

Alternative Beit Din Gaining Some Traction

In first year, 250 litigants — many of them secular — chose independent rabbinical court over haredi-run arbitration. But can it have any real impact?

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Staff Writer

Jerusalem — Rabbi Yosef Carmel, an Israeli Army veteran and founder of an advanced training center for Israeli rabbis, received an unexpected call from overseas the other day.

The call was from an Israeli, a secular businessman whose real estate dealings in Romania with a religious Romanian Jew had become strained.

A lawsuit, with 400,000 euros at risk (more than \$500,000), was pending.

Don't go to a civil court in Romania, a Bucharest rabbi advised the Israeli — call Rabbi Carmel.

He is the founder of Mishpat Vahalacha Beyisrael, an innovative, year-old rabbinical court he established as an alternative to both the extant rabbinical courts and the backlogged secular court system.

Mishpat Vahalacha Beyisrael combines the traditional, halachic-based practices of a beit din with features of a secular, arbitration-based civil court. Rabbi Carmel, who serves as a dayan or judge, on the court, founded the independent beit din to attract secular Israelis, who often feel uncomfortable bringing their legal cases to a rabbinical court, and to improve the image of Israel's state-run batei din. Largely under the control of the haredi establishment, they have earned a reputation in many parts of Israeli society as corrupt and insensitive, and some Orthodox leaders have called for an overhaul.

The Romanian and Israeli businessmen agreed to take their case to Rabbi Carmel's beit din. They signed forms, binding in Romania and Israel, in which they pledged to abide by the court's decision.

Two weeks later Rabbi Carmel flew to Bucharest, where, acting as a one-man beit din, he listened to testimony for a day in a rented office that became an impromptu courtroom. Two weeks after that, he issued his decision — in favor of the Israeli; the Romanian paid the agreed sum.

The Romanian case, the rabbi says, is the latest sign that his rabbinical court, which marked its first anniversary last month, is gaining wider acceptance in Israel and abroad, especially outside the religious community.

About a case a day comes before his rabbinical court, some 250 in the first year. So far, most of the plaintiffs have been religious.

Mishpat Vahalacha Beyisrael handles strictly monetary cases — only the government-run courts can deal with criminal issues, and Israeli law allows only a small number of authorized rabbinical courts to deal with such "personal-status" issues as conversions and divorces.

Much of the criticism of Israel's batei din have centered around their conduct in ruling on personal-status cases.

The rabbinical courts suffer from a "negative image," according to statement issued by Mishpat Vahalacha Beyisrael, because of "the impression ... that the system is fossilized and does not adapt itself to the

developing modern world" and "the impression that there are no binding rules of ethics, which creates a feeling of 'unclean hands.'"

"A fair, skilled, sensitive rabbinical court, whose dayanim are Torah scholars, army veterans, and integral parts of the community, can work wonders in the deeply riven Israeli society," the statement reads.

Mishpat Vahalacha Beyisrael (the name means judgment and law in Israel) is a project of Eretz Hemdah, an advanced yeshiva that the rabbi founded 20 years ago to train rabbis to serve as members of rabbinic courts and as experts on issuing halachic decisions. About 100 rabbis have graduated from the seven-year training program, which includes compulsory community service.

Rabbi Carmel calls Eretz Hemdah (www.erezhemdah.org) the largest-such program in Israel affiliated with the Modern Orthodox segment of the religious community.

Tall, with a booming voice and a large, crocheted kipa, he is the very picture of a Modern Orthodox rabbi in Israel, one who enjoys talking about his army background and his secular friends.

Sitting in a dayan's chair in Mishpat Vahalacha Beyisrael's Jerusalem courtroom — there is another courtroom near Tel Aviv — he points to the

room's layout. It looks like any small courtroom, with attorneys' tables and a spectator's area. The room, Rabbi Carmel says, is patterned after modern secular courts where for two years he observed proceedings while designing his beit din's physical and organizational structure.

Behind the dayanim are shelves of Talmudic texts; on a nearby desk is a computer monitor, for recording events in the court.

"We have done extensive halachic research, which enables the Torah laws to give answers and become applicable to modern economic life and real life situations," Rabbi Carmel says, citing how his beit din has adapted "tools from the secular system."

The plaintiff and defendant in cases decided by Mishpat Vahalacha Beyisrael can choose an attorney or a tohain, an expert in beit din proceedings, as counsel, the rabbi says. Legal precedents can be cited; the decisions are printed, with participants' anonymity preserved; more discovery, or pre-trial sharing of evidence, is encouraged, than in standard rabbinical courts.

All his innovations, Rabbi Carmel says, are "100 percent halachic," approved by eminent Modern Orthodox rabbinic authorities. "We are using tools the [other] religious courts are not using."

"We are taking the best from the secular and the rabbinical systems," he says. "We are not attacking the others. We are only offering a solution."

So far, Rabbi Carmel says, the haredi authorities who choose the dayanim to serve on rabbinic courts have appointed only

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Only a few of the rabbinic judges trained by Rabbi Yosef Carmel, above, have been chosen by the haredi authorities to serve on the state-run courts.

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a few dayanim trained by Eretz Hemdah; he declined to cite a specific number. "The appointments are political decisions and we, as a rule, do not get involved in politics," he says.

"We are raising a new generation of dayanim," he says.

"He's training wonderful judges — the tragedy is that they are not being chosen for the court system," says Rabbi Shlomo Riskin, the onetime New Yorker who is chief rabbi of Efrat and has been a leading activist for the reform of the beit din system. But, says Rabbi Riskin, the work of Eretz Hemdah and Mishpat Vahalacha Beyisrael has limited effect so far. The Modern Orthodox institutions will only "make a dent" in the haredi-controlled system unless larger numbers of more-sensitive rabbis become dayanim, and unless courts like Mishpat Vahalacha Beyisrael are allowed to rule on personal status cases, he says.

Following the recent appointment of 15 new dayanim — 12 of them were haredi — Rabbi Riskin called for the establishment of an alternate judicial service whose members "will include love of Israel together with concern for the purity of Israel."

"The problem of the batei din is a terrible one. The image reflects the actual [situation]," Rabbi Riskin says. "The Talmud again and again gives all sorts of leniencies to help women in such a situation," he says, referring to wives whose recalcitrant husbands refuse to issue a get, Jewish divorce, which prevents the women from remarrying.

"But most judges do not implement those leniencies. The

standards are not what they should be in terms of compassion or sensitivity."

Rabbi Riskin says haredi rabbis often take the husband's side in marital disputes, urging reconciliation when it is unrealistic or against the wife's best interests, and make unreasonable demands, "demands not required by halacha," when dealing with prospective converts.

Since 1991, Rabbi Riskin's educational institution, Ohr Torah Stone, has advocated women's interest in the beit din system through the Yad L'isha Legal Aid Center and Hotline for Women.

Rabbi Riskin and Rabbi Carmel, with similar means, work independently of each other.

Eretz Hemdah, which is best-known for its "Ask the Rabbi" feature, which offers answers to a wide variety of contemporary questions, especially after the 9/11 attacks on the United States, recently issued "Living the Halachic Process: Questions and answers for the modern Jew (Devora Publishing) a book based on its questions and answers.

As word of his beit din's work spreads in the secular and religious media, Rabbi Carmel says, its influence on other rabbinic courts is likely to spread.

"We have established very strong sidrei din (rules of procedure) and rules of ethics which are sure to be adopted soon by all court systems, including the haredi courts," he says. Soon, he says, Mishpat Vahalacha Beyisrael will be joined by similar batei din that include features of secular courts. "In ten years I'm sure there will be at least 50." ■