

Draconian law || Measure aimed at curbing rabbinical 'cheats' casts its net too wide

Amendment to new 'Tzohar law' is aimed at preventing observant couples from subverting the Rabbinate by marrying in unregistered ceremonies.

By Yair Ettinger | 21:27 05.11.13 | 0

We can assume that it all started with a political maneuver by Rabbi Eli Ben Dahan (Habayit Hayehudi). On the eve of the debate on the so-called Tzohar Law for nationwide marriage registration, the deputy minister of religious services received an order from his patrons, the rabbis of the party's conservative, right-wing Tekumah faction, to oppose the law, which was initiated in the Knesset by MKs from Labor and Yisrael Beiteinu.

Ben Dahan, who has espoused reform in religious services, and especially in marriage registration, since assuming his position, couldn't permit himself to vote against the law, especially since his superior, Religious Services Minister Naftali Bennett, is an enthusiastic supporter of the law. So he found a compromise: He would append to the vote another amendment to the marriage and divorce law, which would satisfy the conservative rabbis, headed by Rabbi Dov Lior of Kiryat Arba.

Ben Dahan also sponsored a proposal raised by three MKs from the ultra-Orthodox United Torah Judaism party, which imposes criminal responsibility, including up to two years' imprisonment, on non-registration of marriage and divorce - both for the couple and for the person performing the ceremony. Ben Dahan voted in favor of both the Tzohar Law and the UTJ amendment, and Lior was reassured.

Presumably, any Israeli Jew who marries outside the Chief Rabbinate from now on, and anyone who performs such a ceremony - including Reform and Conservative rabbis and those who offer various alternative ceremonies - can expect a punishment of two years in prison. In effect, that is not quite the case.

Ben Dahan explained that the law is not intended to prevent Reform and Conservative marriage in Israel, but only private Orthodox marriages that are not reported to the state. He explained that the law was prompted by concern for women who are refused a get (a religious divorce) by preventing their husbands from having secret, bigamous relationships, without the knowledge of the state. The precedent on which he relied was that of a husband who refused to grant his wife a divorce through the rabbinical court, but married another woman in a private, unofficial wedding ceremony, in accordance with halakha, Jewish religious law.

The amendment to the law is in fact designed to reduce the freedom of action of such cheats, but it is doubtful whether that's why Ben Dahan managed to reassure the Tekumah rabbis. A more likely possibility is that the law is meant to prevent a relatively new phenomenon in which couples, most of them religiously observant, marry according to halakha without reporting to the state, mainly out of disgust with the institution of the Chief Rabbinate. Some register afterwards as a common-law couple, or register for marriage abroad, but the religious ceremony remains between themselves and between them and their Creator.

Until now, the marriage law required that a marriage be registered by the couple concerned, with the threat of criminal proceedings if they failed to do so. Those who performed the marriage ceremonies faced only administrative sanction from the Chief Rabbinate, such as exclusion from the list of those officially authorized to officiate at weddings or, in extreme cases, the revocation of powers and titles.

But, despite the sanctions, the practice is expanding - as reported in Haaretz a year-and-a-half ago - and the list of rabbis who perform such marriages is transmitted through the grapevine. One reason is that not all the Orthodox rabbis who perform private marriage ceremonies are on the Chief Rabbinate's list of rabbis, or are known to the Chief Rabbinate. The new regulation could send them to prison, along with the couples.

So is it possible that, in order to curb informal Orthodox marriages, the wording of the law could also lead to prison sentences for entertainer Avri Gilad, Finance Minister Yair Lapid and Reform Rabbi Gilad Kariv - all of whom perform marriage ceremonies without registering with the Chief Rabbinate? Kariv, the head of the Reform movement, believes that it won't happen.

The marriage and divorce law deals with the registration processes for those defined as rabbis, and not with the fundamental aspect. According to Kariv, it's clear that a Reform or Conservative rabbi, or someone who performs alternative ceremonies, is not included in the definition of "rabbi," according to the language of the law, because such ceremonies are not recognized in Israel.

Kariv maintains that the new amendment to the law does not forbid performing ceremonies, but only requires anyone who presides at marriages and divorces to register them. "Clearly someone who performs a ceremony that isn't recognized in the State of Israel as a marriage or divorce ceremony can't register the marriage or the divorce," Kariv says.

So what are we left with? With the phenomenon of private marriages performed according to Jewish law, a marginal but expanding practice that is now expected to go even further underground than it was until now. As in similar cases in recent years, the religious establishment first attacks liberal religious circles, who want to live according to halakha, but are disgusted with the religious establishment. In effect, the new law denies freedom of religion to religiously-observant Israelis. Rabbi Seth Farber, the head of Itim, an advocacy group that helps Israelis navigate the religious bureaucracy, said that this constitutes "persecution - just as in Germany they wanted to prevent observant Jews from practicing circumcision."

Attorney Batya Kahane Dror, head of Mavoi Satum, an organization that advocates on behalf of women denied a get, which supports private marriages, said, "Let's not forget that the flourishing of private, unregistered marriage ceremonies among Orthodox couples is a direct outcome of the establishment's powerlessness in dealing with divorce proceedings, as well as its blackmail and refusal to grant religious divorces. Instead of dealing with the root of the problem and eliminating it, the Knesset prefers, by a large majority, to persecute marriage registrars and their assistants."