion of the Attorney General, sec. 13 of the Dayanim Law can be construed as allowing the appointment of a woman as Director of the Rabbinical Courts. According to the Attorney General, women can also be included in the scope of the term "a person qualified to be elected as a Municipal Rabbi" for the purpose of

candidacy for the position of Director of the Rabbinical Courts, provided they pass the Municipal Rabbi examinations in Talmud and religious law decisors, or their equivalent, in accordance with reg. 5(a)(2) of the Religious Services Regulations. In order to give that interpretation practical effect, the Attorney General instructed the Ministry of Religious Services and the Chief Rabbinate to hold such Jewish law examinations – for both men and women – so that all will be able to contend for the position of Director of the Rabbinical Courts. The Attorney General's position was – and continues to be – based on the presumption that a person serving as Director of the Rabbinical Courts must not only have managerial capabilities, but also "must have deep familiarity with the substantive law under which cases are adjudicated in the Rabbinical Courts", even though, in his opinion, "this is not a position that is intrinsically a religious position, but is rather a strictly administrative position". A position taking exception to appointing a woman was presented on behalf of the Chief Rabbis, including the President of the Great Rabbinical Court, and on behalf of the Minister of Religious Services, arguing that what is concerned is a religious position that is, therefore, subject to the exception under sec. 7(c) of the Equal Rights for Women Law, 5711-1951, that the provisions of that law shall not apply to an appointment to a religious position in accordance with religious law.

13. In response, the Petitioners argued that, for all practical purposes, the Attorney General's interpretation of sec. 13 of the Law frustrates the possibility of appointing a woman to the position of Director of the Rabbinical Courts, in light of the demand to pass examinations in Jewish law that require many years of study in religious institutions, which is not ordinarily available to women, and in light of the fact that the Certificate of Qualification that would allow a woman to apply for the position would be issued by the Chief Rabbinate, which already expressed its reservations regarding women vying for the position of Director of the Rabbinical Courts.

14. On December 31, 2015, the Respondents informed us of their consent that the petition be heard as though an order nisi had been granted. On January 7, 2016, the second hearing of the petition was held. In our decision following the hearing, we stated: "We have no doubt, in principle ... that the position of Director of the Rabbinical Courts should be perceived... as an administrative position that a woman can perform, of course after meeting certain threshold conditions that include a proper understanding of the subject of the Rabbinical Courts and their work." We clarified that we do not see the position of Director of the Rabbinical Courts as being a religious or judicial position, and therefore sec. 7(c) of the Equal Rights for Women Law does not apply to the present case. As for the option of administering examinations in Talmud and decisors for women similar to those held for serving as a Municipal Rabbi, we stated that based on reasons of practicality and fairness, the Attorney General must examine an option of a different format of examinations, so that they would also be appropriate for women who did not have a yeshiva education. We also raised the option of adding an additional track to the four Municipal Rabbi qualification tracks appearing in reg. 4 of the Religious Services Regulations that

would treat only of qualification for the purpose of sec. 13 of the Dayanim Law, and would prescribe qualifying conditions that would apply to both men and women. We instructed the Attorney General to state his opinion of the proper track within 30 days. We also noted that under the circumstances, and in light of the anticipated expiration Rabbi Ya'acobi's temporary appointment, we see no impediment to his continuing to serve as temporary Director of the Rabbinical Courts.

15. On February 28, 2016, the Attorney General informed us that in accordance with the Court's recommendation, the Minister of Religious Services decided to promulgate regulations by virtue of the Dayanim Law, in the framework of which an additional qualification track will be added for the purpose of sec. 13 of the Law. It was also noted that a draft of the said regulations was already distributed to all the relevant entities at the various government offices, and that it is expected that the text of the regulations will be presented for discussion by the Knesset's Constitution, Law and Justice Committee (hereinafter also the Constitution Committee or the Committee) – for its approval pursuant to sec. 27(b) of the Dayanim Law – "in the coming weeks". That discussion eventually took place many months after the notice.

16. Only on May 11, 2016, was a draft of the regulations sent to the Constitution Committee, and concurrently to the Petitioners. We shall now present its original version:

*Dayanim (Qualification of the Director of the Rabbinical Courts)  
Regulations, 5776-2016*

By virtue of the power and authority vested in me under sec. 27 of the Dayanim Law, 5716-1955, and with the approval of the Knesset's Constitution, Law and Justice Committee, I promulgate these regulations:

*Qualification*

1. Notwithstanding what is stated in reg. 4 of the Jewish Religious Services (Election of Municipal Rabbis) Regulations, 5767-2007, for the purpose of the qualification of a Director of the Rabbinical Courts, a person shall be deemed qualified to serve as a Municipal Rabbi also if all of the following terms and conditions are met:

- (1) He is a resident of Israel;



- (2) He is a lawyer, and in addition holds one of the following: a license as a rabbinical pleader or a master's degree in Jewish law.
- (3) He passed the examination administered by the Ministry of Religious Services by an examining committee appointed by the Minister of Religious Services, with the consent of the President of the Great Rabbinical Court, including an examination in the practical field of the profession;
- (4) He has at least 5 years of experience in appearing before the Rabbinical Courts;
- (5) In terms of his character and lifestyle, he is worthy of serving in the position of Director of the Rabbinical Courts.

17. The essence of the arguments in the Petitioners' response to the draft regulations was that they incorporate obstacles and stumbling blocks that could prevent any real possibility for women to compete for the position of Director of the Rabbinical Courts, *inter alia*, in light of the threshold requirements that relate to the candidate's education and the need for an examination in the "practical field of the profession", the nature of which is ambiguous.

18. On February 15, 2017, following adjournments, the Constitution Committee held its first discussion of the draft regulations. As emerges from the State's response (no minutes of the discussion were prepared), the Committee discussed various reservations that were raised with respect to each of the proposed regulations, except that which requires that the Director of the Rabbinical Courts be a resident of Israel. However, prior to the Committee's second meeting, which was held on May 10, 2017, reg. 1(2) was amended, with the apparent intention that it would also allow persons with a master's degree in Talmud or Oral Law to apply for the position of Director of the Rabbinical Courts (in the words of the proposed regulation: "He is a lawyer, and in addition he has one of the following: a license as a rabbinical pleader or a master's degree in the field of Jewish law in the framework of legal, Talmud or Oral Law studies"; and see in this regard, Minutes no. 378 of the Twentieth Knesset's Constitution, Law and Justice Committee, dated May 10, 2017, page 3 (hereinafter: the Committee's Minutes)). The issue of the threshold requirements for submitting candidacy for the position of Director of the Rabbinical Courts was discussed by the Committee, at the end of which the Chairperson *pro tempore* of the Committee, Knesset Member Revital Swid, concluded that the amendment to the draft regulations that was prepared in preparation for the discussion "is not an amendment that in any way or form materially changes the fact and the difficulties placed before a woman to be appointed to the position" (Committee's Minutes, p. 36). It was concluded that the Respondents would consider additional changes to the regulations, in accordance with

the Knesset Members' remarks in the discussion, and particularly in all that relates to the conditions of education and professional training required of the candidates.

19. An additional Committee meeting was held on June 6, 2017, but the Respondents did not submit an updated version of the draft of the regulations. Again, the Committee did not reach a decision, and no vote on the draft regulations was held. The Chairperson of the Constitution Committee, Knesset Member Nissan Slomiansky, announced that he would act within approximately two weeks vis-à-vis the government representatives in an attempt to formulate an agreed version of the regulations, which would be presented for the Committee's approval. On June 26, 2017, the State informed us that Knesset Member Solmiansky's attempts were unsuccessful. In our decision dated July 2, 2017, we instructed the State to once again provide an update as to the status of the Committee's approval of the draft regulations, and we clarified that following the update, a judgment on the petition would be delivered. A notice submitted on behalf of the State on July 24, 2017, reported that no significant progress had been made regarding the approval of the draft regulations by the Constitution Committee. The State reiterated that in light of the Attorney General's interpretation of sec. 13 of the Dayanim Law, the petition should be dismissed.

*Prior to Ruling: Incidentally – The Appointment of a Female Deputy Director General of the Rabbinical Courts*

20. Before ruling on the issue at the focus of the present matter, we will briefly address a subsidiary issue – which is important to the this matter – that arose while addressing the petition, and which concerns the appointment of a female Deputy Director General of the Rabbinical Courts. During the first hearing of the petition, on January 7, 2016, the Director General of the Ministry of Religious Services informed us that he would act to appoint a woman to the position of Deputy Director General of the Rabbinical Courts, as suggested by this Court. As stated in our decision of September 19, 2016:

The Rabbinical Courts system, in which inequality is deeply embedded due to the fact – which we are not addressing at the moment – that there are no women dayanot, while it is undisputed that 50% of those who require the services of the Rabbinical Courts are women... It is clear that a woman's presence in the Rabbinical Courts' senior administration is vital to enhancing the trust of the women who turn to the Rabbinical Court.

We are not concerned here with any particular gender ideology, nor even with equality in its basic format.

We will not set out the details of the State's responses to this matter in the months following the hearing. We will but note that on several occasions we were informed that despite the declaration of the Director General of the Ministry of Religious Services, it had not succeeded in appointing a female Deputy Director General for various reasons related to appointment procedures in the public service. In these circumstances, we were required to issue a large number of decisions in order to promote that which was desired. Later update notices filed by the State informed us of attempts to facilitate such an appointment procedure in various ways, whether by upgrading a slot already staffed by a woman in the Rabbinical Courts system to the level of deputy director general, or by adding a deputy director general position by virtue of a Government resolution in accordance with sec. 15A(b)(2) of the State Service Law, or by means of an inter-ministerial transfer through which a woman who is serving as a deputy director general at another governmental agency would be appointed as Deputy Director General of the Rabbinical Courts. When these attempts failed and no solution appeared on the horizon despite the said promise, on April 3, 2017 – after we held an additional hearing on the petition – an decree nisi was granted instructing the Respondents to explain "why a woman will not be appointed to the position of Deputy Director General of the Rabbinical Courts".

21. On May 1, 2017, following lengthy – and it must be said, with all due respect, excessively so, given the scope of the matter – exchanges between the Court and the State, we were informed that after consultations among the senior echelons of the Public Service Commission, the Attorney General, the Ministry of Religious Services and the administration of the Rabbinical Courts, it was decided to effect an inter-ministerial transfer in accordance with sec. 15A(b)(1) of the State Service (Appointments) Law, 5719-1959 (hereinafter: the State Service Law), and sec. 10.232D(d) of the State Service Regulations. On June 29, 2017, after a number of update notices in the matter, the State informed us that the appointment of Ms. Michal Goldstein to the position of Deputy Director General of the Rabbinical Courts was approved on June 15, 2017. On July 24, 2017, the State informed us that Ms. Goldstein is scheduled to take up her position as Deputy Director General of the Rabbinical Courts on September 1, 2017, and the matter was resolved. The outcome, of course, should be commended, and we have already noted that this may be significant both in the interface with the world of the Rabbinical Court judges and in the interface with the public that needs the Rabbinical Courts. Therefore, the order nisi in this regard, dated April 3, 2017, is rescinded. We wish Ms. Goldstein every success and godspeed. We will now address the primary issue raised by the petition – that of the appointment of the Director of the Rabbinical Courts, which is the main issue, although some of our statements regarding the matter of the deputy director general are, of course, *a fortiori*, relevant to the matter of appointing a director general.

## *Decision*

22. In the hearings before us in the course of the ongoing handling of the case, we encouraged and urged the State to find a solution that would make our decision superfluous. However, when there was no significant progress for too long in the sensitive matter on the agenda, and when it became clear that the decision makers do not deem addressing the matter as particularly urgent, and that no further date had even been set for discussing the draft regulations – in one version or another – in the Constitution Committee, we are left with no choice but to rule on the petition, as we stated in the past. After review, we have concluded that the Petitioners are correct in principle. We therefore make the order nisi absolute, in accordance with the outline that will be set out below.

23. As stated, we view the position of Director of the Rabbinical Courts as one that is essentially an administrative management position. The Attorney General is also of the opinion that it is a "clearly administrative" position and not a religious one. Therefore, in light of the fundamental principles of Israeli law, and primarily the principle of equality, which is a "fundamental principle of governance – standing head and shoulders above all other principles " (HCJ 2671/98 [\*Israel Women's Network v. Minister of Labor and Social Affairs\*](#) [1], 650 *per* Justice M. Cheshin (hereinafter: the *Israel Women's Network* case)), and the provisions of sec. 6C of the Women's Equal Rights Law, which requires that "in a public body... *there shall be proper representation of women, given the circumstances of the matter*, in the types of positions and the various levels among the employees, the management..." (emphasis added – E.R.), and of sec. 15A(a) of the State Service Law, which prescribes that "Among the employees in the State service, at all levels in all professions, in any office and any auxiliary unit, proper expression shall be given, to the extent that circumstances allow, to the representation of members of both sexes...", we are of the opinion that there is no legal impediment to appointing a woman as Director of the Rabbinical Courts, if and to the extent she is found suitable for the position in accordance with the terms and conditions that will be specified. This conclusion is consistent with various legislative acts, including the Basic Laws regarding human rights, the Women's Equal Rights Law, and the Employment (Equal Opportunities) Law, 5748-1988, and with the need for proper representation of women in the public sector in general, and in the administration of the Rabbinical Courts in particular, as we will be set out below.

24. We will reiterate fundamental principles: When considering candidates for the position of Director of the Rabbinical Courts, the Minister of Religious Services acts as a public trustee, and he is subject to the entire scope of rules of administrative discretion. He must reach his decision reasonably, after weighing all of the relevant material considerations on the question of the candidate's personal and professional suitability to the position, while striking a proper balance among them (compare with

H CJ 8134/11 H CJ 8134/11 *Moshe Asher, Adv. and Acct. v. Minister of Finance, Dr. Yuval Steinitz* [2], para. 12 of the opinion of Deputy President E. Rivlin; H CJ 6407/06 *Doron, Tikotzky, Amir, Mizrahi, Advocates v. Minister of Finance* [3], para. 6 of the opinion of Justice E. Arbel and the supporting references there). The fact that a candidate is a woman, in and of itself, is a foreign, irrelevant consideration in the matter of her suitability to the position, and the Minister may not take it into consideration as a disqualifying criterion of candidates for the appointment. The words of Deputy President M. Elon, in a context similar to the case at hand, regarding the possibility of electing a woman as a member of a Religious Council, are appropriate::

... the exclusion of a female candidate from appointment to a religious council because she is a woman, clearly contradicts a fundamental principle of Israeli law that prohibits discrimination on grounds of sex. This fundamental principle was laid down in the Declaration of Independence, and is among those that have gone beyond recognition in the case law to become enshrined in legislation (H CJ 153/87 [Shakdiel v. Minister of Religious Affairs](#) [4], 240).

It is well-known that religious systems are conservative, especially in all that concerns the status of women. However, over the years these obstacles have been overcome (see for example the *Shakdiel* case; H CJ 953/87 *Poraz v. Mayor of Tel-Aviv-Jaffa* [5]; H CJ 3856/11 [Anonymous v. Supreme Sharia Court of Appeal](#) [6] ).

25. I will not deny that in the present case, the high road might have been for the legislature to have amended sec. 13 of the Dayanim Law, such that it would be crystal clear that the position of Director of the Rabbinical Courts is open to all. Amendment of the Regulations could also have been possible. However, once we have concluded – as did the Attorney General – that sec. 13 of the Law should be interpreted as allowing a woman to be appointed to the position, we no longer deem it necessary to address the amendment of the Regulations, and leave that as an aspiration for the future. In light of the above, and in accordance with our proposal from January 7, 2016, to which the Minister of Religious Services agreed in principle, we thus instruct, as a matter of purposive interpretation of sec. 13, the objective of which is to find the preferred Director of the Rabbinical Courts, that an additional qualification track be added under sec. 13 of the Dayanim Law that will apply to both men and women. The outline of the said qualification track will be in the spirit of the draft of the regulations, with certain modifications that we believe are required due to the nature and substance of the position of Director of the Rabbinical Courts, and due to the need to be certain that a woman's candidacy to the position be considered by those concerned with an open heart and mind, all as will be specified below. We will add that we also decided to wait no longer because the position of Director of the Rabbinical Courts has not been filled by a full appointment for some three years, and

we say this with no offence intended to the acting Director of the Rabbinical Courts, Adv. Rabbi Ya'acobi, but rather as a normative matter.

26. After considering the matter, we have concluded that for the purpose of sec. 13 of the Dayanim Law – and in the matter at hand, for the purpose of being appointed as Director of the Rabbinical Courts – a person can be deemed qualified to serve as a Municipal Rabbi if they meet all of the following conditions:

- (1) He is a resident of Israel;
- (2) He has a license as a rabbinical pleader, or is a lawyer with a master's degree in Jewish law or Talmud; preference to be given to a lawyer who is also a rabbinical pleader;
- (3) He has at least 7 years of experience appearing before the Rabbinical Courts;
- (4) In terms of his character and lifestyle, he is worthy to serve in the position of Director of the Rabbinical Courts.

Clearly, and to allay any doubt, the conditions are directed to both females and males. Attention should also be drawn to the fact that the said conditions are the result of our interpretation of sec. 13 of the Dayanim Law, and the Minister of Religious Services must examine candidates for the position of Director of the Rabbinical Courts in accordance with them. It is the authority's obligation to act within its authority within a reasonable period of time, *a fortiori* when what is at issue is a fundamental right that has been unlawfully infringed, and the lack of proper representation in the Rabbinical Courts system has been extremely conspicuous for some time (compare with H CJ 1892/14 *Association for Civil Rights in Israel v. Minister of Public Security* [7], para. 119 of my opinion), and where an important position has not been filled by way of an ordinary appointment.

We will now briefly address the reasons why we deemed it fit to prescribe threshold conditions that are slightly different from the last version of the draft regulations that was submitted to the Constitution Committee.

27. As for the education condition, and considering the nature of the position of Director of the Rabbinical Courts, we are of the opinion that it is inappropriate to prevent a licensed rabbinical pleader who is not a lawyer from submitting candidacy for the position. It is reasonable to assume that a person who met the threshold conditions for such a license – which include studies at a yeshiva or an educational institution recognized by the Great Rabbinical Court, alongside examinations, including in the practical field of the profession (see sec. 2 of the Rabbinical Pleaders Regulations, 5761-2001) – is sufficiently familiar with religious law to vie for the position of Director of the Rabbinical Courts. However, a rabbinical pleader who is

also a lawyer will have an advantage. Additionally, we agree with the State that a lawyer who wishes to submit candidacy for the position must possess "something more", in the form of relevant religious education. To this end, we deemed it appropriate to state explicitly that a master's degree in Jewish law or Talmud are sufficient, however it is clear that this is not a closed list and the Respondents, of course, may consider candidates with other degrees that in their view meet the required familiarity with religious law (regarding the education condition, see our decision dated August 3, 2016, where we stated with respect to the original draft regulations, that "in our opinion, there are matters that require clarification (such as the question whether it is not appropriate to have the qualification alternatives be a lawyer *or* rabbinical pleader, with the lawyers (and not pleaders) being required to take examinations..."). Having said that, it is clear that the candidates must have a real familiarity with the Rabbinical Courts system, and therefore, after taking the Petitioners' proposal in this matter into consideration, we deemed it fit to prescribe that they must have at least 7 years of experience in appearing before the Rabbinical Courts, and not to suffice with five years as appeared in the draft regulations. It should be noted in this context that similar preconditions that can attest to a candidate's familiarity with the legal system are also prescribed for the appointment of judges (see secs. 2-4 of the Courts [Consolidated Version] Law, 5744-1984). Having said that, we do not find any reason to set a threshold condition regarding passing examinations – both theoretical and practical – in order to qualify to serve as Director of the Rabbinical Courts. Such examinations do not exist in corresponding positions in the public service. The Director of the Rabbinical Courts does not make decisions on the basis of religious law and is not required to have extraordinary knowledge of Halakha that needs to be put to a test. It is presumed that candidates who meet the education condition, and who have significant professional experience of more than a few years in appearing before the Rabbinical Courts, will bring the necessary expertise to the position of Director of the Rabbinical Courts, even without examinations on Halakha, which, as noted, by their nature place women at a disadvantage. It should be noted in this regard that there are no threshold requirements regarding knowledge of religious law in the religious courts of other religious communities (see sec. 16 of the Druze Religious Courts Law, 5723-1962, and sec. 10(a) of the Qadis Law, 5721-1961). Moreover, in the civil courts system, the law requires the appointment of a Director of the Courts "who may or may not be a judge" (see sec. 82(a) of the Courts [Consolidated Version] Law, 5744-1984). Given the appointing body and its position on the matter of women's qualification to serve in this position, we also found it appropriate to instruct, without casting suspicion or aspersion on anyone, that the procedure of appointing a Director of the Rabbinical Courts be accompanied by the Attorney General, who will be able to confirm a person's administrative qualification, if necessary. We will further add, without derogating from this ruling as it stands, that for the sake of good order and transparency, it would be appropriate for the Minister of Religious Services to consider grounding this ruling in regulations.

28. In our view, the said qualification conditions reflect the kind of professional skills that are required of the candidates for the position of Director of the Rabbinical Courts, including the necessary familiarity with the entire Rabbinical Courts system. These conditions also facially grant equal opportunity to women and men to vie for the position, and what we stated in para. 20 above and are *a fortiori* relevant here.

29. Therefore, and considering the "inherent inequality" in the Rabbinical Courts system, it seems to me that it is appropriate to also mention and emphasize sec. 6C of the aforementioned Women's Equal Rights Law, which provides that "in a public body ... there shall be proper representation of women, given the circumstances of the matter ... *provided that if for the purpose of effecting this provision it is necessary to prefer a woman, such preference shall be given if the candidates of both sexes have similar qualifications*" (emphasis added – E.R.), as well as the aforementioned sec. 15A(a) of the State Service Law, which provides that "among the employees in the State service ... proper expression shall be given, to the extent that circumstances allow, to the representation of members of both sexes ..." (and see the words of Justice Cheshin in the [Israel Women's Network](#) case [1]: "... in attempting to achieve proper representation of women in public entities, a real duty is imposed on the competent authority to search for suitable female candidates" (*ibid.*, at p. 668)). Below are the words of Justice E. Mazza, which concern the interpretation of sec. 18A of the Government Companies Law, and which are relevant, *mutatis mutandis*, to the case at hand:

... the burden of proof that in the circumstances of a specific case it was not possible to appoint a woman rests with the appointing minister. This burden is not a light one. In order to discharge it, the appointing minister must show that he examined the possibility of appointing a suitable female candidate, but discovered that, in the circumstances of the case, this was impossible. Even his duty to make such an examination is not simple. In order to discharge it, the minister must adopt reasonable measures to locate a suitable female candidate. The scope of these measures depends on the type of appointment in question ... This does not mean that the minister must seek, at any cost, to locate an unknown female candidate who has the necessary qualifications. But he also will not have done his duty by making a "formal" search for any female candidate. In order to do his duty properly, he must adopt reasonable measures designed to lead to the discovery and appointment of a suitable female candidate. (HCJ 453/94 [Israel Women's Network v. Government of Israel](#) [8], 529; and compare with the [Israel Women's Network](#) case [1], para. 52 of Justice Cheshin's opinion).



30. At this (fortunate) time when women have a respectable presence in a variety of positions in the public service, it is unreasonable that women should not be given proper representation in the administration of the Rabbinical Courts. As noted, opening the gates of the Rabbinical Courts to women to serve in administrative positions is of great value not only to women, but also for the sake of reinforcing the Rabbinical Courts' status, given that public trust is vital for its proper functioning. We would note that while Ms. Goldstein's appointment to the position of Deputy Director General of the Rabbinical Courts should be applauded, the possibility of there being a woman at the head of the administrative pyramid, as the Director of the Rabbinical Courts, in a system in which the central administrative positions comprise a large male majority, is important in and of itself, and realizes the value of equality in its material sense. Of course, in stating this we do not mean to express an opinion regarding any candidacy for the position.

31. In conclusion, we therefore order that the qualification defined as qualification to serve as a Municipal Rabbi for the purpose of sec. 13 of the Dayanim Law, can also be in accordance with the conditions set out above in para. 26. If the Minister of Religious Services choose to appoint a "person qualified to be elected as a Municipal Rabbi" (as opposed to a Dayan), he has a duty to consider candidates in accordance with these conditions, in addition to the conditions prescribed in regs. 4 and 5 of the Religious Services Regulations. As stated, in this sense the order is made absolute. The Respondents will pay the Petitioners' costs in the amount of NIS 15,000 (inclusive).

**Justice M. Mazuz:**

I concur.

**Justice U. Shoham:**

I concur in the clear, comprehensive judgment of my colleague Deputy President (Emer.) E. Rubinstein, and I am also of the opinion that an order absolute should be granted as proposed.

Due to the importance of the matter, I will add the following. First and foremost, I wish to join in congratulating Ms. Michal Goldstein on her appointment as Deputy Director General of the Rabbinical Courts, and I wish her every success in her new position.

As my colleague made clear in para. 26 of his opinion, the necessary qualifications for the appointment of a male or female Director of the Rabbinical

Courts must be established by the interpretation of sec. 13 of the Dayanim Law, 5729-1969. However, it would be preferable if the Minister of Religious Services would attend to grounding those qualification conditions in regulations, without derogating therefrom or adding anything thereto, as my colleague stated "*for the sake of good order and transparency*".

Decided as stated in the opinion of Deputy President (emer.) E. Rubinstein.

Given this 23<sup>rd</sup> day of Av 5777 (August 15, 2017).