

Lay Judges at the Israeli Labor Court-Equal Partners to the Judges or Assistants to Professionals?

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Abstract

The Israeli Labor Court system was established in 1969. It became a major factor in the functioning of the Israeli labor relations system. A unique characteristic of labor courts in Israel is the composition of the judging panel, which includes judges and lay judges. Judges are nominated by the president upon recommendation of committee of three Supreme-Court judges, two ministers, two kneset (parliament) members and two representatives of the Israel Bar Association. Lay judges are appointed by the Minister of Justice and the Minister of the Economy based on recommendations made by the key actors in the labor relations system.

This article deals with the following question: What is the rationale for the inclusion of lay judges in the Labor Court panel? Is such inclusion meant to provide a contribution that is of equal value but unique, provided by a partner who, despite differences in training and experience, enjoys the same status as judges, or should the lay judges be regarded as quasi-assistants to the “real” professionals, the judges, providing the later with non-systemic contributions and public legitimacy? This question has been ignored so far in the literature. A detailed analysis of the discussions in the Israeli legislature, the Knesset, prior to the approval of the Labor Court Law of 1969, indicates that the legislature intended to assign lay judges equality, both in terms of status and in terms of value, with their judicial colleagues. However, since the legislature did not explicitly specify its reasoning, this intention failed to materialize.

This paper examines the current methods of recruiting and training lay judges and the efforts made to preserve the more proficient ones; presents the advantages and disadvantages of the current policy; and suggests ways to improve it.

This article depicts the barriers that interfere with the materialization of the full potential of lay judges during the public hearing in-court phase, during backstage panel interactions, and in terms of legitimizing the institution of the Labor Court. The conclusion of the article is that lay judges will be able to make a much more significant contribution if they are provided with the right tools and the backing of the Knesset and the judicial system.

Robert Merton distinguishes between two elements of social and cultural structures, culturally defined goals, purposes, and interests on the one hand and ways in which society defines, regulates, and controls the acceptable methods of achieving these goals. He assigned the term “goals” to the first and “means” to the second. This article suggests that judges should be treated as the experts in the “means” aspect the Labor Court system, i.e., the knowledge of the law - and lay judges should be treated as the experts in achieving the goals of the organization, namely reinforcing the status of work as a social institution.

To improve the performance of lay judges as experts in the realm of “ends”, it is proposed to adopt appropriate policies of human resource management such as extending the duration of their term of office, and promoting experienced lay judges to serve as mentors of new ones. Furthermore, it is suggested to change the seating placement of panel members so as to increase the active participation of lay judges in public hearings and to allow direct communication between them and the presiding judge. In addition, it is also proposed to train lay judges in translating their views into legal form, thus paving their way to greater participation in writing verdicts. In addition, it is recommended to transfer mediation and conciliation authority to the care of lay judges.