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FAMILIAL AND MARITAL LAW OF THE STATE OF ISRAEL: PREMISES OF THE ESTABLISHMENT AND DEVELOPMENT

INTRODUCTION. *Israel is a diverse and controversial state. Its laws, especially those of the area of family and marital law, are distinctly unique. The reason being that throughout its centuries-long history Eretz Israel (the Land of Israel) – the historical name of the country, the structure of norms of this branch of law has gone through a set of changes under different political regimens.*

The government ruling over this holy land at a certain time period was to some extent influencing current social order and the lives of Jewish people, including such aspect as the performance of religious rituals. Considering the specificity of traditionalistic norms of Judean legal system attempts of influence on it from the outside have always been a big challenge. Those norms had to be strictly followed as it was of utmost importance for the conservation of the Jewish communities, Jewish culture and its authenticity, which for centuries has been challenged by many in attempts to modify, discriminate and even irradicate it.

Hence, in this article the authors examined the most notable periods of the existence of Jewish communi-

ties in Eretz Israel. Inter alia there is an analysis of rules and measures introduced by the ruling system under the Ottoman Empire (from year 1517 to year 1917), of decrees present under the Mandate of Palestine (1922-1948), of the Israeli Declaration of Independence in 1948 and of current legislation.

MATERIALS AND METHODS. *The article is based on the current Israeli legislation which concerns familial and marital relations, as well as on traditional religious code of rules and obligations “Halakha” which is still in action in Israel’s society. In the article Ottoman and British-Palestinian legislation is mentioned which was in force during the corresponding historical periods of time. It is also stated that the majority of the legislative acts in the area of familial and marital relations follow the principles of the International law, the rulings of the Supreme court of Israel are made according to the norms of International law and, among other things, in consideration with the Convention on the Elimination of all Forms of Discrimination Against Women of 1979. For the achievement of result general and specific sci-*

entific methods of research were applied, in particular historical-legal and comparative-legal methods of study.

RESEARCH RESULTS. Research result consists in presentation of current Israeli familial and marital legislation and other religious traditional rules review. It is well-proven that despite the strictness of the Judean traditions, according to the clauses of the Israeli Declaration of Independence 1948, Israel being a Jewish state is also a modern and democratic one. Democratic principles of equality and humanism prevail in cases where in the proceedings regarding marital and family affairs where the rights of one of the parties are violated, every citizen of the state of Israel can appeal to the Supreme Court and the Supreme Court of Justice seeking a justified sentence and protection of one's interests.

Therefore, the result of the integration of the legal principles typical for democratic countries and the traditional norms of Judaism current legal system of the state of Israel was created. The mechanism of this system comes from the respect for the traditions whilst the main principles of democracy are also followed, namely those of justice, equality and humanism. This is what makes the legal system of Israel unique in every aspect, including the norms of familial and marital relations which integrate both traditional implementations and modern aspects.

DISCUSSION AND CONCLUSIONS. In the frames of the present research study the authors found that familial and marital law of Israel is based on norms of the Religious law, on a special code of rules and obligations called – “Halakha”. From the standpoint of the development of law and practice, a certain role was played by the procedural rules introduced in the territory of Eretz Israel during the period of Ottoman Empire. English law had a certain influence on the development of Israeli law in general during British Mandate of Palestine. Modern Israeli legislation in the field of marriage and family relations is based on and takes into account international agreements to which Israel is a party.

KEYWORDS: Judaism, Halakha, traditionalism, Rabbinical Court, Ottoman Empire, kadi, the Mandate of Palestine, kibbutz

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БРАЧНО-СЕМЕЙНОЕ ЗАКОНОДАТЕЛЬСТВО ИЗРАИЛЯ: ПРЕДПОСЫЛКИ ВОЗНИКНОВЕНИЯ И РАЗВИТИЯ

ВВЕДЕНИЕ. Израиль является государством своеобразным и противоречивым. Законодательство страны, особенно в области брачно-семейных отношений, несомненно, уникально. Причины тому кроются в многовековой истории самой земли Эрец Израэль (земля Израиля) – таково историческое название страны. Брачно-семейное законодательство Израиля изменялось на протяжении веков под воздействием разных политических режимов, осуществлявших правление в стране.

В определенный период времени основными нормами, определявшими всю общественную жизнь еврейского населения, были нормы религиозного права, включая и те, которые обязывали к неукоснительному соблюдению соответствующих норм поведения. Учитывая своеобразие традиционалистских норм иудейской правовой системы, влияние на них извне всегда оставалось затруднительным. Нормы иудейского права должны были неукоснительно соблюдаться всеми еврейскими общинами с целью сохранения еврейской культуры и идентичность народа. В течение столетий именно на изменение этих правил и норм были направлены многочисленные попытки со стороны, чтобы изменить, дискриминировать и даже уничтожить идентичность народа.

В статье авторы рассматривают наиболее значимые периоды жизни еврейских общин в Земле Израиля. В том числе проводится анализ норм и правил, введенных при Османской империи (с 1517 по 1917 гг.), рассмотрены декреты, принятые в период действия мандата Великобритании на управление Палестиной (1922-1948 гг.), Декларация независимости Израиля, принятая в 1948 г. и действующее законодательство.

МАТЕРИАЛЫ И МЕТОДЫ. Статья основана на действующем законодательстве Израиля в области регулирования брачных и семейных отношений, а также на религиозном сборнике правил и обязательств «Талахе», который продолжает действовать в израильском обществе. В

статье затронуто законодательство Османской империи и британско-палестинское законодательство, действовавшее в соответствующие периоды истории. Установлено, что большинство современных законодательных актов в области брачно-семейного права следуют принципам международного права, постановления Верховного Суда Израиля принимаются с учетом норм международного права, включая Конвенцию об искоренении всех форм дискриминации женщин 1948 г. Для достижения результата применялись общенаучный и специальные методы исследования, в том числе историко-правовой и сравнительно-правовой методы.

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. Результатом исследования является обзор действующего израильского брачно-семейного законодательства и иных традиционных религиозных правил и норм. Доказано, что, несмотря на строгость иудейских традиций, в соответствии с положениями Декларации о независимости Израиля 1948 г., Израиль является правовым и демократическим государством. Таким образом, в результате интеграции правовых принципов, свойственных демократическому государству, и традиционных норм иудейского права была создана современная правовая система Израиля. Механизмом существования этой системы служит уважение традиций и следование основным принципам демократии, в том числе принципам справедливости, равноправия и гуманизма. Это делает правовую систему Израиля уникальной во всех своих аспектах, включая нормы брачно-семейного права, которое соединяет в себе одновременно традиционализм и современное регулирование.

ОБСУЖДЕНИЯ И ВЫВОДЫ. В рамках настоящего исследования авторы установили, что брачно-семейное законодательство Израиля основано на нормах религиозного права, в его основе лежит свод традиционных правил и норм, носящий название «Талаха». С позиций развития

права и практики определенную роль сыграли процессуальные нормы, введенные на территории Эрец Исраэль («Земли Израиля») в период Османской империи. Определенное влияние на развитие права Израиля в целом оказало английское право в период Мандата Великобритании. Современное законодательство Израиля в сфере брачно-семейных отношений основано и учитывает международные соглашения, участниками которых является Израиль.

КЛЮЧЕВЫЕ СЛОВА: Иудаизм, Галаха, традиционализм, раввинатский суд, Османская

империя, кади, Мандат Великобритании на управление Палестиной, киббуц

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Авторы заявляют об отсутствии конфликта интересов.

1. Introduction

Laws of each country are distinct in their own ways. It can be explained by various factors, one of the most important ones being the traditions that played a role of obligatory rules of conduct in different aspects of life. Norms present in family and marital relationships have a strongly pronounced authenticity due to the fact that the development of those relationships is strongly affected by the cultural traditions that have been and are present in a given country. One of the most indicative implications of traditional views on family and matrimony in our opinion is the family law of Israel, the basis of which are norms of the Religious law.

On certain stages of the establishment of the future state of Israel it has encountered multiple instances of political influence by the regimens of the ruling governments whose heads have been wielding their power over these territories. State regimens ruling the area in the time prior to the establishment of the independent state of Israel have been introducing certain sets of changes inherent to their laws while maintaining the traditions of the Jewish population of the Land of Israel (hereinafter “Eretz Israel”) for centuries. First and foremost, those were the traditions of the formation and dissolution of marriage that according to the Judean law were of utmost importance for the Jewish community.

The most notable changes in the system of realization of Family law of Eretz Israel were brought by in the period of Turkish government in the time of rise and fall of the Ottoman Empire that has lasted for 400 years, namely in the period of 1517-1917. It is also important to examine the Mandate of Palestine which although lasted shorter has still strongly

affected the system of judicial and executive powers of the future state of Israel.

2. Ottoman Empire rule

When looking at the period of the Ottoman Empire rule it is important to start with the fact that the territory of Eretz Israel has been conquered by the army of Ottoman Turks led by Selim I in the beginning of XVI century. Regarding that in his book Prof. K. M. Bazili wrote that for 400 years Eretz Israel has been a part of the enormous Ottoman Empire that covered a big part of the South-eastern Europe, the entirety of Anatolia and the Near East, Egypt and Northern Africa [Bazili 2007: 54]. Jewish population at first favored Turkish conquest as it was widely known that sultans were merciful towards Spanish exiles and Jewish subjects in general [Ikhsanoglu 2006:282-285].

Territories of Eretz Israel were not rich for their size and population count, nor did they have any natural resources, so they could not stand out among other Ottoman provinces. This land could not serve as a source of large income nor could it be a military bridgehead for the Ottoman Empire that was constantly at war with someone. However, a certain amount of *fermans* (decrees) [Lapidus 2002:260-261] applied to this land points at the fact that Ottoman rulers considered this province to be quite significant. Its biggest advantage was that it was the holder of numerous shrines that were honored by the members of all three Abrahamic religions: Judaism, Christianity and Islam [Goodwin 2016:37-38].

In the XVI century Jewish population of Eretz Israel was growing, at a much slower rate, however, than the Muslim population, increasing in numbers

mainly by the immigration of European Jews. As a result of this migration with the agricultural revival came the revival of traditional religious lifestyle. New *Yeshivas* [Lange 2012:50-52] (religious educational facilities) were built, and Rabbinical courts [Lange 2012: 64-76] were formed. It is also important to note that synagogues were granted inviolability by the Ottoman Empire and it was prohibited to turn them into mosques [Bazili 2007:56-60].

Interaction between Jewish communities and the Ottoman authorities was an interesting procedure. For it the community had to choose a representative – *sheikh al-yahud* (“chief of the Jews”) [Levy 1994:132-133]. Responsible for the selection of the *sheikh al-yahud* was a *kadi* – Muslim judge-official¹. The proceedings took place at the Islamic court. During the court hearing the petition of the Jewish community for the approval of the candidate was considered. His duties consisted of being a treasurer, he was responsible for the tax count and had to take part in weddings and funerals. However, his authority was limited: *sheikh al-yahud* had to attend to the *kadi* regarding the approval for a wedding, as well as in the case of a death of a Jew without a successor, consider the handover of his belongings to the treasury [Levy 1994:133-134].

An important aspect of this is that the interpretation, application, execution and protection of the norms of Judean law were exclusively a part of the jurisdiction of the judge of Rabbinate,

as well as the registration of marriages, funerals and deaths. Besides that, if needed *sheikh al-yahud* had to be community members’ representative in the Islamic court and was responsible for their moral conduct [Tsirkin 2003:50-57]. *Kadi* was responsible for the approval of the candidate, who have been elected by the elders of the community. However, although Turkish authorities did not interfere in the familial and marital legal procedures of the Jewish community, they demanded a special approval from *kadi*, that had to be paid for [Levy 1994:134].

Therefore, the life of the Jewish communities of Eretz Israel in the Ottoman Empire was not affected by discrimination from the Turkish authorities. Interfering with any religious rituals and processes was prohibited, hence playing an important role in preservation of Judean traditions.

It is important to note that the need of revitalization of Judean traditions in Eretz Israel, or by the historical name of this land “Philistia” [Van Seters 2014:14] was of utmost importance because for the statehood’s rehabilitation Jewish people needed their religious traditions to be conserved as for centuries, they held the leading role in the daily life of the people [Tsirkin 2003: 50-57].

Thus, during the existence of the Ottoman Empire, when the Jewish communities increased due to the influx of Jewish immigrants from European countries, where they were being persecuted, the tolerant attitude of the Turkish authorities allowed the Jewish communities to preserve religious traditions and even organize the study of religious sources in the city of Safed. This city became the most important center for the study of the Torah.

3. Legal basis of the marital and familial relationships’ regulation in the Jewish community

A fundamental role in the maintenance of religious traditions and the preservation of centuries-long history for every Jew plays a special code of rules and obligations called – “*Halakha*” [Mendell 1994:27-30].

This code of rules aimed to regulate all aspects of life including his everyday life, prayer, compliance with the obligations with the employer, trade and one of the most important aspects – judicial order [Quint, Hecht 1986:21-22]. The word “*Halakha*” comes from the word “*halakh*” a version of “*lalahet*” meaning “to go”. Although this word should not be understood literally but rather figuratively, as it means “the path to follow”, meaning the law [Mendell 1994:27-30]. One of the key traditions that every Jewish person had to follow according to the norms of Judean law was the formation of marriage.

According to the Judean law the process of marriage consisted of two separate parts.

The first one being “*erusin*” meaning “*betrothal*” and the second – “*nissuin*” meaning the wedding itself [Roth 1986: 86-90]. Following these acts is crucial as it is enshrined in *Halakha*, as M. A. Kanievskiy writes “the mandatory nature of *Halakha* laws comes from the fact that the laws themselves as well as their interpretation and application in specific sit-

¹ Miloslavskii G.V., Petrosyan Yu.A., Piotrovskii M.B. *Islam. Entsiklopedicheskii slovar'* [Islam. Encyclopedic Dictionary]. Moscow: Publ. 1991. P. 152. (In Russ.).

uations... Related to Halakha and such characteristic of the ancient mentality towards the law is explained by its traditionalistic approach². We have previously mentioned the importance of traditionalism for Jewish people throughout their history and especially during the Ottoman rule.

Before the process of marriage traditionally a ritual of “engagement” – “kiddushin” is performed, which is an agreement between the man and the woman where they exchange obligations to marry each other and the process of marriage is considered [Elon 2003:112-113]. It is important to note that obligations to marry can be given by the parents of the parts, their relatives or other interested parties, the obligation itself is formalized in the document called “*shtar tenaim*”, or the document of conditions which is checked by both parts. After the agreement of the parties and completion of all the rituals, the date for the marriage is set [Roth 1986: 88-90]. It is also important to note that erusin changes the personal relations between the couple and nissuin puts legal marital obligations on them [Elon 2003:113-114].

According to Halakha the husband has the following obligations to the wife and children:

- He is entitled to secure wife’s livelihood;
 - Provide the wife with a home and clothes;
 - Live together with the wife;
 - Realize the material obligations stated in the marital contract (*ketubah*);
 - Take care of the wife in case of her being ill;
 - In case of the wife being taken captive – buy her back;
 - Ensure the payment for all the burial expenses in case of her death before the his own;
 - Ensure her livelihood in case of his own death and provide her with the permission to live in his house being a widow;
 - Ensure the livelihood of his daughters in case of his death before they get married;
 - Give his legacy to his sons;
- The husband is entitled to demand the completion of the following obligations from the wife:
- Employ her labor;

- Be entitled to use the money she has earned in accidental circumstances;
- Be entitled to use her belongings;
- A permission to inherit her legacy [Roth 1986:111-113];

In the case of marital relationship not being successful in a Jewish family, Judean laws ensure specific conditions of their termination.

The process of termination of the marriage as is its formation is performed according to Halakha³. The document proving the divorce is called *get*⁴.

Get is a written statement of the husband to the wife, where he states that he has made a decision to get a divorce, it has to be written and certified by witnesses. Get has to have a certain structure according to the special standard, and as it was written by the outstanding Israel law researcher Pinchas Shipman, it usually contains of 12 lines, and it has to have all the necessary details, namely: the names of the husband and wife, place and date of the divorce [Shipman 1995:409-412].

It is important to note that the wife which did not receive a get becomes an “*agunah*” – “a wife without a husband”, she is still a married woman but the one that lives separately from her husband. An American Jewish traditions researcher Joel Roth regarding this problem states that “if a woman of this status has children within a new marriage, without legally receiving a get from her first husband, these children according to the norms of Judean law are in a “no-good” position. They are now “*mamzers*”. Because of this status the children in the society are deemed “shameful”. Mamzers are not allowed to marry a Jew or be members of a community. This instance of punishing the innocent for a misdemeanor of the other is the only one in Judean law” [Roth 1986: 225-226].

In his work Roth notes that in the case of get being granted under pressure or coercion, it is deemed invalid. Albeit under certain circumstances the court of Rabbinate using indirect measures could influence the husband using its authority [Roth 1986:227]. This influence cannot be deemed as direct coercion because it is performed indirectly, as for example,

² Kanevskii A.A. Mesto Galakhi (iudeiskogo prava) v natsional'nykh sistemakh pravogo regulirovaniya. Diss. ... kand. yurid. nauk. [The Place of Halacha (Jewish Law) in National Legal Systems. Thesis for the degree of Candidate of Juridical Sciences]. Moscow. 2015. P. 24. (In Russ.).

³ Kanevskii A.A. Op. cit. P. 3.

⁴ See: Meacham (leBeit Yoreh) T. Legal-Religious Status of the Married Woman. URL: <https://jwa.org/encyclopedia/article/legal-religious-status-of-married-woman> (accessed 06.01.2022).

announcing the presence of this man in the society undesirable, but direct application of violence to the husband was prohibited [Elon 2003:114-115].

An American author, the Judean religious texts researcher Tirzah Meacham (leBeit Yoreh) in one of her articles points out that the court could argue its decision on the basis of violation of ktuba, a marital contract. However, the wife could initiate the divorce herself by filing a lawsuit to the court of Rabbinat stating that the husband did not complete his obligations and violated the conditions of ktuba⁵. Although it is important to note that an obligatory condition for the initiation of a divorce process was the fact of the husband handing the get to the wife.

A very important detail is that the norms of Judean law, including those of the formation and termination of marriage were not altered or interfered with throughout the whole period of existence of the Ottoman Empire. Nonintervention into the religious communities by the Turkish government was formalized in the rules of the system called “*millet*” which established the independent status of the private court, according to it “a religious community (a group that follows the laws of Islamic Sharia, Christian Canon law or Jewish Halakha) has a right to be self-governed and follow its own rules” [Ágoston, Masters 2009:383].

Consequently, freedom of religion was allowed in Ottoman Empire, if the laws of the State were not violated, which positively influenced the preservation of some independence of Jewish communities in preserving their religious foundations.

4. The Mandate of Palestine

In the course of its rule the government of the Ottomans did not in any way affect the internal laws present in the Jewish communities of Eretz Israel. This policy was active up until the end of the Empire's existence. Nonetheless as the result of Turkish government's decision to partake in the military action on the fronts of World War I the Ottoman Empire has fallen and the ruling of Eretz Israel has been taken over by Great Britain. The policy for this land

was now dictated based on the directive established in the Balfour Declaration [Gutwein 2016:117-118]. The goal of this declaration was to provide support from the British government for the idea of establishing a national home for the Jewish people on the territories of Eretz Israel. This goal has been achieved during the Paris Peace Convention taking place in 1919-1920⁶.

On June 22nd the British mandate over Eretz Israel (Palestine) has been approved by the

Council of the League of Nations [Friedman 2010:179]. In the preamble of the mandate text the basis of the reconstruction of the national home for Jewish people in Eretz Israel was stated, as well as the historical connection of the Jewish people to this land⁷.

It is important to note that before accepting the final version of the Balfour Declaration and the conditions of its realization British authorities have expressed an intention to minimize the importance of creation of a national home for the Jewish people in Eretz Israel. This intention was directed towards the limitation of rights of Jewish people in the country and the increase of the rights of Arabic population. The most initiative regarding this question was expressed by the Middle East affairs officials, “whose political thrust was motivated by their intentions towards creating a number of Arabic kingdoms that were the pillars of the expansion of the British hegemony in the Middle East” [Gutwein 2016:124].

In the period of the British mandate Eretz Israel had three official languages: English, Arabic and Hebrew, while legislative acts were written in English and then translated into Hebrew and Arabic. In the case of contradiction in the translation the original English version was deemed the proper one [Shetreet, Homolka 2017:30-31].

One of the most notable events of the period was the adoption of the King's Palestinian Order of Council which has consolidated the authority of the religious courts whose jurisdiction applied onto the country. In paragraph 46 of the Order of 1922, it stated that in case of the collision of the Ottoman and Anglo-Palestinian laws or the lack of regulations for

⁵ See: Meacham (leBeit Yoreh) T. Op. cit.

⁶ Magadeev I.E. Parizhskaya mirnaya konferentsiya 1919–20 [Paris Peace Conference 1919-20]. – *Bol'shaya rossiiskaya entsiklopediya*. Gl. red. Yu.S. Osipov. [Big Russian Encyclopedia. Ed. by Yu.S. Osipov]. Moscow: Bol'shaya rossiiskaya entsiklopediya, 2004–2017. (In Russ.). URL: https://bigenc.ru/world_history/text/2320676 (accessed 06.01.2022).

⁷ See: League of Nations: Decision confirming the Principal Allied Powers' agreement on the territory of Palestine: *The Mandate for Palestine*. August 1922. URL: <https://web.archive.org/web/20131125014738/http://unispal.un.org/UNISPAL.NSF/02FCA2C68106F11AB05256BCF007BF3CB> (accessed 06. 01.2022).

the dissolution of a dispute, the norms of currently operating legal framework of Great Britain were applied with the necessary corrections being made with regards to the local conditions”⁸.

The Rabbinate courts were maintaining their activity following all the Jewish traditions that have existed since the dawn of time the same as they did under the Ottoman Empire rule. Among other things, Rabbinate courts were independent in their decision making in all cases regarding marital and familial affairs⁹. Consular marriages, however, were still a common event in the period of the Mandate of Palestine and civil divorces carried out abroad were registered and accepted by the administration [Shetreet, Holmka 2017:31-32].

Thus, even during the period of the British mandate to govern Palestine, there was no interference by the state in the exercise of the rights of Jewish communities to observe their own religious customs and traditions.

5. The influence of Zionist movement on the order of realization of familial and marital relations

With the measures taken by the British government regarding the ruling and administrative control of Eretz Israel it was important to the Jewish people to continue developing the restoration of their state and resolve the corresponding questions in the areas of economy, culture, society and law [Bregman 2002: 44-47].

For the purposes of our research, it is important to note that World Zionist Organization which leader was a social and political figure Theodor Herzl [Kornberg 1993: 5] was created in the end of XIX century and the main focus of which was the restoration of Eretz Israel [Kornberg 1993:5-6]. However, this movement was strongly contradicting many aspects of the religious dogmatics of Judaism.

The main contradiction was that “willingness of young immigrants from Europe who yearned to create a Jewish state in The Land of Israel was the cause of anger of the elders, who thought that the revival of the state can only be based on the principles of Torah”¹⁰.

Nevertheless, despite meeting the resistance from the religious communities and aggression from some Arab citizens Jewish immigrants continued arriving to The Land of Israel. They were inspired by the idea of creating a young Jewish state the foundation of which would be *kibbutzs* [Rayman 1981:12] – agricultural communities created in the XIX century.

A kibbutz was a collective union whose main activity was focused on the agricultural development of the Jewish settlements in The Land of Israel. First kibbutz – Degania Alef was created in 1909, the ideology behind creating such a form of collective labor was based in the combined ideas of Zionism and Communism [Goldenberg, Wekerle 1972: 224-226]. Besides the collective labor that was a novelty in the lifestyle of Jewish settlements in The Land of Israel, there were separate principles and norms regulating familial and marital relations.

Apart from the existing principles regarding shared property and common ideology everyday life also had “communal” characteristics. For instance, the majority of kibbutz’s canteens had benches not because of the low price or efficiency but because they represented one of the manifestations of the shared ideology, namely the fact that a man and a woman are equal and could sit wherever they have a desire to. In some kibbutzs it was even prohibited for a husband and a wife to sit together because in their circle it was believed that marriage does not imply any exclusive rights of the spouses towards each other [Goldenberg, Wekerle 1972: 227-228].

Another unique implication of the gender equality principles created by the founders of kibbutzs is the banning of the traditional Hebrew word for husband – baal (לעב) because it has such connotation as “owner” and implies that the wife obeys her dominating husband [Goldenberg, Wekerle 1972: 227-228].

An important factor is that in the first decades of existence of kibbutzs traditional marriage was never a common practice among the members. Israeli history researchers Yosef Griden and Saadania Gelb in their work point out that if a man and a woman wanted to get married they went to the community house and asked to be provided a shared room. In its turn the process of termination of the relationship

⁸ See: The Palestine Order in Council, 1922. By King George V of the United Kingdom. Art 46. URL: https://ecf.org.il/media_items/1468 (accessed 07.01.2022).

⁹ Ibid. Art.51.

¹⁰ *The Cambridge Dictionary of Judaism and Jewish Culture*. Ed. by J.R. Baskin. Cambridge: Cambridge University Press. P. 304.

consisted in the man and the woman no longer living together, yet the process of division of property did not take place since the members of a kibbutz did not own any property [Criden, Gelb 1974:18-20].

In their book Yosef Griden and Saadania Gelb highlight an interesting fact that absence of traditional marriage should have served a purpose of destroying patriarchy and giving women an opportunity to independently maintain their position in the society and not depend on a man (economically or socially) and was looked at as a generally positive aspect for the society shifting the focus to the communal life which was the main aspect of a kibbutz [Criden, Gelb 1974:20].

An important idea in a kibbutz was the intention of exempting women of the traditional obligations of a motherhood. This intention served as the driving ideological force for the entire system of raising and educating children. Miri Scharf notes in her paper that “women were freed from the status of a domestic servant” in the sense that children were taken care of by the whole commune in the special establishment called “house of a child” and the tasks of food preparation and laundry were done collectively [Scharf 2001:241-242].

Nonetheless, the circumstances of a life in a kibbutz were such that women born there were not as opposed to the partaking in the so-called “traditional female roles”. As a result of that was that the majority of women were gravitating towards “the domestic chores” and despite their positive experiences living in the “houses of a child” they wanted to raise their children by themselves without the help from others [Scharf 2001:242-243].

Hence, we can conclude that despite living together in one big commune which principles were based on gender equality the notion of “a traditional family” still circulated among some people who believed to be correct to at least partially follow the traditional norms. Indeed, despite of the existing highly restrictive norms of the marital and familial relations present in the Jewish communities of Eretz Israel from the moment of their formation during the Ottoman Empire rule and until the termination of the regimen of the Mandate of Palestine and the establishment of the independent state of Israel. Those religious norms of familial and marital relations are still applied to this day.

Therefore, the British government ruling over Eretz Israel in 1922-1948 brought a set of changes towards the judicial process that was present during the Turkish-Ottoman period. The order of case consideration was organized according to the norms of the Customary law that was applied in England and all its colonies [Bentwich 1948:34-35]. However, norms applied in the legal proceedings were solely those of the Judean law, used for the conservation of traditions and the prevention of frustration among the Jewish communities of Eretz Israel. As a result of this influence legal system of the state of Israel was created on the base of English common law while taking into consideration the religious norms, especially those of regulation of the formation and dissolution of marriage.

6. Conclusion

Thereby, it can be concluded that since its establishment the legal institute of marriage in Eretz Israel starting at the time of the Ottoman Empire rule, until its termination and throughout the British Mandate of Palestine the legal proceedings in the area of marital and familial relations have been realized according to the norms of the Judean law. During the governance of the British monarchy in Eretz Israel the judicial process has gone through a set of changes due to the implementation of the norms of the English law. Inter alia a shift in the society was brought about by the youth Zionist movement in kibbutz legal system of which was based off of the principles of equality.

The normative basis for Israeli Declaration of Independence of 1948¹¹, as well as for the majority of the legislative acts in the area of familial and marital relations were the principles of the International law, while maintaining intact the religious traditions which have existed in the Jewish communities of Eretz Israel for many centuries. Moreover, despite the strictness of the Judean traditions, according to the clauses of the Israeli Declaration of Independence besides Israel being a Jewish state it is also a democratic one. Hence, democratic principles of equality and humanism are the most prevalent in cases where in the proceedings regarding marital and family affairs where the rights of one of the parties are violated, every citizen of the state of Israel can appeal to

¹¹ See: Israeli Declaration of Independence. URL: <https://main.knesset.gov.il/en/about/pages/declaration.aspx> (accessed 07.01.2022).

the Supreme Court and the Supreme court of Justice seeking a justified sentence and protection of one's interests¹². Meanwhile the rulings of the Supreme court are made according to the norms of International law and, among other things, in consideration with the Convention on the Elimination of all Forms of Discrimination Against Women of 1979¹³.

Therefore, the result of the integration of the legal principles typical for democratic countries and

the traditional norms of Judaism current legal system of the state of Israel was created. The mechanism of this system comes from the respect for the traditions whilst the main principles of democracy are also followed, namely those of justice, equality and humanism. This is what makes the legal system of Israel unique in every aspect, including the norms of familial and marital relations which integrate both traditional implementations and modern aspects.

References

1. Ágoston G., Masters B. *Encyclopedia of the Ottoman Empire*. New York: Facts On File. 2009. 650 p.
2. Bazili K.M. *Siriya i Palestina pod turetskim pravitel'stvom v istoricheskom i politicheskom otnosheniyakh* [Syria and Palestine Under Turk Dominion in Historical and Political Relation]. Moscow: Mosty kul'tury Publ. 2007. 607 p. (In Russ.)
3. Bentwich N. The Legal System of Palestine under the Mandate. – *Middle East Journal*. 1948. Vol. 2. Issue 1. P. 33-46.
4. Bregman A. *A History of Israel (Macmillan Essential Histories)*. New York: Red Globe Press 2002. 344 p.
5. Criden Y., Gelb S. *The Kibbutz Experience: Dialogue in Kfar Blum*. New York: Herzl Press. 1974. 277 p.
6. Elon M. *The Principles of Jewish Law*. The U.S.A.: Jewish Publication Society. 2003. 866 p.
7. Friedman I. *British Pan-Arab Policy 1915-1922*. New York: Routledge. 2010. 370 p.
8. Goldenberg S., Wekerle G.R. From utopia to total institution in a single generation: the kibbutz and Bruderhof. – *International Review of Modern Sociology*. 1972. Vol. 2. Issue 2. P. 224-232.
9. Goodwin J. A History of the Ottoman Empire: Lords of the Horizons. (Russ. ed.: Goodwin J. *Velichie i krakh Osmanskoi imperii. Vlastiteli beskrainikh gorizontov*. Moscow: Azbuka-Attikus Publ.; KoLibri Publ. 2016. 416 p.)
10. Gutwein D. The Politics of the Balfour Declaration: Nationalism, Imperialism and the Limits of Zionist-British Cooperation. – *Journal of Israeli History*. 2016. Vol. 35. Issue 2. P. 117-152. DOI: <https://doi.org/10.1080/13531042.2016.1244100>
11. Ikhsanoglu E. *Istoriya Osmanskogo gosudarstva, obshchestva i imperii. T. 1*. [History of The Ottoman State, Society and Civilization. Vol. 1]. Moscow: Vostochnaya literature Publ. 2006. 604 p. (In Russ.)
12. Kornberg J. *Theodor Herzl: From Assimilation to Zionism (Jewish Literature and Culture)*. The U.S.A.: Indiana University Press. 1993. 240 p.
13. Lange N. de. An introduction to Judaism. (Russ. ed.: Lange N. de. *Iudaizm: drevneishaya mirovaya religiya*. Moscow: Eksmo Publ. 2012. 336 p.)
14. Lapidus M. *A History of Islamic Societies*. 2nd ed. Cambridge: Cambridge University Press. 2002. 1002 p.
15. Levy A. *The Jews of the Ottoman Empire*. Princeton, N.J.: Darwin Press. 1994. 800 p.
16. Mendell L. *Jewish law. An Introduction*. Northvale NJ: Jason Aronson, Inc. 1994. 298 p.
17. Quint E.B., Hecht N.S. *Jewish Jurisprudence: Its Sources & Modern Applications*. New York: Routledge. 1986. 283 p.
18. Rayman P. *The Kibbutz Community and Nation Building*. Princeton, N.J.: Princeton University Press. 1981. 308 p.
19. Roth J. *The Halakhic Process: A Systemic Analysis*. New York: The Jewish Theological Seminary of America. 1986. 398 p.
20. Scharf M. A "Natural Experiment" in Childrearing Ecologies and Adolescents. Attachment and Separation Representations. – *Child Development*. 2001. Vol. 72. Issue 1. P. 236-251.
21. Shetreet S., Homolka W. *Jewish and Israeli Law - An Introduction*. Berlin; Boston: De Gruyter. 2017. 575 p.
22. Shipman P. *Family Law in Israel*. Israel: The Hebrew University of Jerusalem. 1995. P. 439-460.
23. Tsirkin Yu.B. *Istoriya bibleiskikh stran* [History of the Bible Countries]. Moscow: Astrel' Publ. 2003. 576 p. (In Russ.).
24. Van Seters J. *Abraham in History and Tradition*. Vermont: Echo Point Books & Media. 2014. 350 p.

¹² See: Basic Law: Judiciary Art. 15. URL: <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawTheJudiciary.pdf> (accessed 07.01.2022).

¹³ Convention on the Elimination of All Forms of Discrimination against Women New York of 18 December 1979. URL: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> (accessed 07.01.2022).

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