

Tel Aviv University Law School
Tel Aviv University Law Faculty Papers

Year 2007

Paper 44

Religious Education in Israel

Asher Maoz*

*Tel Aviv University, Maoza@post.tau.ac.il

This working paper is hosted by The Berkeley Electronic Press (bepress) and may not be commercially reproduced without the permission of the copyright holder.

<http://law.bepress.com/taulwps/art44>

Copyright ©2007 by the author.

Religious Education in Israel

Asher Maoz

Abstract

The area of religious education in the State of Israel is one of the most complex issues, possibly without comparison to other modern countries. The reason for this complexity is complex in itself. It has religious, national, historical and economical backgrounds and above all political grounds that account for it.

The value of education is highly regarded in Jewish tradition. Jewish communities were the first to introduce compulsory education for which the organized community, not less than the parents, was responsible. The rift within Jewish society, starting with the Renaissance and Enlightenment and continuing with Zionism, circled to a large extent around the issue of education. Segments of the Jewish people that were attracted by the Enlightenment Movement changed the curriculum at school. So did the segments that followed Zionism. The Orthodox circles, feeling threatened by these new trends, closed themselves off from the outer world and clung to the traditional teachings. They, moreover, kept their children from being influenced by the outside world.

As the State of Israel was established a struggle between the melting pot policy, advocating educational uniformity, and the demand for religious autonomy in the area of education broke out. It ended with a salient triumph of the latter. Israel's educational system appears as a convincing example of educational autonomy, particularly religious autonomy, and as a model of multicultural education. The education system in the State of Israel includes various school streams, among them several religious chains. These chains include State schools, independent schools and private ultra-Orthodox schools. All of them are supported by State budget yet they do not adhere to the curriculum prescribed by the Ministry of Education. Continuous struggles go on regarding the teaching of "secular" subjects and the inspection over the schools.

The author's argument is that by abstaining from enforcing a basic curriculum on these schools, the State is infringing its duties towards their students, both under municipal law and under international conventional law.

Religious Education in Israel

ASHER MAOZ*

A WORD OF INTRODUCTION

A stranger that would examine the system of education in Israel, especially religious education, might describe it in one word – chaos. He would not be far from the truth. The area of religious education in the State of Israel is one of the most complex issues, possibly without comparison to other modern countries. The reason for this complexity is complex in itself. It has religious, national, historical and economical backgrounds and above all political grounds that account for it.

The value of education in Jewish tradition is without comparison. Jewish communities were the first to introduce compulsory education for which the organized institutions, not less than the parents, were responsible. The rift within Jewish society, starting with the Renaissance and Enlightenment and continuing with Zionism, circled to a large extent around the issue of education. Segments of the Jewish people that were attracted by the Enlightenment Movement changed the curriculum at school. So did the segments that followed Zionism. The Orthodox circles, feeling threatened by these new trends, closed themselves off from the outer world and clung to the traditional teachings. They, moreover, kept their children from being influenced by the outside world.

When massive immigration to Palestine started, these distinct groups brought with them their convictions, way of life and system of education. Even after the State of Israel was established they kept their old ways. This was possible since self-sufficient autonomous Jewish communities existed in the Diaspora for many years.

The newly born State embarked on a melting pot policy but soon realized it was futile. Then there was another issue. Even before the establishment of the State, the Zionist leadership needed the cooperation, or at least the non-disturbance, of the Orthodox segments. The Zionist leaders, fighting for Jewish statehood, were willing to reward the Orthodox groups by respecting their educational autonomy. This continued after the establishment of the State of Israel when religious political parties were constant partners to the coalition governments. This resulted not only in

* Associate Professor, Tel-Aviv University Faculty of Law. Amnon de-Hartog read a former version of the article and made valuable suggestions. Dan Gibton and Yael Kafri supplied helpful information. Moran Yahav and Lydia Mandelbaum rendered excellent research assistance. I am indebted to all of them.

the non-enforcement of State education on ultra-Orthodox children but even by supporting their “non-official” education networks. These arrangements - which were not based on law and were even contrary to law - grew out of control. It is, moreover, hard to get precise figures of this support, as it is difficult to even receive agreed upon numbers of students attending these schools.

The State established several commissions to try and introduce some order in this chaos, to no avail. As this article is going to press a new effort to organize the education network is taking place.

RELIGIOUSLY ORIENTED PRIMARY SECONDARY AND HIGH SCHOOL EDUCATION

1. Historical background

The State of Israel recognizes the status of religious schools at all levels, from kindergarten to high school, as well as institutions for the training of school and kindergarten teachers.¹ The education system includes both religious and non-religious state schools as well as private schools.² To better understand the Israeli education system some historical background might be helpful.³ Through the British Mandate over Palestine most Jewish schools were affiliated with political parties and belonged to three streams: the General Stream connected to the centrist parties, mainly the General Zionist party, that encompassed fifty-two percent of the pupils in 1948; the Labor Stream operated by the workers union, *Ha'Histadrut ha'Kelalit shel ha'Ovdim ha'Ivriyyim be'Eretz Yisrael* [The General Federation of Jewish Labor in Palestine] (27.3%); and the Mizrahi Stream, affiliated with the religious-Zionist parties *Mizrahi* [an acronym for *merkaz ruhani* (spiritual center)], and *Hapoel Hamizrahi* [Spiritual Center Worker] (22.5%). All three streams were financed by the World Zionist Organization. Alongside these streams religious ultra-Orthodox non-Zionist schools operated. All three streams, or trends, as termed by statutory law, were recognized by the State of Israel upon its establishment

1. See State Education Law, 5713-1953, 7 LSI 113 (1952-53) (Isr.). There were several amendments to the statute. A Hebrew consolidated version is available at: <http://www.education.gov.il/zchuyot/chukim4.htm>.

2. See generally Asher Maoz, *Religious Human Rights in the State of Israel*, in JOHN WITTE, JR., RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 349, 373-76 (Johan D. Van Der Vyver & John Witte, Jr. eds., Martinus Nijhoff Pub. 1996), reprinted in JASON ARONSON, HUMAN RIGHTS IN JUDAISM: CULTURAL, RELIGIOUS, AND POLITICAL PERSPECTIVES 113, 144-49 (Michael J. Broyde & John Witte, Jr. eds., 1998); Stephen Goldstein, *The Teaching of Religion in Government Funded Schools in Israel*, 26 ISRAEL L. REV. 36 (1992); Stephen Goldstein, *Multiculturalism, Parental Choice and Traditional Values: A Comment on Religious Education in Israel*, in CHILDREN'S RIGHTS AND TRADITIONAL VALUES 118 (Gillian Douglas & Leslie Sebba eds., Ashgate 1998).

3. See ZVI ZAMERET, ACROSS A NARROW BRIDGE: SHAPING THE EDUCATION SYSTEM DURING THE MASSIVE IMMIGRATION (Ben-Gurion Research Centre, Sede Boker 1997) (Isr.).

together with a stream connected to the *Agudat Yisrael* [Union of Israel] ultra-Orthodox party, as well as the Arab educational system, as schools that fulfil the requirement of compulsory education and were fully funded by the State.⁴ The recognition of the *Agudat Yisrael* stream was a result of a commitment given to that party, before the establishment of the state, known as “the *status quo* agreement,”⁵ to respect the autonomy of its educational system. Alongside a stream of “Religious - Labor System,” that was part of the Labor Stream operated.⁶

However, the streams were not allowed to operate in immigrant camps. There a system of uniform education was established to further the policy of a “melting pot” that would result in modernizing the newcomers, most of them from oriental countries (known as *Sephardic* [Spanish] Jews) and assisting them in becoming an integral part of Israeli society. Soon accusations were raised that these schools enforced secular education on the students, most of whom came from religious backgrounds and infringed their freedom of religion. The pressure of religious circle, both from Israel and from the United States, led to the establishment of a governmental commission of inquiry headed by Gad Frumkin, a former judge of the Mandatory Supreme Court.⁷ The commission found that though not a result of governmental policy of anti-religious coercion, the uniform education resulted in harsh infringement of the religious freedom of the new immigrants. As the supreme authority for administering the State’s business, the government bore collective responsibility for this situation. The Frumkin report led to the forced resignation of the Minister of

4. Compulsory Education Law, 5709-1949, 3 LSI 125 (1948-49) (Isr.).

5. See Menachem Fridman, *The Chronicle of the Status Quo: Religion and State in Israel*, in *TRANSITION FROM “YISHUV” TO STATE 1947-1949: CONTINUITY AND CHANGE* (Varda Filobsky ed., Univ. of Haifa, Herzal Institute for the Research in Zionism 1990) (Isr.). For an English translation of the *status quo* agreement, see *THE DILEMMA OF RELIGION AND POLITICS* 151 (Susan H. Rolef ed., Semana Pub. Co. 1986). Actually, this was not an agreement, but rather a letter sent on behalf of the Jewish Agency executive to the *World Agudat Yisrael Union*.

6. On this stream, see Zvi Zameret, *The Religious – Labor System – The History of an Unsuccessful Attempt at Building a Bridge between Secular and Religious Jews*, in *RESHAFIM: HISTORICAL, PHILOSOPHICAL AND SOCIOLOGICAL ASPECTS OF EDUCATION* 121 (Arye Kasher & Rina Shapira eds., Tel-Aviv Univ. 1991).

7. On the Frumkin Commission, see ZVI ZAMERET, *THE MELTING POT IN ISRAEL: THE COMMISSION OF INQUIRY CONCERNING EDUCATION IN THE IMMIGRANT CAMPS DURING THE EARLY YEARS OF THE STATE* (State Univ. of New York Press 2002); Eliezer Don-Yihya, *The Struggle over the Education in the Immigrants’ Camps and its Manifestations in the Public Arena* 18-19, in *NIV HA’MIDRASHIYA* 198 (1985-86), available at <http://www.daat.ac.il/daat/kitveyet/niv/donyihye-1.htm> (Isr.); Dov Levitan, *First State Investigation Commission: The Education in the Immigrants’ Camps* 20-21, in *NIV HA’MIDRASHIYA* 290 (1987-88), available at <http://www.daat.ac.il/daat/kitveyet/niv/levitan-1.htm> (Isr.). The Commission also investigated accusations made regarding pressure to abandon the religious way of life of Yemenite youth educated in special educational camps and found them groundless.

Education. Combined with future developments regarding religious education it also led to the fall of the government, dissolution of the *Knesset* and to early elections.

The accusations investigated by the Frumkin Commission regarding secular education enforcement in the immigrants' camps were not isolated. Alongside the episode of education in the immigrants' camps, religious education was denied to new immigrants who were absorbed in cooperative agriculture settlements dominated by the Labor Party. The new immigrants were forced to attend the Labor Stream educational institutions in dire contradiction of Compulsory Education Law.⁸ Even prior to the establishment of the State of Israel, a scandal known as "The Teheran Children Affair" broke out. In 1943, 1,228 Jewish children, most of them orphans who had fled from Poland to the Soviet Union at the outbreak of war in 1939, arrived in Palestine via Iran. Seven-hundred and nineteen of them were placed in various institutions of *Aliyath Ha'noar* [Youth Immigration],⁹ many of them secular. This caused an outcry from religious circles, which led to the establishment of a commission of clarification, that found no ground for the sharp criticism launched against the Jewish Agency,¹⁰ yet declared that most of the teachers in the institutions were indifferent or even hostile to the childrens' religious needs.¹¹

A year after the submission of the Frumkin Commission report another investigating commission found that accusations of anti-religious coercion of Yemenite children in immigration camps were unfounded, yet their religious needs were not looked after. Moreover, the submission of the Frumkin Commission report did not put an end to accusations regarding anti-religious coercion in education in immigrants' camps and in transit settlements [*ma'abara* in Hebrew].¹²

The second *Knesset* enacted the State Education Law designated to bring about the abolishment of the various educational streams.¹³ Originally the proposed legislation attempted to establish a single Jewish educational system to be based on "the values of Jewish culture and scientific achievement, love of the homeland and loyalty to the State of

8. See Zvi Zameret, *The Integration of Yemenites in Israeli Schools*, ISRAEL STUD., Fall 2001, at 1.

9. An organization founded in 1933 to rescue Jewish youth from Nazi Germany which later became a Department of the Jewish Agency. On the history of *Aliyath Ha'noar*, see NORMAN BENTWICH, *JEWISH YOUTH COMES HOME: THE STORY OF THE YOUTH ALIYA 1933-1943* (Victor Gollancz 1944).

10. Note the sharp title of a book published then by Jacob Rosenheim, a leader of Agudat Yisrael: *THE TEHERAN CHILDREN ACCUSE: ORIGINAL DOCUMENT AND FULL STORY OF THE SEIZURE AND NON RELIGIOUS EDUCATION OF REFUGEE CHILDREN BY THE JEWISH AGENCY IN PALESTINE* (Jacob Rosenheim 1944) (Hebrew, Yiddish, and English).

11. See TOMER BEN-ZION, *RED, WHITE AND THE SMELL OF ORANGES* (The Zionist Library 1972) (Isr.).

12. See ZAMERET, *supra* note 7, at 101-22.

13. See *supra* note 1.



Israel and the Jewish People.”¹⁴ Yet, due to religious opposition, the draft legislation has been changed to enable religious state schools alongside the general state schools.

2. State Education Law

2.1 Israeli Educational System

The system of education in Israel consisted originally of kindergarten until the age of six; primary (or elementary) school for grades one to eight; and four years of high-school. This structure has been adopted during the British mandate in Palestine following the Central Europe model. In 1968 the Knesset adopted a reform under which primary school lasts for six years followed by an intermediate division (secondary or junior high school) and (senior) high school.¹⁵ As of today most schools have adopted the reform though its advantages are still debatable and suggestions for deviation from it were made along the years.¹⁶ Compulsory education covers nine years of school, namely primary and secondary schools. Save for a couple of exceptions, there are no State high schools. Instead, they are usually run by local councils or are private.

2.2 Jewish Studies in State School

Judaic texts, such as the Bible, as well as Jewish history and Jewish holidays, are taught in all schools, including those that are not religious, though the Bible is being taught from a critical view and not as a divine book.¹⁷ This is natural considering that those texts constitute part of Jewish culture and history beyond their religious manifestations.¹⁸ Indeed, State Education Law outlines the objects of state education, *inter alia*, as

14. See State Education Law Bill, 1953, HH, 242, § 2.

15. See RONIA BRITBART & MICHAL TAVIVIAN-MIZRAHI, CHANGES IN THE EDUCATIONAL SYSTEM STRUCTURE IN ISRAEL AND PROPOSALS FOR CHANGES MADE ALONG THE YEARS – BACKGROUND DOCUMENT (Knesset 2003) (Isr.), available at <http://www.knesset.gov.il/mmm/data/docs/m00742.doc>.

16. See e.g., Shimshon Shoshani, *Nothing Can Stand Up to Necessity*, in 16 OFAKIM HADASHIM (New Horizons 2004), available at http://ofakim.org.il/zope/home/he/1101583653/1104935041?curr_issue=1101583653 (Isr.). See also *infra* note 203.

17. See Walter Ackerman, *Making Jews: An Enduring Challenge in Israeli Education*, ISRAEL STUD., Fall 1997. For the objective of teaching the Bible in State schools, see JOSEPH GOLDSMIT, OF THE FOUNDATIONS OF STATE RELIGIOUS EDUCATION 64-65 (Ministry of Education 1976). Compare this with the objective of teaching the Bible in Religious State schools. *Id.* at 65-66. For a comparison between teaching *Mishna* and *Talmud* in State schools and in Religious State schools, see YEHUDA SHWARTZ, TEACHING ORAL LAW: TEACHING MISHNA AND TALMUD IN ISRAELI EDUCATION IN VIEW OF THE CURRICULA AND THE DIDACTIC LITERATURE (Hebrew Univ., 2002).

18. See Asher Maoz, *State and Religion in Israel*, in INTERNATIONAL PERSPECTIVES OF CHURCH AND STATE 239 (Menachem Mor ed., 1993).

educating the students to respect their heritage, their cultural identity and their language.¹⁹ The Law specifically provides that these objects include “teaching the Torah of Israel, the history of the Jewish people, Israel’s heritage and Jewish tradition.”²⁰ A few years after the introduction of the state education system a special Center for the Fostering of Jewish Consciousness was formed in the Ministry of Education to enhance the knowledge of Jewish tradition in the State schools, including prayers and practices of traditional Jewish life.²¹ The center operated for some ten years and the overall appreciation was that the program was not very successful, due to, *inter alia*, a rejection by teachers and parents of what they regarded as an attempt to introduce religious education into the State schools. In the 1980s, a Division for Strengthening Jewish Education had been established in the Ministry of Education. The programs developed by the Division included exposing high school students to Jewish teachings on the problems confronting modern man; teaching Jewish holidays in primary school; teaching school students about the Bar Mitzvah and providing seminars on Judaism for teachers. Two aspects signified these curricula. First, they were optional and encouraged school-based curricula. Second, the individual schools were free to invite outside organizations and institutions to teach Judaism. Indeed, schools invited religious instructors, mainly from the *Habad (Lubavitch)* Hassidic group to teach Judaism.

In addition to formal study programs, informal educational techniques have also been used in order to guide youngsters toward a sense of themselves as Jews. One day, as well as longer seminars, conducted away from school and by staff who were not regular school teachers, used practices adapted from group work theory and encountered group experiences in moving participants toward an exploration of the self and the others. Beyond the classroom, activities have also been incorporated on a much grander scale in the teaching of the Holocaust.

In 1991 the minister of education appointed a commission headed by the Rector of Haifa University, Professor Aliza Shinhar, to examine the status of Jewish studies in State schools and offer recommendations regarding approaches and goals, curricula and other initiatives capable of advancing Jewish education in Israel. The Commission submitted its report three years later, entitled “A Nation and the World – Jewish Culture in a

19. State Education Law, 5713-1954, 7 LSI 113, § 2(1) (1952-53) (Isr.), *as amended* by Statutes Education Law, 2000, S.H. 122.

20. *Id.* § 2(4).

21. See Government of Israel, DEEPENING JEWISH CONSCIOUSNESS (1959) (Isr.). For an evaluation of the Center’s activity, see ADRIAN TOMA & YESHAYAHU GUTTMANN, EVALUATION OF THE ACTIVITY OF CENTER FOR THE FOSTERING OF JEWISH CONSCIOUSNESS (Sold Institute 1973); Zvi Zameret, *An Attempt that Failed – Zalman Aran and the Jewish Consciousness*, in VALUES AND EDUCATING TO VALUES – ISSUES IN TEACHERS’ ADVANCED STUDIES 345 (Ministry of Education & Hebrew Univ. 1999).



Changing World.”²² The Commission viewed Judaism as “a national and pluralistic culture in a continuous state of development.”²³ This culture contains “national-religious” motifs, including “personal and social moral values derived from the Jewish tradition, from the Zionist ethos, and from generally human ideologies and moral theories.”²⁴

The Commission explicitly did not address its recommendations to the “national-religious or the independent ultra-Orthodox trends, which are defined by their nexus to a cultural system with an integrated view and respond to a clear spiritual and civic authority.”²⁵

The Commission decried the “continuing decline in the prestige of Jewish studies in State school education,” and determined that “we should strive to teach the subjects of Judaism in a way that emphasizes their humanistic character, imparts culture and values, and provides tools for constructing an outlook.”²⁶ It proposed the placement of Jewish studies in the broader framework of the humanities. The Commission called for the development of curricula and other materials that encourage dialogue and critical inquiry and emphasized the importance of an interdisciplinary approach. It advocated knowledge of the history of the Jewish people and culture as an essential element in the development of the identity and the shaping of the spiritual and ethical world of Israeli youth.²⁷

The Government endorsed the Shinhar report and the Ministry of Education set up a special headquarters to implement its recommendations, together with the recommendations of a steering commission nominated by the Minister “for the purpose of developing a comprehensive programme for inculcating in the students a citizenship that will serve as a common ethical and behavioral foundation for all citizens of the State.”²⁸ The Commission, headed by Professor Mordechai Kremnitzer, submitted its report, entitled “Being Citizens” in 1996.²⁹ The Ministry explained the common enterprise of the two reports as a result of the fact that “the common starting point of both is the existence of the State of Israel as a

22. A NATION AND THE WORLD – JEWISH CULTURE IN A CHANGING WORLD (Ministry of Education and Culture 1994) (Isr.) (translation by author), *available at* http://cms.education.gov.il/EducationCMS/Units/Mazkirut_Pedagogit/Mate/Dochot/AmOlam.htm.

23. *Id.* at 4.

24. *Id.* at 5.

25. *Id.* at 11.

26. *Id.* at 10.

27. *Id.* at 12.

28. BEING CITIZENS 5 (Ministry of Education and Culture 1996) (Isr.) (translation by author), *available at*

http://cms.education.gov.il/EducationCMS/Units/Mazkirut_Pedagogit/Mate/OdotHamate/OdotMate.htm. For an English concise version, see

<http://cms.education.gov.il/EducationCMS/Units/Owl/English/Pedagogic/Being/>.

29. *Id.*



Jewish and democratic state.”³⁰ It should be emphasized that while the Shinhar report relates to State schools only, the Kremnitzer report applies to all schools in Israel.

However, the implementation depends to a large extent on the personality of the Minister of Education at the time. Thus, while the Shinhar Commission was established during the term of a National-Religious Party minister, the report was handed to his successor from the secular left-wing Meretz party. The latter attempted to break Orthodox monopoly in religious education and enabled Conservative and Reform streams in Judaism to join in implementing the Shinhar recommendations. Dozens of private non-profit organizations have been established to promote a Jewish pluralistic education in State schools even before the Commissions report was submitted, and more energetically afterward. Some of the organizations were secular, viewing Judaism as culture; others belonged to progressive religious movements. Schools, however, terminated their contacts with these organizations following the decision of the Ministry of Education, now headed by a minister from the right-wing *Likud* [unity] party, to stop engaging external contractors.³¹ Instead the Ministry encouraged the recruitment of female graduates from State religious schools to teach Judaic studies in general State schools in lieu of military service. Some secular, reform and conservative organizations petitioned against this decision; however the Supreme Court ruled that the ministry may change its policy of contracting external organizations. Yet the Court disqualified the criteria for funding Torah and Jewish culture lessons in non formal education that clearly discriminated against these organizations.³²

Professor Shinhar herself vigorously attacked the Ministry's policy of “encouraging National Service girls (religious girls from schools of the state-religious stream) to teach diverse Judaic subjects; [of] supporting Orthodox educational societies [and] withholding the transfer of funds to Jewish education in the pluralistic spirit – and obligating junior high school students to memorize Jewish concepts that are not taught in a manner espousing dialogue and criticism.”³³ Professor Shinhar emphasized that by

30. Ministry of Education, <http://cms.education.gov.il/EducationCMS/Units/MazkirutPedagogit/Mate/Dochot/DohBeEzrah.htm> (translation by author). For the implementation of both reports, see Ministry of Education, Culture and Sport, *The Development of Education*, § 8-9 (National Report of Israel Submitted to the 45th Session of the International Conference on Education 1996), available at <http://www.ibe.unesco.org/countries/countryDossier/natrep96/israel96.pdf>. For Israel as a Jewish and democratic state, see Asher Maoz, *The Values of a Jewish and Democratic State*, 26 *IYHR* 289 (1996).

31. HCJ 1447/03 Panim for Jewish Renaissance in Israel v. Minister of Education [2004] *IsrSC* 59(3) 942.

32. *Id.*

33. Aliza Shinhar, *A Nation without a World*, 30 *OFAKIM HADASHIM* [New Horizons] (2006) (translation by author), available at



doing so the Ministry frustrated the Commission's recommendation to resort to "the pluralistic-liberal approach in teaching Judaic studies in the general State school" and engage "teachers whose viewpoint and lifestyle are acceptable upon the versified secular public, according to the varied communities served by the schools."³⁴

The attempts to implement the Shinhar recommendations are continuing and substantial resources have been allocated towards that end. However, the recommendations and their implementation are a subject for ongoing controversy. In this regard it is important to point out the fact that the Commission itself found it hard to reach common recommendations and commission members took reservations from substantial parts thereof.

At the beginning of 2007 the Minister of Education, herself a secular person, appointed a Public Committee for Bible Education. She did so "in view of the growing gap between schoolchildren and the Bible's world and language and the growing polarization between the religious and secular in Israeli society."³⁵ The committee consists of thirty-nine public figures, headed by former Supreme Court Deputy President Justice Mishael Cheshin. The committee's goal has been described as turning the study of the Bible to a more central focus in the educational system. It should "lead [to] a change in the student's capture of the Bible through intellectual and experimental study."³⁶ The committee recommended the institution of a discussion of Bible stories and subjects in the morning roll-call in each school. The recommendation, which would take effect in the upcoming school year and can be implemented at the discretion of a school's principal, applies to all schools in the State and State religious school systems. The enhanced studies program planned by the committee includes trips around the country in the footsteps of Bible stories, musical, literary and artistic competitions on Biblical themes, after-school events, and a Bible studies corner in each elementary school.

In launching the committee's activities, Education Minister Professor Yuli Tamir stated: "The beauty of the Bible is reflected in the values and moral dilemmas it raises.'... 'I believe that dealing with moral issues can help develop students' moral judgment'" and mold their image as tomorrow's citizens.³⁷ The Ministry's Director General declared that "the

http://ofakim.org.il/zope/home/he/1138194787/1147600179?curr_issue=1138194787.

English synopsis: http://ofakim.org.il/zope/home/en/1138194787/1147600179_en.

34. *Id.*

35. See The Public Committee for Bible Education is being launched, The Ministry's spokesperson's announcement, Jan. 9, 2007 (Isr.) (translation by author), available at http://209.85.135.104/search?q=cache:0o4ld_9qU1kj:cms.education.gov.il/EducationCMS/PortalOvdeyHoraa/Taarich/LimodTanach.htm.

36. *Id.*

37. Haviv Rettig, *New committee to bolster Bible study in schools*, JERUSALEM POST, Jan. 10, 2007, available at

Bible is the constitutive book of the Jewish people that planted in it eternal life. It is our duty to bequest the Jewish heritage to the young generation. I am certain that the Public Committee will offer practical means to return the Bible to the center of our cultural life.”³⁸

2.3 State Religious Education

The Religious State schools formally constitute an amalgamation of the former recognized religious streams. However, in practice they are a continuation of the *Mizrahi* stream schools; this is so since the *Agudat Yisrael* schools did not join the State schools and the Religious - Labor System faded away upon the abolition of the educational streams. Even the teachers and inspectors of that *Mizrahi* stream continued to work for the new religious State schools.

Religious education is defined, in the State Education Law, as “State education, yet its institutions are religious according to their way of life, their curricula, their teachers and inspectors.”³⁹ A Religious State education institution is defined as “an official education institution in which state religious education is being provided and which educate to a life of *Torah* and *mitzvoth* [religious commandments] according to the religious tradition and in the spirit of religious Zionism.”⁴⁰ These institutions may enrich their curricula “to include *Torah* and Talmudic studies and will direct to a religious way of life, including religious observance and a religious atmosphere within the institution.”⁴¹

A separate Council of Religious State Education, has been established by law, comprising of fifteen members, six of them recommended by the Minister of Religious Affairs,⁴² and three recommended by the Organization of Religious Teachers.⁴³ The Minister of Education must consult with the Council before exercising any of his or her powers relating to the State Religious Education. This includes the appointment of the Director of the Division of Religious Education in the Ministry and the appointment of inspectors, school headmasters and teachers for the

<http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1167467697826>.

38. Moran Zelikovitz, *Recommendation: School will start with a Bible roll-call*, YNET, Jan. 9, 2007 (Isr.) (translation by author), available at

<http://www.ynet.co.il/articles/0,7340,L-3350317,00.html>.

39. State Education Law, 5713-1953, 7 LSI 113, § 1 (1952-53) (Isr.).

40. *Id.*

41. *Id.* See also MATTITYAHU DAGAN ET AL., GUIDELINES FOR STATE-RELIGIOUS EDUCATION POLICY (Ministry of Education Culture and Sports, Religious Education Administration 3d ed. 1996).

42. The Ministry of Religious Affairs was abolished since and this authority has been transferred to the Prime Minister.

43. State Education Law, 5713-1953, 7 LSI 113, § 13 (1952-53) (Isr.).



religious schools.⁴⁴ Various powers entrusted to the Pedagogical Secretariat at the Ministry have been allocated to the Director with regard to religious schools. Regulations promulgated by the Minister categorically state that “[t]he supreme pedagogical authority regarding the religious nature of the said educational institutes shall be entrusted to the Director of the Division of Religious Education.”⁴⁵ In each district an inspector of State Religious Education must be appointed to supervise these schools rather than the general inspector.⁴⁶ The Division for Religious Education has, moreover, been elevated to an autonomous Administration for Religious Education.

The Law provides for the religious way of life of the educators. It states that the Council “may, on religious grounds only, disqualify a person for appointment or further service as a principal, inspector or teacher at a religious State-educational institution.”⁴⁷ The Labor Court ruled, however, that the council may not fire a teacher who leads a religious life merely because he is married to a secular spouse or that his children do not attend religious schools.⁴⁸ No restrictions relating to secular background or lifestyle apply to students and their families, save for the schools right to insist on the students not infringing, in their appearance and conduct, the religious way of life within school. Indeed, a substantial portion of the student body of the schools comes from non-religious homes.⁴⁹

The Religious State education struggles with the need to combine State Zionist education with religious education. It experienced in recent

44. *Id.* § 15.

45. State Education Regulations (Inspection Procedure), 1957, KT 5717, 116, § 6(b), *amended by* 1980, KT 5740, 1487, *and* 1992, KT 1152.

46. *Id.* § 10(a).

47. State Education Law, 5713-1954, 7 LSI 113 (1952-53) (Isr.) (translation by author), *available at* <http://www.edu-negev.gov.il/matefet/koch/k6.doc>.

48. LC (Nazareth) 1693/98 Rosenbaum v. The Ministry of Education [1999] Tak-Labor 99(1) 253; *available at* http://www.lawandreligion.org.il/topics/17edu_religion/17psak_deen/17pd2.doc.

49. A survey conducted in State-Religious schools in Tel-Aviv, several years ago revealed that as many as one quarter of the student body come from non-religious families. JOSEPH GALANZ, *THE OTHER CHILD IN CLASS: STUDENTS FROM A NON-RELIGIOUS HOME IN A RELIGIOUS SCHOOL* 80 (Bar Ilan Univ. 1981) (Isr.). At the same time, in another study, the author suggests that non-religious parents be requested to cooperate in respecting religious values at home and in observing religious precepts that are maintained at school. JOSEPH GALANZ, *STUDENTS FROM A NON-RELIGIOUS HOME AT A RELIGIOUS SCHOOL (COMPARATIVE STUDY)* (Ministry of Education and Culture & The Religious Education 1988) (Isr.). It has been further suggested that “since it is impossible to insulate completely the religious nature of a school from the religious nature of its student body, the preservation of a given school’s religious way of life may justify restricting the number of non-religious students in the school.” Goldstein, *supra* note 2, at 133 n.7.



years a withdrawal of students to ultra-Orthodox institutions⁵⁰ and came

50. Between 1995 and 2000 the percentage of the students in religious State primary schools dropped from 26.50% to 20%. The percentage of students in ultra-Orthodox schools rose to 19.20% by the year 2000; see SHIRA BEN SASOON-FORSTENBERG, *THE CORE OF EDUCATION – FROM SECTARIANISM TO STATEHOOD?* (Knesset 2002) (Isr.), available at <http://www.knesset.gov.il/mmm/doc.asp?doc=m00276&type=pdf>. A survey of the student body of the school year 2004 to 2005 reveals that out of a total of 573,937 students in the Israeli Hebrew primary education system, 318,821 (55.5%) were enrolled in State schools; 104,455 (18.2%) in Religious-State schools and 150,661 (26.2%) in ultra-Orthodox schools. See ETTI WEISBLAI, *DATA ON THE NUMBER OF STUDENTS IN HEBREW ELEMENTARY EDUCATION ACCORDING TO THE TYPE OF INSPECTION AND LEGAL STATUS* (Knesset 2005) (Isr.), available at <http://www.knesset.gov.il/mmm/doc.asp?doc=m01375&type=pdf>. A report submitted by the Ministry of Education to UNESCO reveals that between the years 1989-1990 and 2002-2003 the percentage of students enrolled in religious recognized and exempt primary schools raised from 11.9% to 23.6% out of the total number of students in Hebrew primary education. At the same time the proportion of students in State-religious schools dropped from 20.5% to 18.8%. In State education the percentage dropped from 67.6% to 57.6%. The same tendency occurred in secondary education as well, where the recognized non-official and exempt student body rose from 3.8% to 10% (State education dropped from 78.6% to 72.2% while State-religious schools maintained their stability and even raised from 17.6% to 17.8%).

The figures of the rise in the ultra-Orthodox student body in various sources may be somewhat misleading. This is a result of the fact that until the school year 1998-1999 the figures of enrollment in ultra-Orthodox schools, as published by the Central Bureau of Statistics, included only recognized ultra-Orthodox schools. Since that year they include also exempt institutions. Hence, while the percentage of students in ultra-Orthodox primary schools rose from 6.6% in the year 1959-1960 to 7.6% in the year 1989-1990, it rose to 20.4% in the year 1999-2000. However, even after the inclusion of the exempt schools the figure kept growing to 25.1% in the year 2005-2006. At the same time the ratio of students in religious state schools dropped from 26.5% in 1959-1960 to 19.2% in 1999-2000 and then to 18.8% in 2005-2006. State education enrollment dropped from 66.9% in 1959-1960 to 60.4% in 1999-2000 and then to 55.3% in 2005-2006. The figures of enrollment in ultra-Orthodox high schools seem even more impressive. They rose from 3.7% in 1969-1970 to 14.8% in 1999-2000 and to 19.9% in 2005-2006. Religious State high school enrollment dropped from 21.9% in 1969-1970 to 17.2% in 1999-2000 to 16.7% in 2005-2006. State high school enrollment dropped from 74.4% in 1969-1970 to 68% in 1999-2000 to 63.4% in 2005-2006; Central Bureau of Statistics, *Statistical Abstract of Israel 2006 No. 57*, at 39.1 (2006), available at http://www1.cbs.gov.il/reader/shnatonenew_site.htm.

When reviewing the statistics in kindergartens one may venture to predict that the proportion of ultra-Orthodox students might even rise. In 2002-2003, 27.7% of kindergarten kids were enrolled in ultra-Orthodox institutions while only 52.0% were enrolled in State education. At the same time 20.3% were enrolled in State-religious education. See *Document Submitted to the Forth-Seventh Session of the International Conference on Education, DEVELOPMENT OF EDUCATION: FACTS AND FIGURES 73-75* (Ministry of Education, Culture and Sport 2004), available at http://www.ibe.unesco.org/International/ICE47/English/Natreps/reports/israel_part_2.pdf.

It is doubtful, however, whether the proportion in pre-primary education will fully perpetuate itself in primary and higher education. This is so because, unlike State schools – including State-religious institutions – the ultra-Orthodox institutions are usually long-day institutions and provide bussing as well as hot meals for their students. This factor might be of major importance to young age children, especially for those who come from poor neighborhoods. It is, moreover, hard to compare among these numbers as the various surveys might have related to different classifications of the ultra-Orthodox schools. See



under pressure from parents to enrich their religious curricula and introduce a more Orthodox atmosphere in school. This led to the establishment of networks within state religious education that put more emphasis on religious studies. The leading network is Noam-Zviya that separates between boys and girls. These networks joined large networks of high-school *yeshivas* [institutions of Talmudic studies] for boys, most of them boarding schools and colleges for girls, the Zviya network. Some secondary schools are attached to high-school *yeshivas*. The proportion of these networks within State religious education is in a constant rise. Thus, by the year 2002, forty schools out of 407 primary schools were affiliated with the Noam network. In secondary and high schools the proportion of high-school *Yeshivas* and girl colleges rose to fifty percent.⁵¹ Critics of these schools point to the fact that they tend to be elitist and frustrate one of the main targets of the educational reform of 1968, to enhance integration of various socio-economic sectors. This is so both because of the high standard of study and the substantial participation of parents in funding studies beyond those financed by the state. Another phenomenon of secondary State Religious schools is the high percentage of schools that introduce different levels of studies within the school.⁵² Researchers have pointed out that the difficulties of State Religious schools in introducing integration stems from the fact that while a successful integrative class must consist of at least sixty percent of the students coming from established families, seventy-three percent of the students in State Religious schools are “special care” students coming from lower socio-economic homes.⁵³

infra Part 2.5. Moreover, over the years there were changes in the educational structure and the division between elementary and higher education. However, the drop in the student population of the Religious-State schools continued while the student body of the ultra-Orthodox schools grew parallelly. Finally, the figures were presented by various departments within the Ministry and doubts have been raised as to their accuracy. See SHLOMO SWIRSKI, ETTI KONUR & YARON YECHESKEL, GOVERNMENT ALLOCATIONS TO ULTRA-ORTHODOX (HAREDI) SECTOR IN ISRAEL (Adva Center 1998), available at <http://www.adva.org/UserFiles/File/Government%20Allocations%20to%20the%20ultra%20ortodox.pdf>.

51. Records of Meeting 481 of the Education, Culture, and Sports Committee of the Knesset, June 12, 2002, at 5 (Isr.), available at <http://www.knesset.gov.il/protocols/data/html/chinuch/2002-06-12-02.html> [hereinafter Records].

52. While merely 7% of State schools have separate classes according to the students' standards, it rises to 26% in State Religious secondary schools. See State Comptroller, *Annual Report No. 43, 277* (1992), available at <http://www.mevaker.gov.il/serve/contentTree.asp?bookid=164&id=57&contentid=&parentid=undefined&sw=1024&hw=698>.

53. See CHAIM LAGZIEL, EDUCATION POLICY AT A CROSSROAD BETWEEN CHANGE AND CONTINUITY- EDUCATION IN ISRAEL DURING THE LAST DECADE (Institute for the Research of Education Systems 1993).

In the early 1950's, primary schools, run by the *Chabad (Lubavitch)* Hassidic community were recognized as "a non-stream stream."⁵⁴ After the State Education Law passed they were included as an independent network in the Religious State education stream. By the year 2002 the Chabad network comprised ten percent of the primary religious-State schools.⁵⁵ They include over 10,000 students.⁵⁶ The willingness of this ultra-Orthodox Hassidic sect to join State education that emphasizes the Zionist nature of its religious education seems remarkable. Although, *Lubavitch* Hassidism are unique among the ultra-Orthodox Hassidic sects, in its nationalistic aspects and its involvement in Israeli society, its submitting to "education . . . according to the religious tradition and in the spirit of religious Zionism"⁵⁷ seems far reaching. Not less far reaching is the State's readiness to recognize a particular stream within religious-national education, thus reverting in a way to pre-statehood educational streams system. One cannot overlook, moreover, the fact that by joining State education the *Lubavitch* educational network became fully financed by the State. It should be, moreover, emphasized that unlike other Hassidic educational networks, *Lubavitch* primary schools cater to a large extent to students who come from outside of this sect. In a biography of the founder of the Chabad network, it is revealed that this was part of a strategic plan: Not merely to receive state funding but also to enlist students from non-religious backgrounds that might be deterred from joining independent religious schools.⁵⁸

Several Knesset Members submitted a bill proposing the amendment of the State Education Law establishing a third stream of State education – the Judaic-Pluralistic Stream similar to the Religious State Education stream. This stream was designed to emphasize "the importance of tolerance and co-existence among religious, secular and conservative people as well as persons of other Jewish identities."⁵⁹ The bill was not accepted.⁶⁰

54. See Menachem Cohen, *The Rabbi and the Network: The Rabbi: The Network is "a non-stream stream"*, HA'CHINUCH [The Education – The educational site of Chabad schools], Mar. 9, 2006 (Isr.), available at <http://www.reshet.org.il/chinuch/arc1.asp?aid=412&catid=2>.

55. Records, *supra* note 51.

56. See Reshet Chabad, *Religious Public Schools, Israel*, available at <http://www.reshet.org.il/en/html/ourstory.asp>.

57. See *supra* text accompanying note 39.

58. MENACHEM B-E ZIGELBOIM, DAVID MY SERVANT: TAILS FROM THE LIFE OF RABBI DAVID CHANZIN (Eshel Library 2004).

59. Draft bill amending the State Education Law (Recognition of Institutions for Jewish-Pluralistic Education), 5764 (P/1821) (2004) (translation by author) (Isr.), available at <http://www.knesset.gov.il/privatelaw/data/16/1821.rtf>.

60. An identical bill has been submitted a year later and defeated as well: Draft bill amending the State Education Law P/3160 (Isr.), available at <http://www.knesset.gov.il/privatelaw/data/16/3160.rtf>.



2.4 Arab, Druze and Circassian State Schools

Arab State schools operate in Arab towns and villages and in city quarters with large Arab populations.⁶¹ The same goes for Druze⁶² and Circassian⁶³ villages. Students belonging to these ethnic groups may choose to attend these schools or a general (“Jewish” or “Arab”) school where available.

The Arab schools are part of the general State schools and are not regarded as religious schools. State Education Law does not classify them as separate schools; however, the Law provides for a curriculum, in non-Jewish schools, that will fit “their special conditions.”⁶⁴ The Law provides for the Minister of Education to promulgate regulations for the adaptation of the provisions of the Law to the needs of those students.⁶⁵ In practice the curriculum is adapted to the religion of the student body, whether Muslim or Christian. Schools operating in Druze villages adapt their curriculum to that population. The same goes for Circassian villages. There exists, moreover, a separate Division for Arab education at the Ministry of Education. The Regulations of State Education (Consultative Council for Arab Education), 5756-1996⁶⁶ established a Consultative Council for Arab Education, to advise the Minister on matters concerning Arab education. The regulations charged the council with the formulation of an educational and pedagogical policy that would ensure the equal status of Arab citizens, taking into account their linguistic and cultural individuality and their heritage. The council is entrusted further with the task of paving a policy for the development of curricula “that will express the needs and culture of the Arab population.”⁶⁷ However, the regulations

61. For a discussion about the Arabs in Israel see ORI STENDEL, *THE ARABS IN ISRAEL* (Arie Yisrael trans., Sussex Academic Press 1997).

62. The Druze are a distinct religious community residing mainly in Lebanon, Israel, Syria, Turkey and Jordan. Small communities of expatriates also live in other parts of the world, including the United States, Canada, Latin America, Australia, and Europe. There are some 90,000 Druze living in Israel, mainly in villages in the Galilee. In five of them they constitute the entire population. The origin of the Druze is debatable; however, they are regarded as stemming from the *Isma'alia*, an extreme sect of *Sh'ite* Muslims. Yet, they are not Muslims. The tenets of their faith are kept secret even within the community. They do not accept converts nor do they recognize converting out. For further information about the Druze in Israel, see ORI STENDEL, *THE MINORITIES IN ISRAEL : TRENDS IN THE DEVELOPMENT OF THE ARAB AND DRUZE COMMUNITIES* (Israel Economist 1974).

63. The Circassians are Sunni Muslims of the *Hanafi* School, yet they maintain a distinct ethnic identity and share neither the Arab origin nor the cultural background of the larger Islamic community. They are of Caucasian origin and arrived in the Middle East towards the end of the 19th century. In Israel there are some 4,000 Circassians. Most of them live in two villages in the Galilee. For more about the Circassians in Israel, see DAVID WASSERSTEIN, *THE DRUZES AND CIRCASSIANS OF ISRAEL* (Anglo-Israel Ass'n 1976).

64. State Education Law, 5713-1953, 7 LSI 113, § 4 (1952-53) (Isr.).

65. *Id.* § 34(4).

66. Regulations of State Education, 1996, KT 5756, 1407.

67. *Id.* § 5(1).

do not provide that the Minister must consult with the council before making decisions and he is not bound by its recommendations.

The main language of instruction in these schools is Arabic, and Arab culture is being taught.⁶⁸ The use of Arabic represents a characteristic of cultural autonomy, the language being related to cultural, historical, and religious attributes of the Arab minority in Israel.⁶⁹

In the year 2000, the State Education Law was amended and it decreed that among the objectives of education was the learning of “the language, culture, history, heritage, and unique tradition of the Arab population and of other population groups in Israel, and recognition of the equal rights of all citizens of Israel.”⁷⁰ It was also stated that the objective of State education was “to educate people to love others, their nation, and their country, to be loyal citizens of the State of Israel, to respect their parents and family, their heritage, their cultural identity, and their language.”⁷¹ Yet, Arab politicians and educators are not content with these provisions. They argue that the content of the studies has been dictated to a large extent by the Ministry and does not include sufficient Arab studies. They demand, moreover, full autonomy for Arab education. This is so in spite of the fact that in recent years the autonomy of the Arab school widened. Thus since 1989 the Division for Arab Education is headed by an Arab educator and Arab education has been decentralized as to enable the administration of the schools on a district level. Moreover, the teaching of Arab culture and the belonging to the Arab nation and the Palestinian nation has also increased since the seventies.⁷² A bill aimed to create a separate Arab State stream, similar to the Religious State stream has been submitted to the Knesset, yet has not been accepted.⁷³

68. See Suzie Navot, *Language Rights in Israel*, in ISRAELI REPORTS TO THE XV INTERNATIONAL CONGRESS OF COMPARATIVE LAW 43 (Alfred M. Rabello ed., Harry Sacher Institute for Legislative Research and Comparative Law 1999).

69. HCJ 4112/99 Adalah v. City of Tel Aviv-Jaffa [2002] IsrSC 56(5) 393, 418. Nevertheless, the Court criticized the degree of national-cultural autonomy granted to the Arab education system. See MAJID AL-HAJ, *EDUCATION, EMPOWERMENT AND CONTROL: THE CASE OF THE ARABS IN ISRAEL* (State Univ. of New York Press 1998).

70. State Education Law, 5713-1953, 7 LSI 113, § 2(11) (1952-53) (Isr.).

71. *Id.* § 2(1).

72. For the development of Arab education, see Chaled Abu-Asaba, *The Arab Education Network: Developments and Contemporary Reality*, in ARAB SOCIETY IN ISRAEL (1): POPULATION, SOCIETY, ECONOMICS (Aziz Chidar ed., Van Lir Institute 2005). See also Ruth Gavison and Tali Bebefor, *Background Material for a Discussion on Collective Rights of Minorities* (Presented to the Constitutional Committee of the Knesset 2005) (Isr.), available at http://www.huka.gov.il/wiki/material/data/H13-09-2005_8-54-06_miutim.doc.

73. See Draft bill amending the State Education Law, 5766 (P/339/17) (2006) (amending law on Arab education); available at <http://www.knesset.gov.il/privatelaw/data/17/339.rtf>. Five identical Bill Proposals have been defeated by the 14th (P/1666, P/2453), 15th (P/4228, P/52), and 16th Knesset (P/977).

Recently some bi-national and bi-lingual schools have been established.

2.5 State Schools With Reinforced Jewish Studies

There are provisions in the State Education Law that though not designed solely for religious education, may serve to further it. Section 4 imposes on the Minister of Education the task of establishing a curriculum for all State schools. Section 5 charges the Minister with establishing a “supplementary programme” to the prescribed curriculum of every official educational institution encompassing one quarter of the total curriculum. In a Religious State-educational institution this must be “one of the special programmes designed for such school.”⁷⁴ Section 6 enables the Minister to establish a unique programme, if so requested by the parents of the students in a certain educational institution. Additionally, the Law allows the parents of three-quarters of the students in a class to demand the Minister to establish a special curriculum beyond the prescribed curriculum.⁷⁵ Parents may also request the Minister’s approval for an additional curriculum above the prescribed teaching hours to be financed by the parents or by the local council.⁷⁶

Under this aegis, parents joined to create schools with an enhanced program of Jewish studies, yet not Orthodox oriented. These schools, the first of which was founded in 1976, known under the name “Tali” [a Hebrew acronym for “reinforcement of Jewish studies”], operate with the sponsorship of the Schechter Institute for Jewish Studies, which provides pedagogical and educational support with a Conservative orientation.⁷⁷ In the early 1990s, the Ministry of Education adopted the Tali network in an effort to encourage Jewish education within non-religious State schools. A special inspector charged with the task of supervising the network was appointed within the Ministry. Moreover, State resources were made available to Tali, which became a semi official stream within the State

See also raft bill amending the State Education Law, 5764 (P/2680) (2004) (amending laws to include Arab heritage, *available at*

<http://www.knesset.gov.il/privatelaw/data/16/2680.rtf>. A Druze educational network petitioned the High Court of Justice demanding that it be recognized as an official institution. The petition has been rejected since the network insisted on its independence and rejected the Ministry’s inspection. H CJ 2828/02 Al-arfan v. Minister of Education [2004] IsrSC 2004(2) 232.

74. State Education Law, 5713-1953, 7 LSI 113, § 5 (1952-53) (Isr.).

75. State Education Regulations (Supplementary program), 1953, KT 5713, 102, § § 6, 2.

76. State Education Law, 5713-1953, 7 LSI 113, § 8 (1952-53) (Isr.).

77. On the Tali education, see Eitan Chikli, *Tali Education: The Development and Realization of an Educational Concept in the Context of Changing Realities* (Doctoral Thesis, The Jewish Theology Seminary 2004) (Isr.); HARVEY MEIROVICH, *THE SHAPING OF MASORTI JUDAISM IN ISRAEL* (Argov Center 1999) (Isr.); Lee Levine, *The Tali Schools*, 7 *STUD. IN JEWISH EDUC.* 259 (1995). On the Schechter Institute for Jewish Studies, see § 2.5.



schools. At present, some seventy schools are part of the Tali network. In most cases the entire school belongs to the system; in other cases only individual classes. In addition, over one-hundred kindergartens belong to the network. The population of the Tali network totals some 30,000 students. Most of the schools were not founded as Tali schools. Rather, existing State schools joined the chain at the initiative of the principals and parents.

The program defines its mission as “providing Jewish, Zionist, and democratic education in an open atmosphere and in the spirit of the time, with the cooperation of parents and educators. The education aspires to form a broad-minded personality, whose outlook contains layers of both the Jewish and general culture.”⁷⁸ The curriculum includes prayers, welcoming the Sabbath, the weekly Torah portion, holidays, and sources of the Jewish tradition as well as both Jewish and universal values.⁷⁹ Some thirty schools also include daily prayers in their curriculum. Thus, the Supreme Court declared as follows, “[t]rue, from the formal-organizational aspect, the Tali schools are state education schools. They do not belong to the religious state education. Yet, on the substantial level they are very similar to the religious state schools.”⁸⁰

In the 1980’s, the Movement for Progressive Judaism, which is part of the World Reform Movement, joined the Tali network in opening a school in Jerusalem. However, the cooperation between the two movements came to an end when, according to Tali Foundation director, it became obvious that the Reform movement attempted to take a lead of the Tali network alongside the Tali Educational Fund.⁸¹ According to the Reform Movement the source of this tension was the fact that, unlike Tali schools in general, the schools run by that movement comprise of students from families who belong to the movement and are an integral part of the local community. In recent years the cooperation between the Tali network and the Reform Movement resumed. At present there are three primary schools and one high-school that belong to the movement and are operated as Tali schools. On top of that, the Reform Movement runs a network of some fifty kindergartens that are part of its communities. Some of them are municipal kindergartens that operate under the pedagogical responsibility of the movement. A primary municipal state school that belongs to the movement is now under construction in Tel-Aviv. On top of that, the movement operates a program of educational involvement in some forty

78. From a memo of the General Director of the Ministry of Education and Culture, May 1, 2003.

79. See <http://www.tali.org.il>.

80. HCJ 8186/03 Tali Education Fund v. The Ministry of Education [2004] IsrSC 59(3) 873, 889 (ordering the Ministry to allocate additional funding to the Tali schools that introduced daily prayers as part of their curricula, though unlike Religious State-schools they are not imposed by the Ministry).

81. See Chikli, *supra* note 77, at 147-65.



state schools. The movement runs also an MA program in Jewish education in conjunction with the religious (Orthodox) Bar-Ilan University. Some of the sixty graduates of the program teach at those schools.⁸²

There are other State schools that do not belong to the official religious stream but reinforce Judaic studies. Thus, there are joint schools for religious and secular students, founded originally in mixed communities. Some five years ago the Meitarim network was set up to spread the gospel of religious-secular education across the country. Approximately twenty institutions joined the chain and it totals close to 3,000 students from kindergartens to high schools. The student body comes from all range of society, such as former religious families, secular families and children born to parents of mixed marriages.⁸³ The revival of the interest of seculars in Judaic studies may be attributed to a recent trend of viewing Judaism as a culture rather than merely a religion. While in the past non-religious people regarded Judaic sources as entirely religious in nature thus showing little interest in them, the recent approach is to view them as part of Jewish national identity.⁸⁴ This trend led to the establishment of various secular institutions that study Judaism from a secular point of view.

2.6 Recognized Non-official Schools and Non-recognized Schools⁸⁵

Alongside the State schools, operate schools that are recognized by the State yet are “non-official.” These are “[an] educational institution which the Minister by declaration published in Reshumot [Official Gazette], has declared to be a recognized educational institution.”⁸⁶ Under this provision various types of “non-official” schools have been established. These include agriculture settlements, mainly kibbutzim, as well as specialized schools⁸⁷ or schools that wish to preserve utmost autonomy. Some schools

82. See *The Israel Movement for Progressive Judaism Education Department 2006 Summary* (Isr.).

83. See Ilan Shahar, *More Secular Parents Look to Schools to Provide Missing Jewish Education*, HA'ARETZ, July 21, 2004.

84. Cf. Asher Maoz, *The Place of Jewish Law in the State of Israel*, 40 HAPRAKLIT 53 (1991-92) (Isr.).

85. See Leslie Sebba and Varda Shiffer, *Tradition and Rights to Education: The Case of the Ultra-Orthodox Community in Israel*, in CHILDREN'S RIGHTS AND TRADITIONAL VALUES, *supra* note 2, at 160.

86. Compulsory Education Law, 5709-1949, 3 LSI 125, § 1 (1948-49) (Isr.). Section 11 of the State Education Law empowered the minister to promulgate in regulations the procedure and conditions for such declaration, which the minister did in State Education Law (Recognized Institutions) Regulations, 1953, KT 5713, 399; See HCJ 8437/99 Network of Lubavitch Kindergartens in the Holy Land v. Minister of Education [2000] IsrSC 54(3) 69.

87. As an illustration, the International American School in Israel is organized as a recognized school. It caters to children of diplomats, U.N. representatives, representatives of overseas institutions as well as foreign businesspersons. However, a substantial portion

have been privately organized prior to the enactment of the State Law Education and did not wish to join the State education system. However, most of the recognized schools are religious schools, both Jewish and Christian. The latter include schools that are operated by the Greek-Catholic Malachite Church, the Latin Patriarch, and the Anglican Church. Muslim and Druze students also study in these schools, and at times they form a substantial portion of the student body.⁸⁸ There are even church schools where most of the student body does not belong to that church. Nevertheless, while the percentage of Christian students who attend private schools reaches forty-two percent of all students in the Christian population, only fifteen percent of Druze students and one percent of Muslim students attend these schools. There is also a Druze network of recognized schools.⁸⁹

Most of the recognized religious Jewish schools are ultra-Orthodox. There are at least fifteen variants of these schools' networks, belonging to various Hassidic communities as well as to "opponent" communities.⁹⁰ The main networks are the Independent Education Network and the *Sephardic* Centre of Fountain of Religious Education in Israel, known as "The Fountain of Religious Education" [*Mayan Ha'hinuch Ha'torani*] in Hebrew]. The first network is the former *Agudat Yisrael* network that was an official stream under Compulsory Education Law, yet declined to integrate into the Religious-State Education. The latter was founded in 1984, by the Sephardic religious new political party, "*Sephardi* Keepers of the Torah" [*Hitahdut Sephardim Shomrei Torah*], known as *Shas*. While the Independent Education Network caters exclusively to the ultra-Orthodox population, the Fountain of Religious Education includes students from various backgrounds, most of them of non-Orthodox, but rather traditional or even non-religious background. The Independent Education Network established in the late nineties a network for students that come from non-religious families called *Shuva* [repent]. This network caters, to a large extent, to Russian immigrants. There is a strict sexual division among the students in these networks. Such division exists also in many Religious-State education schools, as well as in the *Chabad* network. The educational system of male students within the Independent Education Network is divided into four age groups: *Talmudei Torah* [verb. Torah Studies] for ages five to thirteen; *Yeshiva* [verb. session, sitting] divided

of its student body population consists of Israeli children. The school adopted the International American Curriculum for English Speaking Students.

88. Moreover, there are church schools where most of the student body does not belong to that church.

89. HCJ 2828/02 Al-arfan v. Minister of Education [2004] TakSC 2004(2) 232. The total number of students enrolled in Christian primary schools during the school year 2005-2006 was 22,632 out of a total of 137,192 in all primary recognized schools; see Ministry of Education, *Budget Proposal for the Budget Year 2007 No. 11*, at 11 (Oct. 2006).

90. See ZAMERET, *supra* note 7, at 142 ("Opponent" communities oppose Hasidism. They are also known as Lithuanians).

between a “Small *Yeshiva*” [*Yeshiva ketana*] for ages thirteen to sixteen and “High - *Yeshiva*” [*Yeshiva gevoha*] from the age of seventeen. Girls are educated in a separate network.

The number of students in the ultra-Orthodox schools has increased significantly, from 5,000 (five percent of primary school age population) upon the establishment of the State of Israel to about 200,000 (12.7 percent) at the turn of the century,⁹¹ and the numbers keep growing. At the same time the proportional numbers of students, both in State Education schools and in Religious-State Education schools, dropped substantially.⁹² A special division was set in the Ministry of Education, which is administratively in charge of these schools – The Division of Recognized Non-official Education.

A further category includes schools that are neither State nor recognized schools, but which the Minister of Education has decreed that parents and children attending them are exempt from the obligation “to ensure that such child or adolescent attends a recognized educational institute.”⁹³ Though the students and their parents are those who are exempt from the duty to attend State or recognized schools, in jargon the schools themselves are known as “non-recognized” or “exempt” institutions. These institutions belong to ultra-Orthodox Judaism and are run like old fashion education as prevailed in the Diaspora.⁹⁴

A religious community may run schools belonging to various classifications. Thus, the *Chabad* community has an education network belonging to the Religious-State schools alongside with *Talmudei Torah* which are recognized institutions. Likewise, the Noam network runs both schools that are part of the Religious-State schools and others that are recognized schools. Originally these schools have been organized as recognized institutions in order to enable them to establish exclusive schools. Once established as such they endeavor to join the Religious-State

91. *Id.*

92. See VARDA SHIFFER, *THE HAREDI EDUCATION SYSTEM: ALLOCATION, REGULATION AND CONTROL* (Floresheimer Institute for Policy Studies 1998) (Isr.). See also *supra* note 49. A former minister of education predicted that if this trend continues ultra-Orthodox education will account for one-third of elementary school population by the year 2020. Amnon Rubinstein, *The Secular Hourglass*, HA'ARETZ, May 8, 1998.

93. Compulsory Education Law, 5709-1949, 3 LSI 125, § 5(a) (1948-49) (Isr.).

94. *Id.* § 5. Section 5 of the Law refers to “educational institutions”; however, this provision is practically being applied to ultra-Orthodox schools. In a case that came before the Supreme Court, the Ministry of Education ordered the closure of a primary school that was opened in an exclusive settlement in contravention of the Ministry’s provision to register the children to the regional school. In an attempt to frustrate the order, some of the parents approached the Minister of Education requesting to apply to their children the provision of § 5. Upon the Minister’s refusal they petitioned the Supreme Court. The Court dismissed the petition in a short opinion stating that “Section 5 does not apply to this case. This section is not aimed to circumvent the requirements of the Compulsory Education Law. It rather applies to anomalous exceptional cases.” H CJ 4901/98 Carmei Yosef v. The minister of Education [1998] IsrSC 98 (3)705.

schools and enjoy full financial support by the State. A further example is the Reform Movement primary school that is being established at the Leo Beck high-school Haifa campus. In this case the movement finds itself obliged to operate the school as a recognized institution due to the fact that the Haifa municipality rejected the movement's request to operate it as a municipal State school.

The autonomy of private schools, especially religious schools, and the extent of State supervision that may be exercised over them, varies. Generally speaking, the autonomy of exempt institutions is much wider than that of recognized schools. However, even among the latter institutions there exist substantial differences. First, a distinction must be drawn between schools that operate under the Education Ordinance enacted by the British Mandatory government in 1933,⁹⁵ which remained valid in the State of Israel,⁹⁶ and other schools. Secondly, a distinction should be drawn between Religious Communities' schools and others. Church schools in Israel operate under the rules of the Education Ordinance. The right to operate those schools had been recognized by the Palestine Mandate, granted by the League of Nations to Britain, which provides: "The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired."⁹⁷

The Ordinance recognizes as community schools "any school of which the proprietor is a community . . . organized under the Religious Communities (Organization) Ordinance⁹⁸ or exercising jurisdiction in accordance with . . . the Palestine Order in Council."⁹⁹ The Ordinance granted broad autonomy to these schools. Among others, the Ministry of Education is not entitled "to demand any change in the curriculum or internal administration of the school"¹⁰⁰ and its supervision is limited to preserving public order and proper management."¹⁰¹

95. 1 Laws of Palestine 623.

96. A revised version of the Ordinance was published in LSI (N.V.) 31, 15.8.1978 (Isr.).

97. Terms of the British Mandate for Palestine confirmed by the Council of the League of Nations on July 24, 1922; League of Nations Official Journal, August 1922, at 1007-12; Terms of League of Nations Mandates, 2-7, art. 15, U.N. Doc. A/70 (Oct. 1946).

98. 2 Laws of Palestine 1292. It was under this ordinance that the organization of religious communities was made possible.

99. 3 Laws of Palestine 2569. This legislation, which was regarded as supreme law in Palestine, recognized various religious communities and granted their courts jurisdiction in matters of personal status. See Asher Maoz, *Matrimonio E. Divorzio Nel Diritto Israeliano*, 2 DAIMON 222 (2002). See also State Education Ordinance, in LSI (N.V.) 31, § 1, 15.8.1978 (Isr.).

100. *Id.* § 6(b).

101. *Id.* § 6(c).

The Ordinance and the Regulations made under it “give clear expression to the intention of the Government to refrain from all interference in the conduct and management of private schools [conducted by foreign religious and charitable organizations] which is not absolutely necessary for the maintenance of order and good Government.”¹⁰²

According to State Education Law the Minister of Education may regulate the basic curriculum of recognized schools, as well as their administration and inspection. The minister issued the State Education (Recognized Institutions) Regulations, 5714-1953.¹⁰³ According to these regulations, no institution will be recognized, unless it fulfills “the basic curriculum,” which “will consist [of] seventy-five percent of the total curriculum hours in an official education institution.”¹⁰⁴ However, “the basic curriculum” is defined as “the number of hours according to the subjects that are compulsory on each educational institute.”¹⁰⁵ There are no provisions as to the content of this curriculum, save for the fact that an institution wishing to be granted recognition, must submit “a curriculum, including extra-curricular activities.”¹⁰⁶ There are no provisions that the curriculum is subject to the approval of the minister. The result was that these schools enjoyed vast independence in calculating their educational system.¹⁰⁷ In 1969, the Knesset enacted the Inspection of Schools Law.¹⁰⁸ The Law introduced an important innovation in the subjection of schools to State control. Section 28, entitled “Inspection of schools,” provides as follows:

(a) The Minister of Education and Culture may issue to the holder of a license directions which, in the opinion of the Minister, are necessary in order to ensure that the education provided at the school is based on the principles set out in section 2 of the State Education Law 5713-1953.¹⁰⁹

102. See Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of Palestine and Trans-Jordan for the year 1932, *available at* <http://domino.un.org/unispal.nsf/d80185e9f0c69a7b85256cbf005afeac/73f844e0122d6772052565d80053b611!OpenDocument>.

103. State Education Regulation, 1953, KT 5714, 104.

104. *Id.* § 3(c).

105. *Id.* § 1.

106. *Id.* § 2(6).

107. Sebba and Shiffer suggest, however, that the Minister indeed imposed on the non-recognized schools the “*adoption of the basic curriculum*.” Sebba & Shiffer, *supra* note 85, at 166-67 [emphasis in the original]. They, moreover, submit that the expression “basic curriculum” in § 11 of the Law, “refer to the ‘basic curriculum’ that constitutes the compulsory element in the teaching curriculum which the Minister has to determine for official schools . . . unless it was anticipated that he would provide for a *different* basic curriculum for unofficial schools.” *Id.*

108. Inspection of Schools Law, 5729-1969, 23 LSI 180 (1968-69) (Isr.).

109. *Id.* § 28(a).

(b) The curriculum, textbooks, references books, teaching aids and teaching achievements of the school shall be subjected to the inspection of the Minister of Education and Culture and shall conform to the general directions obtaining in the type of school.

However, attention must be called to the fact that the subjection of schools to the principles of State education is not automatic and depends upon directives issued by the Minister.

The law applies, according to its definition, to “any school in which more than ten students study or are being educated systematically.”¹¹⁰ Section 36 originally provided that the Law will apply to existing schools six months after its publication, unless the Minister postponed this date. This provision has been repealed, however, and its existing version empowers the Minister to gradually apply the Law to existing schools after consulting the Education and Culture Committee of the Knesset.¹¹¹ Indeed, the Minister issued several orders, the latest from 1977, providing for a wide application thereof. The Law does not apply, however, to *yeshivas*, as well as seminaries for the training of clergies. Nor does it apply to religious studies in high-school *yeshivas*.¹¹² In the same vein it does not apply to institutions of higher education.¹¹³

Another important statute regarding the administration of, *inter alia*, recognized non-official schools, as well as exempt institutions, is the Student Rights Law, 5761-2000.¹¹⁴ This Law was enacted in order to comply with the U.N. Convention on the Rights of the Child¹¹⁵ of which Israel is a signatory.¹¹⁶ The Law prohibits an educational institution from discriminating against a student, or a potential student, on the basis of ethnic affiliation, socio-economic background or political views.¹¹⁷ This provision applies both to the admittance and expulsion of students and to their treatment in school.¹¹⁸ The provision expressly does not apply to exempt schools;¹¹⁹ However, this provision has been introduced in the

110. *Id.* § 2(a).

111. *Id.* § 36, amended by Inspection of Schools Law, 5729-1970, 24 LSI 157 (1969-70) (Isr.).

112. *Id.* § 2(a)(4).

113. *Id.* § 2(a)(2).

114. Student Rights Law, 2000, S.H. 42.

115. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/49 (Nov. 20, 1989), available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

116. See U.N. Convention on the Rights of the Child, KA 31, 279. A commission appointed by the Minister of Justice recommended alterations in the Student Rights Law in order to make it more compatible with the provisions of the convention and apply them to all the students in the education system; see *The Commission for the Examination of Basic Principles in the area of the Child Rights and the Law and their Application in Legislation: Report of the sub-Commission on Education* (Feb. 2003) (Isr.).

117. Student Rights Law, 2000, S.H. 42, § 5.

118. *Id.* § 5(a)(1).

119. See *id.* § 16.

Inspection of Schools Law,¹²⁰ and as such applies also to them. Several provisions, referring to the procedure of expelling students from school and to the establishment of student councils do not apply to non-official schools unless the Minister has otherwise ordered.¹²¹

Another relevant statute is the Prohibition of Discrimination in Supplies, Services and Entrance into Entertainment Areas and Public Venues Law, 5761-2000.¹²² Section 3 of the statute prohibits a supplier of public services from discriminating, *inter alia*, on grounds of race, religion, nationality and origin. According to section 2, public service includes services in the area of education. In the explanatory notes to the statute bill¹²³ it was made clear that the law also applies to the private sector when engaging in public services. In a case involving a claim of discrimination in admittance to school, the court stated: “A refusal to register a student to a school due to his or her ethnic origin, when registration is open to other ethnic groups ... constitutes a discrimination in the supply of a public service.”¹²⁴

The question of the autonomy of private schools, especially of religious schools, and the extent of the supervision that can be exercised over them, has come before the courts on several occasions.

In the *Jabareen* case,¹²⁵ the issue was the refusal of the St. Joseph high school, owned by the Greek-Catholic Malachite community, to enroll a female Muslim student unless she agreed to attend school bare headed and to participate in co-gender physical education activities wearing a gym suit. The school is managed by the Church and has educated the community's priests in the past. Over the years it has opened its gates to students of other communities, and at present, most of the students do not belong to the Greek-Catholic community; in fact, a third are Muslim.

The Israeli legislator refrained from applying the Inspection of Schools Law, which as we have seen entitles the Minister of Education to issue directives to the owner of the school so as to ensure that the education provided at the school is based on the principles of State Education Law. The Ministry of Education pursued a stated policy of “broad discretion and freedom of choice for schools, consistent with the special needs of each community served by the school,” especially “for private schools serving a

120. See Inspection of Schools Law, 5729-1969, 23 LSI 180, § 32(a1) (1968-69) (Isr.), as amended by the Student Rights Law, 2000, S.H. 402.

121. Inspection of Schools Law, 5729-1969, 23 LSI 180, § 16(a) (1968-69) (Isr.).

122. Prohibition of Discrimination in Supplies, Services and Entrance into Entertainment Areas and Public Venues Law, 2000, S.H. 58.

123. Prohibition of Discrimination in Supplies, Services and Entrance into Entertainment Areas and Public Venues Law, 2000, HH, 370.

124. CC (Kefar Sabba) 5244/02 Nathan v. Ministry of Education [2006] Tak-Magistrate 2006(3) 14118, § 73.

125. HCJ 4298/93 Jabareen v. Minister of Education [1994] IsrSC 48(5) 199.

recognized religious community in Israel.”¹²⁶ In the *Jabareen* case, the Supreme Court indicated that had it been a State school, the student would have been entitled to cover her head, because “it is right to grant every student the freedom to express in her dress the principles of her religion. Rules regarding the uniformity of dress should not prevail over the student’s freedom of religion.”¹²⁷ But the situation was different in the case of a private school belonging to a religious community, which is by definition entitled to reject students who are not part of the community. In this case,

the requirement for uniform dress and conduct reflects educational considerations related to the character and essence of the school as an institution of that religious community. The uniform dress and conduct serve as a common denominator that allows all students — Christians of the Greek-Catholic community and Christians of other communities, as well as non-Christians — to lead a common life within the school, based on religious and ethnic pluralism. Violation of the uniform dress code and conduct will harm the character and the unique feature of the school, which will harm the unique character and the (moderate) religious spirit that is prevalent in the school.¹²⁸

The Court made it clear, however, that “the educational autonomy of a ‘community school’ is not absolute,” and that if the school’s decision had not been substantively just, and “if these reasons had been based on uniformity as an independent value, [we] would have been ready to rule that the freedom of religion of the appellant outweighs them.”¹²⁹

These issues were discussed extensively in a Jerusalem District Court ruling.¹³⁰ The case involved an ultra-Orthodox school (*Talmud Torah*), an “exempt institution” with a student body from Hassidic families, which refused to admit students of the *Lubavitch* Hassidic community. The school offered two justifications for its refusal. First, the students and their parents believed that the Lubavitch Rabbi was the Messiah, “which is contrary to the fundamental faith of the Hassidic group.”¹³¹ Second, the language of instruction of the *Talmud Torah* was Yiddish, not Hebrew, a

126. Quotation from the Ministry’s response to the petition. *Id.* at 202.

127. *Id.* at 203 (Barak, D.P.). It is submitted that this statement must be read subject to the right of Religious-State schools to maintain a religious way of life. Indeed, one of the Justices referred, in an obiter, to a pupil in such school refusing to cover his head. He stated that he was not convinced that “in a conflict between freedom of expression of the pupil and the educational framework within which he studied, he would prevail, in spite of the education for tolerance and pluralism.” *Id.* at 204-05 (Goldberg, J.).

128. *Id.* at 204 (Barak, D.P.).

129. Administrative Petition (Jerusalem) 1320/03 Alkeslasi v. City of Betar Illit [2004] Tak-District 2004 (2) 6351.

130. *Id.* § 20.

131. *Id.* § 3.

language that the said students did not master.¹³² Nevertheless, the local council offered to admit the students within the framework of a *Lubavitch* track operating in the very same school, but this offer was rejected by the parents.

In a comprehensive ruling, the Court discussed the status of private schools that operate as exempt institutions, and the extent of state oversight exercised over these schools.

The existence of private schools alongside the official ones is one of identifying marks of participatory democracy. This type of regime encourages community action and makes it possible for the community to manage its affairs as it best understands, among others by operating educational institutions. Private schools relate to the need to ensure the continued existence of various streams within a multi-cultural society, thereby also promoting the personal autonomy of individuals as expressed in their ability to exercise control over their education. The attempt to dictate the content and method of education is liable to create opposition by causing injury to this autonomy. Imposing a uniform educational policy may harm the special needs of various communities and their desire to preserve their unique culture and identity. It can be said that a complete rejection of private schools is liable to harm human dignity and in certain circumstances even the fabric of democratic life. In addition, such rejection injures the right of the minority to organize as a community where such right is recognized.¹³³

This is especially true “when a community with unique characteristics, including religious ones, exists.”¹³⁴

At the same time, the Court pointed out that,

it is necessary to examine not only the contribution of a unique education system to the preservation of the tradition and culture of a minority group, but also the abilities that its graduates bring to the labor market and the opportunities open to them for creative involvement with society at large. It follows that a solution is needed that prevents the involuntary disintegration of minority groups but at the same time protects their members and affords them sufficient mobility to migrate toward the majority if they so desire.¹³⁵

Consequently, it is necessary “to ensure equality. Equality must exist both in the conditions of the community vis-à-vis general public and vis-à-vis

132. *Id.*

133. *Id.* § 10.

134. *Id.* § 12.

135. *Id.* § 15.

other communities, and in the terms under which it is possible to join the community.”¹³⁶ Nevertheless, “it is necessary to safeguard a minimal level and compliance with borderline requirements of openness, equality, and variety.”¹³⁷ The Court ruled that the respondent school, as part of a separate community education system, was exempt from the uniform curriculum of the Ministry of Education so that it may promote the cultural values of the community,” but the institution is subject to the basic kernel of social values” and is not immune from State supervision.¹³⁸ The Court ruled that the Ministry of Education must verify that the institution complies with the said minimal conditions before recognizing it as an “exempt institution” and must supervise their implementation. The Court added that “the level of supervision does not depend on the values of the supervised entities. Supervision and its extent are determined by the values that society is interested in promoting.”¹³⁹ These values also apply to schools whose budget the state does not contribute, “the more so to an exempt institution that is financially supported by the State.”¹⁴⁰ The Court charged the school in question to establish clear rules; to be supervised by the Ministry of Education, which would prevent discrimination in student admissions. In this regard, the Court ruled that students who seek to be admitted to an “exempt institution” and who can overcome the “language barrier and are willing to accept the school’s customs and rules cannot be rejected on the ground of their parents’ world view.”¹⁴¹

This decision seemed far-reaching in Israeli reality where there was no actual supervision over “exempt institution” except for safety and sanitary conditions. Although the Ministry of Education dispatched a supervisor to submit a pedagogical evaluation and to approve the curriculum, in practice the Ministry did not exercise any substantial supervision over “exempt institutions.”

This decision was followed in a further case, involving ultra-Orthodox high-schools for girls. The schools were accused of exercising a discriminatory policy by applying a quota in admitting candidates of oriental origin. Referring to these schools, that were recognized non-official institutions, the Court said:

These institutions enjoy wide pedagogical autonomy which is a manifestation of the democratic regime. This regime encourages the opportunity of communities to preserve their distinctive framework, *inter alia*, by operating separate education institutions. The need to preserve the distinctive character of the

136. *Id.* § 17.

137. *Id.* § 21.

138. *Id.* § 20.

139. *Id.* § 26.

140. *Id.* §§ 26-27.

141. *Id.* § 27.

various communities does not surpasses however the need for public authority supervision when basic rights of utmost importance are at stake. The principle of equality, that negates discrimination, must be highly guarded even within the closed and unique framework of the community particularly within the non-official education institutions. . . In balancing between the preservation of the autonomy of the education institutions and the preservation of equality and the dignity of the child, priority should be accorded to the basic values.¹⁴²

Following the Court's ruling the Ministry of Education issued directives to all recognized non-official schools ordering them to adopt "an equal, clear and measurable procedure, which will facilitate control and inspection by the Ministry." The criteria to be applied in the registration and admittance of students must be "professional, equal and clear."¹⁴³

In further rulings the courts intervened in cases of expulsion of students from recognized non-official schools without granting them fair hearing and without providing them alternative schooling. The courts did so in spite of the fact that the relevant provisions of the Student Rights Law do not apply to them. The courts did so since the expulsions did not conform to the Circular of the Director General of the Ministry of Education. The courts stated that this circular was binding upon the schools under section 28 of the Inspection of Schools Law, authorizing the Minister to issue orders in order to affect schools' conformity with the objectives of State Education Law.¹⁴⁴ The Court applied the circular also to church schools, which are not subject to the Inspection of Schools Law. It found the authority to issue such directives in section 6(c) of the Education Ordinance enabling the Minister to exercise inspection over the school "as necessary for the preservation of public order and proper management."¹⁴⁵ The Court distinguished this case from the *Jabareen* decision asserting that

142. Administrative Petition (Jerusalem) 241/06 The Association for Civil Rights in Israel v. Ministry of Education [2006] Tak-District 2006 (2) 2143.

143. See *Instructions for the admittance and registration of students by schools that are supervised by the Department of Recognized Non-Official Education* (May 7, 2006) (Isr.), available at

<http://cms.education.gov.il/EducationCMS/Units/Owl/Hebrew/Nehalim/Naalim/Hanchayot/Lerishum.htm>. Based on these directives, the court rejected the Association for Civil Rights petition to apply contempt of court proceedings against the Ministry for not complying with the courts ruling; Court decision from Oct. 20, 2006 (unpublished). See also Yuval Vergen, *Procedures for Admitting Students into the Haredi recognized non-official education* (Knesset Oct. 22, 2006) (Isr.), available at <http://www.knesset.gov.il/mmm/data/docs/m01660.doc>.

144. See Administrative Petition (Jerusalem) 7267/03 Abu-Zayad v. "El Farid" School [2003] Padaor 708(4) 03. See also H CJ 4363/00 Committee of Poriya Ilit v. Minister of Education [2004] IsrSC 56(4) 203.

145. Civil Application (Nazareth) 1090/05 Anonymous v St. Joseph School, [2005] Tak-District 2005 (2) 365, 368.

the expulsion of students is not included within the inner administration of the church school that is submitted to the school's autonomy.¹⁴⁶

A mirror case of the *Jabareen* decision has been tried recently by the Jerusalem Magistrate Court.¹⁴⁷ A Jewish ultra-Orthodox recognized primary school cancelled the admittance of an applicant on the ground that her mother did not dress modestly enough, especially so when appearing in school where her three other children were already enrolled. When admitted to school parents of applicants were made to sign a document. In the document they made several commitments: that they run their home according to *Halakhic* requirements; that the father steadily studies Torah; that the mother always covers her hair and follows *Halakhic* rules of modest dressing and that the children do not watch television without the parents supervision. The parents moreover agree that should their declaration prove false the school may expel the child. The Court approved the school's privilege "to set standards and requirements for admittance of students in order to carry out the objectives of the Law and maintain the distinction and character of the institution."¹⁴⁸ The court ruled, however, that the set standards and requirements must be reasonable and should not infringe basic rights set out in the Student Rights Law. Moreover, "they should be qualitative in the sense that they must ensure the goal of Compulsory Education Law, *i.e.* – to enable the creation of a unique educational frame that corresponds to the needs of various populations."¹⁴⁹ The Court added that "in view of the special status that the law bestows upon the recognized non-official institution, in view of its goal and the unique benefits provided by law, when fixing the standards for admittance the institution must ensure that they represent the substantial educational goals for which the institution operates."¹⁵⁰ The court refrained from ruling upon the school's criteria, since in any case they were obscure and the steps taken by the school were disproportionate.¹⁵¹ The court found that by rejecting the student, while her brothers were enrolled in the same school, and by doing so at a late stage, the school infringed the dignity of both the student and parents and ordered the school to pay them compensation.¹⁵²

In another case¹⁵³ a child was rejected by an ultra-Orthodox school due to the fact that "her mother did not conform with the modesty standards as specified in the school's spiritual rules." The Ministry of Education

146. *Id.*

147. Petty Claims (Jerusalem) 2873/06 Bernstein v. Baror [2006] Tak-Magistrate 2006(4) 20621.

148. *Id.* at 15.

149. *Id.*

150. *Id.* at 16.

151. *Id.* at 19.

152. *Id.* The plaintiffs did not ask that their daughter be reinstated.

153. Administrative Petition (Tel-Aviv) 2176/06 M.Y. (Minor) v. Ministry of Education, [2006] Tak-District 2006(4) 8156.



declared that there was “no defect in the admission requirements of the spiritual rules, including the issue of modesty of the parents.” This was so “due to the special nature of the *Haredi* population and the need for full conformity between the school values and behavior and the students home.” The Ministry added that the school, which is a recognized non-official institute, must be given autonomy “to choose its students in consideration with their reliability and behavior, in accordance with the rules that will express the school’s spirit.”¹⁵⁴

Ultra-Orthodox schools go much further in intervening in the lifestyle of their student body’s families. Their educational system is supervised by the Rabbinical Committee on Education. Two years ago the Rabbinical Communications Committee ruled that one may only use an approved “kosher” cellular telephones that block access to Internet and erotic phone calls. Recently, the Rabbinical Committee on Education issued, a decree, supported by Rabbi Yosef Shalom Elyashiv, who is regarded as the leading contemporary Halakhic authority. In the decree the committee declared that “parents who use non-approved cellular phones remove themselves from the Haredi community that united to root out the disease.” The committee ordered the schools to demand parents to sign a declaration that they do not use non-approved cellular phones as a condition for admitting their children to school.¹⁵⁵

2.7 State Funding and School Curriculum

State schools are fully funded by the State and local authorities.¹⁵⁶ Recognized schools, on the other hand, are not automatically entitled to State funding.¹⁵⁷ The logic behind this distinction has been explained by the Supreme Court as follows:

154. The court refrained from examining the schools spiritual rules, since they were not challenged by the petitioners. In the same vein, the Ministry backed a decision by a *Haredi* school to expel a female senior student after her boyfriend proposed to her via a poster he hanged opposite the school gate. “In these schools,” explained the Ministry’s inspector, “contacts with a male means crossing a clear red line, and is an issue that cannot be ignored”; Yuli Haromentchko, “*Karin will you marry me?*” said the poster at the entrance to a *Haredi* high-school in Tel-Aviv – and Karin was expelled from school, HA’ARETZ (Isr.), available at

<http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=551782&contrassID=2&subContrassID=21&sbSubContrassID=0>. See also CC (Kefar Sabba) 5244/02 Nathan v. Ministry of Education [2006] Tak-Magistrate 2006(3) 14118, § 73 (where a child was rejected by a national religious school due to the fact that “her mother did not conform to the school’s spiritual rules regarding the required modesty standards”).

155. See YATED NE’EMAN, Feb. 2, 2007 (Isr.), available at <http://www.yated.com/>.

156. See Compulsory Education Law, 5709-1949, 3 LSI 125, § 6 (1948-49) (Isr.).

157. The only exception is the Minister’s authority to provide, by order, that a child who cannot pursue his studies in an official school will study in another institution and his schooling be funded by the State.



Whoever wishes his child to study [in a private recognized school] accepts upon him willingly the burden of financing that is not imposed on students in the official education. This rule stems from the fact that studying in this school is a result of free choice, and there is no duty incumbent upon the public authority to bare the cost of studying there.¹⁵⁸

However, under provisions of the Law, the Minister of Education may fix regulations, the State's participation in the budget of non-official schools, "if the Minister so decides and to the extent that he will decide."¹⁵⁹ From the very first days, the State supported recognized non-official schools, including church schools, though the scope of supported institutions, as well as the amount of support varied over the years. "Exempt" schools managed to receive State funding as well.¹⁶⁰

As with State funding in general, the allocation of support for education institutes was made on an administrative level. It lacked any clear criteria and was a result of political pressure.¹⁶¹ The Supreme Court ruled, however, that the State cannot spend money without clear statutory authorization.¹⁶² This ruling led to a change in practice, under which State funding of private schools was provided for by the Annual Budget laws. This practice brought about no improvement in ensuring equality in the allocation of funds. The budget laws used to state individually the funds allocated for each and every institution without any clear and equal criteria. As a matter of fact, the amount allocated to a specific institution often reflected the political power of a Haredi party or a Haredi Member of the Knesset with whom the institution was affiliated.¹⁶³ Further criticism led to an amendment of the Budgetary Principles Law.¹⁶⁴ The Law, as amended, mandates "equitable tests for the disbursement of the amount allocated in

158. See H CJ 4363/00 Committee of Poriya Ilit v. Minister of Education [2004] IsrSC 56(4) 203, 217.

159. See State Education Law, 5713-1953, 7 LSI 113, § 11 (1952-53) (Isr.).

160. Extreme ultra-Orthodox schools are also exempt institutions, yet they decline to accept State funding as they do not recognize the legitimacy of the State of Israel; this is so since they regard the establishment of a Jewish state without awaiting Messiah a revolt against God. Such are the institutions of the *Eda Haredit* [the Haredi community] or *Naturei Karta* [Guardians of the City].

161. For a comprehensive analysis of State finances see Amnon De Hartog, *State Support for Public Institutions – The Emergence of Special Allocations*, 29 MISHPATIM 75-107 (1998) (Isr.). See also AMNON RUBINSSTEIN & BARAK MEDINA, 1 THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL: BASIC PRINCIPLES 289-96 (Schocken 6th ed. 2005) (Isr.).

162. See H CJ 59/88 Tzaban v. Finance Minister [1989] IsrSC 42(4) 705.

163. Cf. H CJ 166/84 Yeshivat Tomchei Temimim v. The State of Israel [1984] IsrSC 38(2) 273.

164. Budgetary Principles Law, 5745-1985, 39 LSI 61 (1984-85) (Isr.), as amended by 1992, S.H. 34.



the budget for the support of public institutions.”¹⁶⁵ The Law defines a “public institution” as including “an entity that is not one of the State’s institutions operated for an educational purpose.”¹⁶⁶

Nevertheless, the Law did not eliminate the discrimination among the institutions. This is so because it does not provide for equal funding of all the institutions, but rather for equal funding within the same kind of public institutions.¹⁶⁷ The Law does not prohibit the creation of several categories of education institutions that would be funded according to different criteria. Moreover, religious institutions, including schools, were funded by other governmental sources - such as the Ministry of Religious affairs - on top of the funding by the Ministry of Education. The Ministry of Social Affairs also funded boarding schools for children at risk, including a high proportion of ultra-Orthodox institutions.¹⁶⁸ In 2003, the Attorney General provided that educational institutions may not received funding from the Ministry of Religious affairs as well, as this would mean double funding. The funds for supporting religious schools – secondary schools, girls’ colleges, high-school *yeshivas* and small *yeshivas* – were therefore transferred to the Ministry of Education.

A ministerial committee established the criteria for funding reinforced Judaic studies in State schools, Religious-State schools and ultra-Orthodox schools. The funds were divided into two tracks. The first track (amounting to 85m NIS in the year 2005) was to support Religious-State in schools preparation of students for expanded matriculation exams in Judaic subjects. The second track was supporting reinforced classic Judaic studies. The funding under this heading was allocated as follows: 62m NIS to ultra-Orthodox schools and merely 7.8m NIS (5.2 percent of the total budget) to State schools. A coalition of Jewish organizations whose aim is to advance the renaissance of pluralistic Judaism challenged these criteria arguing that they discriminate against State schools. The Supreme Court

165. *Id.* § 3A(e).

166. *Id.* § 3A(a).

167. It is doubtful, moreover, whether the old defective system has completely vanished. As late as 1998 it has been noted that “[a] close examination of the figures leads to the conclusion that the increases and decreases in State allocations over the years result not from changes in the financial needs of ultra-Orthodox schools and *yeshivas* but rather from changes in the power of the ultra-Orthodox political parties.” SWIRSKI, *supra* note 50, at 3. Thus, in order to recruit a majority in the Knesset for approving the State Budget Law for 2006 the Government agreed to include in the Law special allocation for High School *Yeshivas* and Girls’ Colleges affiliated with the Religious-State Education network, as well as for ultra-Orthodox *Yeshivas* and religious institutions. See Tzvi Zerachia, *The Cost of the Passing of the Budget: 302 Million Shekel*, HA’ARETZ, June 6, 2006; Tzvi Zerachia & Yair Ettinger, *Knesset Approved the Arrangement Law: The Torah Judaism Abstained*, HA’ARETZ, June 6, 2006.

168. See SWIRSKI, *supra* note 50.

dismissed the petition.¹⁶⁹ The Court justified the special allocation of funds for Religious-State schools since the expanded matriculation exams in Judaic subjects were compulsory on all their students.¹⁷⁰ The Court justified the criteria for allocation of funds to support reinforced classic Judaic studies as this was in line with the Ministry's policy to advance the teaching of these subjects.¹⁷¹ The Court rejected the petitioner's argument that the criteria were tailored to suit ultra-Orthodox schools. The Court emphasized that the criteria did not provide for the content of the reinforced Judaic studies, but rather for their extension.¹⁷² The Court also pointed out the fact that this funding was in addition to the funds allocated for the implementation of the Shinhar Report, which adopted a wider definition of Judaism and was designed exclusively for State schools.¹⁷³

However, the most obvious discrimination is drawn between the Independent Education Network and the Centre of Fountain of Religious Education in Israel on the one hand, and all other recognized institutions on the other.¹⁷⁴ This is so since the Law explicitly states that the said provision does not apply to these networks. Rather, the law provides that these networks should be funded "according to uniform and equal criteria like the entire Israeli kids."¹⁷⁵ In interpreting this provision the Supreme Court ruled that the said networks should be funded "by the parameters according to which official education institutions are being funded."¹⁷⁶ This provision creates further discrimination between these networks and Religious-State schools. This is so since all of them compete, to a large extent, over the same potential student body. In this competition the

169. HCJ 11020/05 Panim for Jewish Renaissance in Israel v. Minister of Education [2006] Tak-SC 2006(3) 508.

170. *Id.* at 13-19.

171. *Id.*

172. *Id.*

173. *Id.*

174. This discrimination is a result of historical as well as political realities. The Independent Education Network is a continuation of the *Agudat Yisrael* schools that were official streams under the Compulsory Education Law but refrained from joining State education. It is perhaps worth noting that both this network, as well as and the Centre of Fountain of Religious Education in Israel belong to political parties that are represented in the Knesset and are frequent partners to the Government. See Compulsory Education Law, 5709-1949, 3 LSI 125, §2.6 (1948-49) (Isr.).

175. Budgetary Principles Law, 5745-1985, 39 LSI 61, § § 3A(i), 3A(j)(l) (1984-85) (Isr.).

176. HCJ 10808/04 The Movement for Quality Government in Israel v. Minister of Education [2006] Tak-SC 2006(3) 193. The Court rejected the petitioners' proposal to interpret the phrase "the entire Israeli kids" as referring to "Israeli kids who study in recognized schools." It is possible to interpret this provision as stating that in order to qualify for equal funding the said networks must also comply with the requirements imposed on State schools, namely teaching their basic curriculum. This interpretation is, however, most unlikely in view of sub-section 3A(j)(3) providing that "the nature and status of the *haredi* education in these [networks] shall be preserved." *Id.*

Religious-State schools are disadvantaged, since unlike the recognized schools, they must fully abide by the provisions and limitations imposed by State Education Law.¹⁷⁷ Indeed, the Supreme Court ruled that “the Budgetary Principle Law explicitly establishes the discrimination in the funding of the Torah educational networks and thereby legalizes an unequal distribution of government support.”¹⁷⁸ This ruling has been upheld in a later opinion.¹⁷⁹ The Court recommended, however, that the Knesset apply this provision to all recognized schools, in order to prevent discrimination.¹⁸⁰

In view of the discriminatory nature of the provision, it was ruled that it should be given strict interpretation. It should be limited to State support to the institutions within the framework of the annual budget. It does not apply to support from other authorities, such as local councils. Hence, the Court prohibited the allocation of a building, by a local council, for the use of a school affiliated with Centre of Fountain of Religious Education in a preferential manner. The Court ruled that the school does not have the same right as an official school.¹⁸¹

On December 2006, a draft bill to amend the State Education Law was submitted to the government by Minister Meshulam Nahari, from the *Shas* party. According to the bill local authorities must finance recognized non-official schools by the same ratio and conditions as the State's support. The bill follows a government decision from Nov. 20, 2006 and stems from the coalition agreement with *Shas*. If adopted the bill will put an end to the variety of municipal funding for recognized schools depending usually on the question of who runs the municipality.¹⁸²

Just as the move from Religious State schools to ultra-Orthodox education,¹⁸³ recent years witnessed a decline of both the Independent Education Network and the Centre of Fountain of Religious Education in Israel and the strengthening of other ultra-Orthodox institutions

177. Cf. H CJ 306/05 The National Religious Party v. The Government of Israel [2005] Tak-SC 2005(3) 2141. See generally DAN GIBTON, EDUCATION ACCORDING TO LAW: LEGAL ASPECTS AND LEGAL RAMIFICATIONS OF THE TASK FORCE REPORT (Isr.) (on file with author).

178. H CJ 2828/02 Al-arfan v. Minister of Education [2004] IsrSC 2004(2) 232.

179. H CJ 10808/04 Movement for Quality Government in Israel v. Minister of Education [2006] Tak-Supreme 2006(3) 193.

180. *Id.* § 10.

181. Administrative Petition 1187/05 The Representatives of the Condominium v. The Municipality of Petach Tikva [2005] Tak-District 2005(3), 413; Appeals from the decision were withdrawn by the appellants: Administrative Petition Appeals 9150/05, 9153/05 Centre of Fountain of Religious Education & Petach Tikva Municipality v. Representatives of the Condominium [2006] Tak-SC 2006(3), 1731.

182. *Participation of the Local Authorities in Support of Recognized Education Institutes (Isr.)*. See Avirama Golan, *Infringment of the Nationalistic Approach*, HA'ARETZ, Dec. 26, 2006; available at <http://www.haaretz.co.il/hasite/spages/805721.html?more=1>.

183. See *supra* note 50.

. Thus, while in 1999 the said networks constituted sixty-one percent of the student body of all ultra-Orthodox student body, it dropped to 56.65 percent by 2006.¹⁸⁴ This phenomenon might be attributed to two factors. The first might be the fact that fragments of Israeli society turn more Orthodox. The other is Inspection of Schools Law: the fact that the state funds all recognized schools regardless of the number of students and other conditions, except for the minimal requirements under the Inspection of Schools Law,¹⁸⁵ encourages the establishment of small schools with minimal investments.

School funding in Israel generated heated political as well as legal controversy. Additionally, there were complaints that the State neglected its obligation to provide adequate education to students in order to prepare them for life because ultra-Orthodox institutions declined to teach “secular” subjects.¹⁸⁶ In this regard attention should be called to the “*status quo* agreement,”¹⁸⁷ which is considered as guarantying the autonomy of Orthodox Religious education. Indeed, the agreement ensured “complete autonomy for every stream in Education” and declared that “there will be no derogation by the government against the religious consciousness and the religious conscience of any section in Israel.”¹⁸⁸ The agreement, however, explicitly declared: “Of course, the State will lay down the minimal obligatory lessons in the Hebrew language, history, sciences etc., and will supervise the implementation of this minimum.”¹⁸⁹ Subject to this provision, the agreement stated that the State “will give full freedom to every stream to run its education in accordance with its consciousness, and will avoid any harm to the religious conscience.”¹⁹⁰

184. In the year 2005-2006 the total number of students enrolled in recognized non-official primary schools was 137,392. This number included 68,836 students in the Independent Education Network; 18,332 in the Centre of Fountain of Religious Education in Israel; 25,013 in other ultra-Orthodox schools; 2,379 in Jewish non-religious schools and 22,632 in Arab Christian schools. The number of students enrolled in exempt ultra-Orthodox schools was 41,664. During the budget year 1998-1999, 97,477 students were enrolled in recognized schools. They included 54,870 students in the Independent Education Network; 14,107 in the Centre of Fountain of Religious Education in Israel; some 12,532 in other ultra-Orthodox schools; less than 1,000 in Jewish non-religious schools and 15,000 in Arab recognized schools. And, 69,400 were enrolled in ultra-Orthodox exempt schools. This data is based on a comparison of the budget drafts of both years. Ministry of Education, *Budget Proposal for the Budget Year 1999 No. 11*, at 11 (Oct. 1998); Ministry of Education, *Budget Proposal for the Budget Year 2007 No. 11*, at 11 (Oct. 2006).

185. See Inspection of Schools Law, 5729-1969, 23 LSI 180 (1968-69) (Isr.).

186. See REPORT OF THE SUB-COMMISSION ON EDUCATION 237-39 (Ministry of Justice 2003) (Isr.), available at <http://www.justice.gov.il/NR/rdonlyres/27026F32-DBE8-424A-9FED-48DF6DCC2D5/0/DOCHHINUH.pdf>.

187. See Fridman, *supra* note 5.

188. *Id.* (last paragraph of the letter).

189. *Id.*

190. *Id.* (last sentence of the letter).



In 1999, the founder of a secular NGO petitioned the Supreme Court arguing that the Minister of Education failed in his duty to set a basic curriculum for recognized education institutions. He argued that State Education Law was meant to ensure that every student will study core subjects in order to equip him with the necessary knowledge and tools that will enable him to become part of society. A co-petitioner, a graduate of an ultra-Orthodox education institute, claimed that he had been deprived of studying basic subjects that were necessary for his career and continuing education. In his response the Minister undertook to prepare and publish a basic curriculum as required “within 30 days.” This undertaking became part of the Courts decision.¹⁹¹ Following the decision the Minister of Education established a Commission for Examining the System of Budgeting, headed by Dr. Shimshon Shoshani, a former Director General of the Ministry. The Commission submitted its recommendations that were endorsed by the Minister.¹⁹² Following, the Ministry of Education adopted a core curriculum that must be taught at all primary educational institutions in order to make them eligible for State funding. The Director General of the Ministry of Education issued a circular that implemented the decision.¹⁹³ The circular established what is known as “the Core Curriculum Scheme” for primary education in Israel (grades one through six). It stated “the common denominator, consisting of substances, skills and values that are obligatory to all the students in the Israeli education network.”¹⁹⁴ The subjects included in the scheme have been defined as “the obligatory basis in the entire education network,” on which the various schools may add complimentary subjects.¹⁹⁵ The Core Curriculum comprises of four compulsory and two recommended clusters of subjects. The compulsory clusters are: Heritage (including Bible and history) and social studies (including civic studies); Language and literature (Hebrew language and literature for Jewish schools; Arab language and literature for Arab schools; and English language and literature for all schools); Mathematics and Sciences; and Physical Education. The recommended

191. HCJ 2751/99 Paritzky v. Minister of Education, available at <http://elyon1.court.gov.il/files/99/510/027/a02/99027510.a02.pdf>. A similar view was presented, by Sebba and Shiffer. Referring to section 11 of the State Education Law, they state: “While this provision is drafted in discretionary language it seems to imply that financial support from the state was to be conditional upon a degree of regulation.” Sebba & Shiffer, *supra* note 85, at 166.

192. See Ministry of Education, *Report of the Commission for Examining the System of Budgeting* (2002) (Isr.), available at <http://cms.education.gov.il/http://cms.education.gov.il/EducationCMS/Units/Owl/Hebrew/HoraotNehalim/Mediniyut/DohShoshani.htm>.

193. Ministry of Education, *Basic (Core) Program for Elementary Education in the State of Israel* (Isr.), available at http://www.education.gov.il/edun_doc/sf3ak3_1_25.htm.

194. *Id.* § 2.

195. *Id.*

clusters include Fine Arts and School Culture. It was stated that teaching the Core Curriculum is a prerequisite for obtaining State funding. State schools (general; religious, Arab and Druze) must teach the entire curriculum, while recognized schools must teach seventy-five percent of the curriculum and exempt schools – only fifty-five percent.

In 2002 the Union of Teachers in High Schools, Seminaries and Colleges petitioned the Supreme Court to suspend the funding of *Haredi* high schools that do not teach the basic curriculum including “the basic pedagogical knowledge that each boy and girl in the State of Israel must obtain.”¹⁹⁶ In a statement submitted to the Court, the Ministry of Education declared that it adopted a policy to be implemented gradually in primary schools up to the school year 2005-2006.¹⁹⁷ According to this policy, recognized schools that will teach the set core curriculum and, on top of that, will admit students on an integrative basis and will take part in the Growth and Effectiveness Measures for Schools [GEMS; *Meitzav*, in Hebrew acronym] including feed-back tests will obtain seventy-five percent of the budget of State schools. Recognized schools that will not admit students on an integrative basis will receive sixty-five percent and will have to teach only 65% of the curriculum. Exempt schools will not be subject to these requirements and will obtain fifty-five percent of the budget. The Independent Education Network and the *Sephardic* Centre of Fountain of Religious Education in Israel will continue to obtain full funding, provided they teach the entire core curriculum. The Ministry stated that teaching the core curriculum is a prerequisite for obtaining a permit for opening new schools and that, in some cases, permits of existing schools that do not teach it might be suspended. “As for intermediate schools and high schools,” declared the Minister, “completion of the budgetary reform will need to be spread over several years.” This is so since the Ministry will have to prepare a core curriculum, prepare materials, train teachers, build a proper system of inspection and implementation and obtain the necessary funding. The Minister declared, moreover, that she wishes to come to terms with the ultra-Orthodox community in view of the fact that it is being required to change its way of life in an area that is of utmost sensitivity.

The Court accepted the petition and declared that funding of institutions that do not apply the core curriculum and do not fulfill the objects of State education is illegal.¹⁹⁸ The Court added that the authority conferred upon the Minister to set conditions for recognizing a non-official school, are subject to the objectives of State education.¹⁹⁹ These, according

196. HCJ 10296/02 Union of Teachers in High Schools, Seminaries & Colleges v. Minister of Education [2004] IsrSc 59(3) 224, 228-29.

197. *Id.* at 233.

198. *Id.* at 235.

199. *Id.* at 238.



to the Court, include values of tolerance and respect for the other.²⁰⁰ The Court added: “Funding of institutions that do not fulfill the conditions set by law, and do not carry out the objects of State Education Law, is done without legal authority.”²⁰¹ The Court accepted, however, the Minister’s argument that the implementation will have to last for several years and that immediate revoking of funding for ultra-Orthodox education will shatter the entire sector. The Court was of the opinion that in view of the long period that the present situation existed and the schools reliance on it; considerable steps must be taken in order to amend the illegal allocation of funds.²⁰² In conclusion, the Court accepted the petition and ordered that no funds be allocated to schools that do not fulfill the conditions and criteria set by law for the recognition of *Haredi* schools. The Court decided, however, that the order will come into effect towards the school year 2007-2008.

The adoption of a compulsory core curriculum was met with fierce criticism by the Orthodox community. Its leaders regarded the plan as an infringement on their autonomy and freedom of belief, and declared that they will never succumb to the dictate. The typical reaction of the ultra-Orthodox community to the reform is reflected in the following statement: “after generations of *mesirut nefesh* [verb., giving up one’s life; Self Sacrifice] to instill children with the understanding of Torah and *yirat Shamayim* [verb., fear of the heaven; piety] as the focus of their studies, the Education Ministry cannot be allowed to convey the message that secular studies are of greater importance.”²⁰³ Not only do their spiritual leaders regard secular studies a waste of precious time that may be dedicated to religious studies; they are also concerned about exposing their children to a different culture.²⁰⁴ It is interesting to note that in ultra-Orthodox girls’ schools more time is being allocated to the teaching of general subjects. This is a result of two main factors. First, girls are not obliged to study *Torah* and there exist even statements in classical Judaic sources objecting

200. *Id.*

201. *Id.*

202. *Id.*

203. Yated Ne’eman Staff, *Parents Object to Meitzav Exam*, in DEI’AH VE DIBUR [Information and Insight], Nov. 30, 2005 (Isr.), available at <http://chareidi.shemayisrael.com/archives5766/TLD66aexam.htm>; M. Plaut, Betzalel Kahn & Yated Ne’eman Staff, *Education Ministry’s Plan Holds Dangers for Chareidi Education*, in DEI’AH VE DIBUR, Aug. 28, 2002 (Isr.), available at <http://www.chareidi.shemayisrael.com/archives5762/NTZ62alivnat.htm>; S. Fried, *Core Curriculum: The Attempt to Reeducate the Chareidi Sector*, DEI’AH VE DIBUR, Jan. 21, 2004 (Isr.); available at <http://chareidi.shemayisrael.com/archives5764/VRH64acore.htm>.

204. See YOSEF SHALHAV & MENACHEM FRIDMAN, EXPANSION THROUGH SECLUSION: THE ULTRA-ORTHODOX COMMUNITY IN JERUSALEM (The Jerusalem Institute for Israel Studies 1989) (Isr.); Israel Eichler, *That’s How the High Court of Justice Saved the Orthodox Viewpoint*, 8 MEIMAD 16 (1996) (Isr.).

to it. Second, since in the ultra-Orthodox community men are expected to devote their time to the study of *Torah* even at a mature age, the women support their families and need therefore to obtain a minimal general education that would enable them to acquire a profession.²⁰⁵

A further source of concern for ultra-Orthodox institutions was the implementation of the recommendations of the Shoshani Commission regarding school budgeting.²⁰⁶ Generally speaking, the Commission advocated a transition from a system of budgeting schools on the basis of the number of classrooms to a system of budgeting based on the socio-economic make-up of the students. Towards this end the Commission suggested a model based on the level of neediness index of the students. This system works in opposite directions as far as the ultra-Orthodox network is concerned. On the one hand, it should benefit from the new system, since a large proportion of its student body comes from underprivileged families. On the other hand, due to the fact that their students are spread all over the country and due to the wide range of schools, their classes are small, and therefore they might lose funding. The Shoshani recommendations attempted to put an end to a range of specific allocations that they might have enjoyed.

In May 2006, the Ministry of Education stated that the Independent Education Network and the *Sephardic* Centre of Fountain of Religious Education in Israel fully apply the core curriculum.²⁰⁷ Some doubt the truth of this statement and attribute it to lack of supervision. Moreover, this statement does not refer to other schools that constitute a substantial proportion of ultra-Orthodox education.

2.8 Future Developments

In 2003, the Government appointed a National Task Force for the Advancement of Education in Israel, headed by Shlomo Dovrat. The Task Force was charged with the mission of “conducting a comprehensive examination of the Israeli education system recommending an inclusive plan for change – pedagogical, structural and organizational – as well as

205. See TAMAR EL-OR, EDUCATED AND IGNORANT: FROM THE WORLD OF ULTRA-ORTHODOX WOMEN (Am. Oved. 1992) (Isr.).

206. Following the Ministry's decision to adopt the Shoshani Report, a special Parliamentary Committee advocated “a transition to a method of budgeting education in the spirit of the Shoshani Report recommendations.” See Parliamentary Committee on Inquiry on the Issue of Social Gaps in Israel (M.K. Ran Cohen, Chair), *Report and Survey of the Development of the Social Gaps in Israel in the Last Twenty Years* (Knesset 2002). An English summary by Elia Heller (Susan Harris Rolef trans.) is available at <http://www.knesset.gov.il/mmm/data/pdf/me00416.pdf>.

207. See Yair Ettinger, *The Ministry of Education: 'The Core Curriculum' is Applied in All Schools of Shas and Agudat Yisrael*, HA'ARETZ, May 10, 2006.



outlining a means of implementing it.”²⁰⁸ After fifteen months of intensive deliberations the Task Force submitted its detailed “National Plan for Education.”²⁰⁹ The report calls for a comprehensive reform of the Israeli education system.²¹⁰ It stresses the State’s duty,

[to] equip all students with knowledge and tools that will enable each and every one of them to progress, succeed, and choose a future that permits self-actualization, creative and productive integration in work force, active citizenship, and a contribution to developing a successful, progressive society that respects all its members.²¹¹

It calls for the replacement of the State school system with a strong system of public education “of supreme importance for the strength of education and of the State of Israel.”²¹² The Task Force recognized “the liberal idea of pluralism in education.”²¹³ It therefore, recommended the preservation of separate public religious education, as well as separate Arab, Druze and Circassian public education within the public education system. It recommended, moreover, the inclusion of *Haredi* education “as one possible trend in public education” because of their “distinctive, separate way of life.”²¹⁴ This is so since,

[i]n a society that suffers from numerous rifts and divisions, public education should be a comprehensive system that encompasses as many segments as possible of the Israeli education system [and] should build and reinforce what they have in common . . . and lower the walls of ignorance and mutual suspicion among the different communities.²¹⁵

Alongside public education, the Task Force recognized the existence of independent *Haredi* schools. The Task Force endeavored to strike a balance between a strong public education system and the right of parents “to educate their children in accordance with their national, religious, and

208. The National Task Force for the Advancement of Education in Israel, *National Plan for Education*, at 10 (Ministry of Education 2005) (Isr.). An English summary is available at <http://cms.education.gov.il/EducationCMS/Units/Owl/English/Figures/>.

209. *Id.*

210. *Inter alia*, the Task Force recommended the reversal of a reform that took place in 1988. During that year the school system underwent a major reform. From a dual system of eight years of elementary education and four years of high school it turned into a triple system comprising of six years elementary school, 3 years of intermediate school (junior high school), and three years of high school. See BRITBART & TAVIVIAN-MIZRAHI, *supra* note 15. The Task Force recommended reverting to the old structure.

211. TAMAR EL-OR, *supra* note 205, at 12.

212. *Id.* at 60.

213. *Id.*

214. *Id.*

215. *Id.* at 32.



linguistic tradition.”²¹⁶ It reached this balance by recognizing the State’s right “to obligate parents to give their children an education in schools that it oversees and for which it sets certain minimum standards.”²¹⁷ In any case, “the State must ensure students an open future, even if their parents have chosen a separate community education for them that does not prepare them for integration into society.”²¹⁸

“Public education,” in the Task Force’s vision, “shall strive to achieve the goals of education as set forth in the law and to foster students in line with the image of the ideal graduate that emerges from these goals.”²¹⁹ “Public education,” declared the Task Force,

shall be based on a broad common denominator, including a core of values reflecting the basic consensus derived from universal human values and from Israel’s being a Jewish and democratic state, and a significant academic core that enables all students to achieve their potential and prepares them to be part of an active, creative life.²²⁰

The Task Force recommended a national curriculum, “which reflects society’s expectations of graduates of its education system.” From this “complete national curriculum” a “compulsory core curriculum . . . [that] constitutes a common denominator for all students on the conceptual level and on the level of content, values, and cognitive and study skills,” shall be derived. The curriculum in the schools shall be based on “the complete national curriculum.”²²¹ However, “[s]ome non-public schools will follow only a partial version of the core curriculum.”²²²

Public religious education will retain “complete autonomy with respect to subjects in the heritage and humanities cluster, including Jewish studies and modifications to the curriculum required in other subjects, and with respect to other educational activities, so as to not adversely affect the spirit of religious education.”²²³ Autonomy of the Arab education system “with respect to subject matter” will be retained as well. Likewise, the right of the Druze and Circassian communities to “a separate education system that reflects their unique way of life and whose subject matter is influenced by their heritage, their culture [and] their unique national identity, their religious traditions” shall be recognized.²²⁴

216. *Id.* at 11.

217. *Id.* at 204.

218. *Id.* at 208.

219. *Id.* at 79.

220. *Id.* at 213.

221. *Id.* at 82.

222. *Id.* at 86.

223. *Id.* at 234.

224. *Id.* at 215.

In order to ensure the education autonomy, the Council for State-Religious education shall be reinstated “to provide public leadership for State-Religious education.”²²⁵ The Council will be in charge “of shaping public State-Religious education from the spiritual, curricular, and pedagogical standpoints.”²²⁶ The Task Force recommended the preservation of the office of the Director for the Public State-Religious Education Administration that will be in charge of the “professional and pedagogical management of the public State-Religious system.”²²⁷ The Director shall serve as the professional and pedagogical authority for “everyone in the Ministry of Education who works on public State-Religious education.”²²⁸ Likewise, the Task Force recommended, in its report, to activate the Advisory Board on Arab Education “on a regular basis,” and to employ Arabs “in the various administrative echelons in the Ministry of Education . . . to be responsible for the special subject matter, the activity, and the institutions of Arab public education.”²²⁹

The Task Force made detailed recommendations regarding the funding of the various educational institutions. It recommended that public educational institutions shall receive “full public funding.” On the other hand, non-public educational institutions,

shall receive a percentage of the full funding for teaching and supplementary services commensurate with the amount of the core curriculum that they offer as the main instrument for creating the shared foundation for all Israeli students, and the extent to which they are willing to open to everyone who wants to attend.²³⁰

Moreover, in order to be accredited as “an educational institution entitled to public funding,” the school must satisfy,

minimum conditions that can be inspected: basic licensing conditions; activity that does not conflict with the goals of education; a policy of not screening students on the basis of ethnicity or race; a systematic program of study; a faculty that does not include anyone unfit to work with students; and nonprofit activity.²³¹

225. The use of the term, “State-Religious education,” as well as the institute of “the Council for State-Religious education,” seems to be somewhat anachronistic. This is so since the report recommends the institution of “public education that is the State’s responsibility,” rather than the existing State education. Likewise, the bill the Commission drafted is entitled “Public Education Law.” *Id.* at 243.

226. TAMAR EL-OR, *supra* note 205, at 208.

227. *Id.* at 209.

228. *Id.*

229. *Id.* at 34.

230. *Id.* at 205.

231. *Id.* at 204.

The Government endorsed the National Plan for Education, expressed its determination to carry out the recommended reform and regarded the implementation of its recommendations “a preferred national task.” The Ministry of Education even started implementing its “first stage.” However, the plan came under fire from various sectors, both on pedagogical and academic grounds and was fiercely objected to by the teachers unions. Indeed, due to widespread objections to the plan and lack of appropriate funding the implementation of the plan is tentatively on hold, and it is doubtful whether it will ever be fully implemented. This is especially so since the present Minister of Education expressed her reservations from the Report.²³² Though religious objection to the plan was not a major cause,²³³ it did add to other factors that brought about the stagnation.²³⁴ Some of the requirements set forth in the Report as a prerequisite for the recognition of a school as a public school are such that might leave out the ultra-Orthodox recognized schools thus diminishing their funding. These requirements include: the objects of public education; full application of the compulsory core curriculum; subjection to the supervision of the Ministry of Education and the District Education Administrations; and moving to five days of teaching.²³⁵ At the time, it seemed that the National-Religious Education might be disadvantaged as a result of the Dovrat reform. There seemed to have been an intention to abolish the State-Religious Education Administration.²³⁶ In the end though, not only was this unit preserved, it was also strengthened as was the Council for State-Religious education.²³⁷ Nevertheless, the administrative decentralization and the establishment of regional education administrations, as well as the transfer of most pedagogical, budgetary, and personnel powers to the schools are being regarded as detrimental to religious-public education. This is so because State-religious education is scattered all over the country. Moreover, the inspectors – whose status will

232. See Gilad Grossman, *Social Reform Starts with Education*, NRG, May 5, 2006, available at

<http://www.nrg.co.il/online/1/ART1/420/697.html>.

233. At the time the Dovrat Report was submitted to the Government the religious parties were not part of the coalition.

234. For electronic links to materials connected with the Dovrat report, see Amnon Til, *The Dovrat Report: Digital Sources*, available at <http://stage.co.il/Stories/479818>.

235. See Rabbi Mordechai Karelitz, *Supplement to Recommendation 7.8.5 in the Chapter on Public Education*, in THE ANNEX TO THE NATIONAL TASK FORCE REPORT: SUPPLEMENTS ADDITIONS AND RESERVATIONS OF MEMBERS OF THE TASK FORCE TO CHAPTER 7, *supra* note 205. See also Yuli Haromentchko, *Proposal: State Schools will Turn Public*, HA'ARETZ 10/10/2004 (Isr.).

236. *Id.*

237. See *Minority Opinion: Public Education and the Status of State-Religious Education*, in ANNEX TO THE NATIONAL TASK FORCE REPORT: SUPPLEMENTS ADDITIONS AND RESERVATIONS OF MEMBERS OF THE TASK FORCE TO CHAPTER 7 (Ministry of Education 2005) (Isr.).



be prejudiced – exercise important functions in the State-religious education, such as the instruction of teachers and principals and representing the system vis-à-vis local authorities and parent committees. Finally, the recommended reduction in the number of teachers' colleges and their reconstruction is being regarded as a blow to the widespread religious colleges and a withdrawal in the training of suitable teachers for religious schools.²³⁸

In the negotiations towards the formation of the new Government, both Shas & United Torah Judaism demanded to entrench the current status of their education networks. Indeed, in the coalition agreement between the *Kadima* ruling party and Shas party²³⁹ a special chapter (sections 27-34) is dedicated to *Haredi* education. It guarantees the preservation of “the independence and unique status of the Haredi education, in all its forms, in the education system.”²⁴⁰ It provides, moreover, that “even in case of institutional, constructional or contextual reform of the education system, the unique status, organizational and educational independence and the budget of the *Haredi* education will not be affected.”²⁴¹ The Government is supposed to initiate legislation to ensure “the equality and equivalence of the *Haredi* education in all its forms.”²⁴² This legislation must be completed by the end of the year and should “with utmost clarity fully implement the said provisions.”²⁴³ The agreement states, that there exist “urgent problems that do not allow any postponement,” which the representatives of *Shas* and the United Torah Judaism will bring before the Prime Minister who must solve them “within 60 days.”²⁴⁴ In failing to do so, the Government must initiate urgent legislative amendments “that will anchor the duty of equal budgeting of the Independent Education and *Mayan Ha'hinuch Ha'torani*, by the local authorities according to equal and uniform criteria as for all Israeli children.”²⁴⁵

The agreement is careful not to spell out the intention that seemingly hides behind the lines; to refrain from imposing on the ultra-Orthodox education the provisions of the Dovrat Report, and possibly also of the Shoshani Report, as a condition for the continuation of the present funding

238. See Matityahu Dagan, *Most Conclusions of 'the Dovrat Commission' are Bad for the State-Religious Education*, HAZOFE [daily of the National Religious Party] (Isr.), available at

<http://www.hazofe.co.il/web/katava6.asp?Modul=24&id=24518&Word=&gilayon=2026&mador=>

239. <http://www.knesset.gov.il/docs/heb/coal2006shas.htm> (Isr.).

240. *Id.* § 27.

241. *Id.* § 28.

242. *Id.* § 29.

243. *Id.* §§ 31-32.

244. *Id.* § 33.

245. *Id.* § 34.

of their networks.²⁴⁶ In doing so, the parties might have implied the experience learned from a former coalition agreement between the United Torah Judaism faction and the *Likud* faction. The agreement established a team that would endeavor “to prevent any damage to the organizational and educational independence, the exclusive status and funding of the *Haredi* education,”²⁴⁷ as a result of the recommendations of the National Task Force. Both the National Religious Party and the secular *Shinui* Party petitioned the Supreme Court demanding to declare this provision illegal, as it constitutes “a commitment to abstain from applying the recommendations of the Dovrat Report on the *Haredi* educational system.”²⁴⁸ The Court refrained from doing so on the ground that it constitutes “a declaration of intentions only, which does not amount to a commitment to engage in operational steps.”²⁴⁹ The Court added, however, that “should this agreement be translated into an improper application that contradicts the basic principles of the distribution of the budget, such as infringement of the principle of equality or any other basic values, they will be examined when a concrete cause arises.”²⁵⁰ Another lesson from a court ruling might have been the undertaking to anchor the status of *Haredi* education in legislation rather than in an administrative undertaking. In doing so the parties might have had in mind the court ruling in the *Al-arfan* case.²⁵¹ In that decision the Court approved discrimination in the funding of the Torah educational networks since it had been “explicitly” established by law. Yet, any reliance on the *Al-arfan* decision may prove to be misleading. In order to appreciate the distinction between the two cases it should be realized that Israel lacks a comprehensive written constitution. Rather, the Knesset enacted several Basic Laws, which the Supreme Court declared as enjoying constitutional status.²⁵² Basic Law: Human Dignity and Liberty that was enacted in 1992 provides: “There shall be no violation of the life, body or dignity of any person as such.”²⁵³ The extent of this provision was constantly debated. Specifically there was a heated controversy over the question whether the term “human dignity” includes

246. *Id.* § 27-34.

247. § 6.11 to the coalition agreement.

248. HCJ 306/05 The National Religious Party v. The Government of Israel [2005] Tak-SC 2005(3) 2141.

249. *Id.* § 17.

250. *Id.*

251. HCJ 2828/02 Al-arfan v. Minister of Education [2004] IsrSC 2004(2) 232.

252. See Asher Maoz, *Constitutional Law*, in THE LAW OF ISRAEL: GENERAL SURVEYS 6, 6-13 (Itzhak Zamir & Sylviane Colombo eds., Harry and Michael Sacher Institute for Legislative Research and Comparative Law 1995); Asher Maoz, *The Institutional Organization of the Israeli Legal System*, in INTRODUCTION TO THE LAW OF ISRAEL 11, 11-14 (Amos Shapira & Keren C. DeWitt-Arar eds., Kluwer Law Int'l 1995).

253. An English translation of the Basic Law is published in the Knesset website and is available at

http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.



the principle of equality. Recently the Supreme Court ruled that the term “human dignity” includes “discrimination that does not amount to humiliation, provided it is closely connected to human dignity as an expression of the autonomy of the private will, freedom of choice, freedom of action and similar aspects of human dignity as a constitutional right.”²⁵⁴ Based on this qualification the Court ruled that the exemption of *yeshiva* students from compulsory military service while others are being drafted constitutes a breach of equality that amounts to the infringement of human dignity.²⁵⁵ It is submitted that discrimination in school funding constitutes such a severe breach of the principle of equality as to amount to a violation of human dignity. If that is the case, section 8 of the Basic Law provides “[t]here shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.” If such violation of human dignity took place then the law must be struck down. Indeed, the Court in the *Al-arfan*, as well as in *The Movement for Quality Government* case, was aware of this possible outcome. It nevertheless approved the law since section 10 specifically provides that the Basic Law “shall not affect the validity of any law in force prior to the commencement of the Basic Law.” This provision cannot shield a legislative violation that takes place after the enactment of the Basic Law.

The same goes for another possible infringement of human dignity by allowing Orthodox schools to refrain from teaching “secular” subjects.²⁵⁶ This may give way for an argument, on behalf of the students enrolled in those schools, that by doing so the schools directly, and the State indirectly, infringed their human dignity and possibly also their liberty. By preventing them from acquiring proper education, their chances to acquire appropriate higher education and a desirable profession and integrate into society are being hampered.²⁵⁷

It must be noted, moreover, that although existing legislation is being shielded from repeal as a result of the Basic-Law, the courts must interpret it in light of the Basic-Law provisions.²⁵⁸ Israeli legislation must furthermore be interpreted in light of International law including

254. HCJ 6427/02 *The Movement for Quality Government in Israel v. The Knesset* [2006] Tak-SC 2006 (2) 1559.

255. *Id.* § 41.

256. As was indeed argued in *Paritzky*, HCJ 2751/99 *Paritzky v. Minister of Education*, available at <http://elyon1.court.gov.il/files/99/510/027/a02/99027510.a02.pdf>.

257. Sebba and Shiffer go much beyond that. They argue that “the absence of any freedom to choose an alternative belief or life-style following a Haredi education manifestly amounts to a deprivation of personal autonomy.” Sebba & Shiffer, *supra* note 85, at 173.

258. See CrimA 2316/95 *Ganimat v. The State* [1995] IsrSC 49(4) 589. See also Asher Maoz, *Constitutional Law*, in *THE ANNUAL BOOK OF ISRAELI LAW 1992-1993* 143 (Israel Bar- Tel-Aviv District 1994) (Isr.).

conventional law.²⁵⁹ In this light, the provisions of the Convention on the rights of the Child from 1989,²⁶⁰ as well as the International Covenant on Economic, Social and Cultural Rights from 1966,²⁶¹ must be considered.²⁶² There might, however, be some discrepancy between both documents. Thus, the Covenant on Economic, Social and Cultural Rights affords the parents the right “to choose for their children schools, other than those established by the public authorities . . . and to ensure the religious and moral education of their children in conformity with their own convictions.”²⁶³ The Convention on the rights of the Child, on the other hand, obliges to direct the education of the child “to [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential” and to “[t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”²⁶⁴ The discrepancy between both conventions may be the result of the development of the doctrine of children’s rights in international law.²⁶⁵ The gap between these documents might be, however, smaller than appears at first sight. Thus, the Covenant on Economic, Social and Cultural Rights subjects the parents’ right to choose the education for their children, to the State’s right to impose on the

259. See Asher Maoz, *War and Peace – An Israeli Perspective*, 14 FORUM CONSTITUTIONNE 35, 53-4 (2005).

260. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/49 (Nov. 20, 1989), available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>. See Student Rights Law, 2000, S.H. 42. Cf. the Supreme Court’s decision in *Poriya*, H CJ 4363/00 Committee of Poriya Ilit v. Minister of Education [2004] IsrSC 56(4) 203.

261. Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

262. See H CJ 2599/00 Yated v. Ministry of Education [2002] IsrSC 56(5) 834, 846. An official English translation is available at http://elyon1.court.gov.il/eng/verdict/search_eng/verdict_by_case_rslt.asp?case_nbr=2599&case_year=00.

263. See Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 13.3, U.N. Doc. A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

264. See Convention on the Rights of the Child, G.A. Res. 44/25, art. 29.1(a) & (d), U.N. Doc. A/RES/44/49 (Nov. 20, 1989), available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

265. See CA 2266/93 Anonymous v. Anonymous [1995] IsrSC 49(1) 221 (Shamgar, J.). See also William Duncan, *Children’s Rights, Cultural Diversity and Private Law*, in CHILDREN’S RIGHTS AND TRADITIONAL VALUES, *supra* note 2, at 15; Leora Bilsky, *Child-Parent-State: The Absence of Community in the Courts’ Approach to Education*, in CHILDREN’S RIGHTS AND TRADITIONAL VALUES, *supra* note 2, at 134; Ze’ev Falk, *Rights and Autonomy – or the Best Interest of the Child?*, in CHILDREN’S RIGHTS AND TRADITIONAL VALUES, *supra* note 2, at 111. See generally Geraldine Van Bueren, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* chs. 6, 9 (Martinus Nijhoff 1998).



chosen school “minimum educational standards.”²⁶⁶ At the same time, the Convention on the rights of the Child imposes on the State a duty to supply the child with the education that will be directed “to . . . [t]he development of respect for the child’s parents, his or her own cultural identity, language and values.”²⁶⁷ Israeli courts will have to consider these conventions in interpreting Israeli law regarding religious education.

WORD OF SUMMATION

The struggle between the melting pot policy, advocating educational uniformity, and the demand for religious autonomy in the area of education ended with a salient triumph of the latter.²⁶⁸ Israel’s educational system appears as a convincing example of educational autonomy, particularly religious autonomy, and as a model of multicultural education. Ultra-religious autonomous education, moreover, paved the way for other educational streams. Zionist religious circles broke out of the religious-State schools and established exclusive schools to compete with the ultra-Orthodox network. At first they were established as recognized schools. Yet, within time most of them have been included as separate networks within the religious-State stream. This reform was not confined to religious schools. At the initiative of parents and local councils, specialized schools – such as art schools, natural science schools, Democratic schools and anthroposophy schools – have been established. At the beginning, the Ministry of Education tried to resist this trend, however, in several cases the parents succeeded in overruling the Ministry’s decision, whether in appellate committees or in court. Their success may be attributed to reliance on the ultra-Orthodox model. In recent years the Ministry changed its attitude and is encouraged specialty schools. This was both a result of parents’ success in court and the fact that officials who were involved in developing these schools on municipal level have been elevated to senior positions in the Ministry. Moreover, the social move from socialism to liberalism encouraged this trend.²⁶⁹

Referring to this phenomenon the Supreme Court recently stated that:

Israeli society accumulated people from various venues, from different cultures and with diversified views. During the first years of Statehood, Israeli society professed a policy of a melting pot that refines the cultural range and turns it into an entity with uniform cultural attributes. Along the years, however, Israeli

266. Covenant on Economic, Social and Cultural Rights, *supra* note 261.

267. *Id.*

268. *Cf.* ZAMERET, *supra* note 7, at 159.

269. For a survey, see AYELET BARAK-MEDINA, ALLOCATION OF RESOURCES IN EDUCATION, THE INTEGRATION PRINCIPLE AND EXCLUSIVE SCHOOLS IN DIFFERENT SEGMENTS: A BACKGROUND DOCUMENT (Knesset 2003) (Isr.), *available at* <http://www.knesset.gov.il/mmm/data/docs/m00544.doc>.



society comprehended to recognize the uniqueness and beauty of the variety that exists within the Israeli society and started a process of acknowledging the various cultures and views and giving them space.²⁷⁰

This trend did not escape criticism, shared by the present Minister of Education, mainly on the ground that it brings about privatization of the educational system and discriminates against lower socio-economic groups. In the sphere of ultra-Orthodox education there is another basic deficiency. As one researcher put it, it is multicultural only on the “macro- level,” while uni-cultural on the “micro- level.” This is due to the fact that each educational sub-system is “closed, uniform and unicultural.” As a result, children who are enrolled in an ultra-Orthodox sub-system are exposed to “particularistic subgroup culture and norms at the expense of the appreciation of diversity and the tolerance of other cultures and norms.”²⁷¹ On top of that, the educational and cultural segregation withholds the development of a creed that would be common to all segments of Israeli society. Moreover, in granting large autonomy to these sub-systems the State fails to ensure that the youngsters are being equipped with the necessary tools to become fruitful and successful members of society. By doing so the State abstains from fulfilling its duties both under Israeli law and under international established norms.²⁷² As we have recently seen, Israel embarked on an arduous path to amend some of these hurdles. It still has a long way to go.

270. H CJ 1447/03 Panim for Jewish Renaissance in Israel v. Minister of Education [2004] IsrSC 59(3) 942.

271. Stephen Goldstein, *supra* note 2, at 127-28.

272. *Cf.* H CJ 4363/00 Committee of Poriya Ilit v. Minister of Education [2004] IsrSC 56(4) 203, 222 (“The preservation of educational autonomy in private education is an important value that must be honored in the framework of the persons right to self-fulfillment, subject to safeguarding the basic educational values according to State Education Law.”).

