MEDIATION PROCEEDINGS WITHIN THE DRUZE COMMUNITY: TRADITION V. MODERNITY

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Abstract. *Mediation is an alternative conflict-resolution method, in the framework of which the parties to the dispute engage in negotiations in order to resolve their disagreements. Druze Religious Courts are part of the court system in the State of Israel. The Druze Religious Courts Law, 5723-1962 was enacted in 1962, leading to the establishment of those courts. Since that time, members of the congregation have litigated before Druze religious courts, and Druze Qadis entered their judgments according to the rules of marriage law that are taken from Druze religious law and Druze custom. The Druze religion has also acknowledged the concept of mediation, and especially with respect to disputes that involve spouses.*

In the context of mediation, it should be remembered that the privilege and necessity of understanding, assessing and being creative belongs to the parties. Therefore, the [facilitation] of agreements and the "closure of files" are not the true standard by which the success of mediation proceedings is measured in terms of their social-educational aspects. The true standard consists of the degree of transformation experienced by the parties in all matters that pertain to their belief in their ability to manage their relationship and their disputes in the future.

Keywords: *Druze Community, mediation, Israel, tradistion, modernity, Druze Religious Courts*

Introduction

Mediation is an alternative conflict-resolution method, in the framework of which the parties to the dispute engage in negotiations in order to resolve their disagreements. The process is conducted by a mediator, who serves as a professional and neutral third party (Gabrieli, Zimmerman and Alberstein, 2019). The mediator helps the parties to engage in dialogue, but they lack the authority to decide on the dispute. The mediation proceeding and the solution achieved by it are strictly subject to the parties' consent. Each party may decide to discontinue the proceeding at any time and stage. The mediation proceeding gives the parties an opportunity to communicate with each other in a setting that enables them to proceed towards a solution and to cooperate. The parties can determine their preferred outcome by means of a mediator, in full cooperation, and without there being any external authority, and in lieu of placing their fate in the hands of a judge (Silura and Sharon, 2018).

Druze Religious Courts are part of the court system in the State of Israel. The Druze Religious Courts Law, 5723-1962 was enacted in 1962, leading to the establishment of those courts. Since that time, members of the congregation have litigated before Druze religious courts, and Druze Qadis entered their judgments according to the rules of marriage law that are taken from Druze religious law and Druze custom. The Druze religion has also

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acknowledged the concept of mediation, and especially with respect to disputes that involve spouses. Because of the sanctity attributed to marriage under [Druze] religious law, the Druze religion obligates religious officials, spouses and their parents to make an effort to reconcile spouses and/or reach an amicable solution, inter alia by means of mediators and/or arbitrators, a fact that is reflected in the Druze Marital Status Law (Section 47 of the Marital Status of the Druze in Israel Law, 5762-1962), which forms the basis of rulings by Qadis at Druze courts, and, to the extent possible, [is used to prevent] the occurrence of divorce. Under the Druze religion, a man may never remarry the woman he divorced.

Is the application of mediation and/or conflict-resolution proceedings justified within the Druze religious court system? If so, what are the grounds that justify them?

1. The Druze

The Druze are a heterodoxy congregation. The Druze religion was founded in the eleventh century in Fatimid Egypt (in the times of the sixth Fatimid Caliph, Al-Hakim bi-Amr Allah, who ruled over Egypt between 996-1021. Near the end of his reign, the Druze sect began to form with him as a central figure. Druze doctrine was substantially influenced by the Ismaili doctrine. A year after the religion was founded (1018), Hamza ibn Ali, one of the spreaders of the faith at that time, began to publicly disseminate the new doctrine. The appearance of the Druze religion was met with objection on the part of Muslims, and, in 1021, after the disappearance of the Fatimid Caliph who founded the religion, a purge against the Druze began, (the Druze [were seen as] heretics). The Druze were forced to hide their new faith and express loyalty to the predominant religious doctrine, and they began to apply the "Al Taqiya" principle, which enables members of the congregation to ostensibly express their allegiance to another religion, provided that they keep their true faith in their hearts (Hassan, 2011). Thus, even though the religion was created in Egypt, the Druze doctrine was not very successful in Egypt, but it spread to the mountainous regions of Lebanon and Northern Israel due to persecution. The Druze who were left in Egypt were forced to abandon [or hide] their faith, and [proselytizing] new believers was [banned] in 1043. Thus, the Druze, who were originally an active religious-political movement, became a closed sect (Amarani, 2010; Hassan, 2011).

More than a thousand years after the Druze religion came into existence, the Druze now live in four main Middle Eastern countries: Syria (approximately 700,000), Lebanon (approximately 215,000), Jordan (approximately 30,000) and Israel (approximately 145,000 residents as of the end of 2019). There are also small congregations in other countries, particularly Western countries in North America, South America, Australia and South Africa. As of the end of 2019, the Druze congregation in Israel consisted of approximately 147,000 people, which is 1.5% of Israel's population, and 8.1% of the Arab population in that country (temporary data). 98% of the Druze residents in Israel live in 19 settlements. 17 of those are located in Northern Israel, and two of them are found in Haifa District. The percentage of Druze residents in those settlements is considerable, and, in 13 of them, the percentage of Druze residents is 94% or more, and, in seven of them (Beit Jann, Majdal Shams, Buq'ata, Julis, Yanuh-Jat, Sajur and Mas'ada), the Druze population constitutes 100% of the entire settlement (CBS, 2022).

The State of Israel recognizes the separate status of Druze as an independent religious community, and its men serve in the IDF on a compulsory basis. The settlement of the Druze in isolated regions resulted in a socially-cohesive, rural, and conservative community that is characterized by a traditional lifestyle and a patriarchal structure (Amarani, 2010). This society has always adhered to religious and traditional values, with

independence and their connection to the land always being observed as the key values of the congregation's life. Over the centuries, Druze society has been shaped by religion, with the social-traditional framework and mountainous setting compensating for the limitations of that religion, and they determined the connection of each individual to their congregation. To this day, Israeli Druze society is an isolated, conservative and more traditional society, albeit not necessarily an agrarian one (Amarani, 2010).

2. Divorce under Druze marriage law

The aforementioned law consists of 19 chapters and 171 sections, and is entitled "Marital Status – Druze Congregation Law." The law discusses every aspect of marital status within the Druze congregation, including marriage and divorce. The original law was enacted in Lebanon on February 24, 1948. The law was amended on July 2, 1959, and was later adopted in 1961 by the Spiritual Leadership of the Israeli Druze community. It was later officially recognized as the "Religious Council" of the Druze community, as defined in the Regulations. The chapter of the Marital Status Law that deals with divorce is Chapter 7, entitled "Dissolution of Marital Ties" (Sections 37-49). Marriage law under this law describes several ways to dissolve a marriage [among members of the Druze community]:

The first method consists of unilateral divorce (*Talaq*). Under Section 37 of the Israeli Druze law (this section has been amended), Talaq Divorce takes place in the presence of reliable witnesses, at which point the marriage immediately comes to an end (see Section 37 of the Druze Marriage law). Under the previous version of that section, marital ties are not dissolved by Talaq [divorce] proceedings before a Madhhab-Qadi enters a ruling.

Section 38 of the Israeli Druze Law also states that anyone who divorces his wife by way of Talaq Divorce may not remarry that woman at any time in the future. Section 11 of the Israeli Druze Law also states that a man may not change his mind about the divorce and bring his divorced [former wife] back to him. It is important to note that Section 37 does not state which spouse is the contributor to and/or cause of the Talaq divorce. Under Druze law, under a principle dates back to the greatest enactor of Druze Law since the [Druze religion's inception] – Al Amir Al Sayed – and that [applied] even before the enactment of the marriage laws that are based on the teachings of Al Amir Al Sayed, [equal rights were conferred upon both sexes] under Druze Law in the context of divorce, in view of the principle whereby "Spouses may not be coerced into continuing the marriage." This is a very important [principle] of Druze Law, and it also affects the status of a child who was born in a forced marriage. The content of Sections 37 and 38 below was amended by the Druze Religious Council on February 16, 1979. The previous [version] of this section only allowed divorce that is decreed by a Qadi, so as to prevent divorce in every way possible.

The amendment was enacted in view of the large number of cases in which men divorced their wives, with the court facing the problem of finalized divorces whose annulment it could not certify under religious law if the divorce took place in the presence of two reliable witnesses, if the two witnesses made the entry into force of the divorce public after they tried to reconcile the two spouses and failed. At that point, the spouses would never be allowed to remarry [each other] (Layish, 1978). **The second option** set forth in the Israeli Druze Law consists of the wife's ability to annul the marriage (Tafriq) Dismantiing the family, subject to the application of one of the grounds set forth in Sections 39-41 and 43-45 of the Marital Status Law, which include: severe illness, lack of physical ("manly") strength, insanity, adultery, protracted incarceration or protracted absence of the husband. Pursuant to those grounds, the wife may petition the court to annul the marriage by way of

a judgment. Moreover, the husband may petition the court for a "Tafriq" on the same grounds.

The **third** annulment option, which is described in Section 42 of the Marital Status Law, consists of annulment pursuant to the consent of both spouses (*Tafriq Batarachdhi*). Annulment in such cases enters into force upon its announcement in the presence of witnesses and the *Madhhab Qadi*, who certifies it by way of a judgment.

Section 42: "Spouses may annul their marriage by way of mutual consent (*Tharadhi*)." The annulment enters into force upon its announcement (*A'alan*), in the presence of witnesses, and in the presence of the Qadi-madhhab, who certifies it by way of a judgment.

The fourth option applies under Sections 47 and 48 (*Naza'a* and *Shikak* claims) Family confict, [in the form of] or "dispute and strife" claims, or "domestic peace" claims.

Section 47: "If strife (*Naza'a*) or a dispute (*shikak*) arises between the parties, and one of them petitioned the Qadi-Madhhab, the Qadi will appoint an arbitrator (*Khakam*) who is a member of the husband's family and an arbitrator who is a member of the wife's family. If those family members lack the skills needed by an arbitrator, the Qadi will choose an arbitrator who is not a member of those families.

Section 48: The two arbitrators will familiarize themselves with the causes for the dispute between the spouses and will make an effort to reconcile them (*Itzlakh Dhat Albain*). If the reconciliation efforts fail due to lack of cooperation and obstinacy on the part of the husband, the Qadi-Madhhab will annul the marriage and order the payment of the "Deferred Bride Price", in whole or in part. In both cases, the Qadi may decree that the spouse responsible for the annulment must pay damages (*Utal Vadharar*) to the other spouse. Indeed, divorce can be caused by strife or a dispute between the spouses, and not necessarily in cases where one of the spouses directly petitions the court and informs it of their wish to divorce, and requests a divorce judgment from the Qadi. However, claims that are based on those sections are not claims for divorce. Rather, [the purpose of these claims] is to seek the assistance of the court in resolving the strife or dispute that arose between the spouses, after the Qadi explains the significance of annulment to the parties and the rights and obligations that arise therefrom, as well as the meaning of divorce. Only if he fails to reconcile them and bring them back to the family unit will he appoint two arbitrators, one relative of the husband and another of the wife, who will attempt to reconcile the two and resolve the dispute. If no suitable arbitrator can be found among the members of the family, the Qadi will appoint arbitrators who are not their relatives, and who will act on behalf of the court. In such cases, the arbitrator serves as a type of reconciliatory mediator, and not as an arbitrator as defined in the Arbitration Law (Arbitration Law, 5728-1968).

The results of the mediators' efforts will determine the future adjudication and handling of the issue by the courts. Under Section 48 of the Marital Status Law, if the arbitrators or mediators failed to reconcile the two spouses, they will then examine who – in their view or according to their conclusions – among the spouses is the ultimate cause of the divorce. If the husband causes the divorce, he will pay the deferred bride price, in whole or in part, to the wife. If the wife is the cause of the divorce, the Qadi will decree that her right to the deferred bride price (in whole or in part) is invalid. In both cases, the Qadi may rule that the spouse responsible for the annulment must pay damages (*Utal Vadharar*) (Section 48 of the Marital Status Law). As stated, the Druze congregation strictly protects the rights of each wife, maintains equal rights for both men and women, and enables women to act separately and independently, and to not be tied to the husband in all matters pertaining to the divorce. Druze legislators were aware of the possibility of husbands who

[might] divorce their wives without any justified cause and without any contributory culpability on the part of the wife. Section 49 of the Marital Status Law addresses such situations, grants protection to women, and states that if the Qadi finds that there is no legal justification for divorcing the wife, the Qadi will award damages to the wife in addition to the deferred bride price that is payable to her.

It therefore follows that husbands and wives may divorce their spouses in the presence of witnesses. In such cases, the announcement by the court that the divorce has taken place is declarative, and the each of the two reliable witnesses [must be] an official who serves as a *Sayes* or *Imam*. They will make every effort to reconcile the two and prevent the divorce from taking place before it is announced. In such cases, the court is precluded from bringing spouses back together, including by way of mediation, after it finds that the divorce has been finalized, as that is prohibited under religious law.

The courts may also seek a divorce in case of a dispute. Under religious law and the provisions of the Marital Status Law, the court will then appoint arbitrators or mediators, even without the parties' consent, in an attempt to resolve the dispute before the Qadi decrees the marriage's annulment. In such cases, the court's decision to annul the marriage is constitutive.

Marriages can be annulled in case the husband or wife suffers from a terminal illness after two years have passed, or if the husband has been absent for three years and it is not possible to collect spousal support from him, or five years in any event even if it is possible to collect spousal support from him, or in case the husband or wife commits adultery, and this includes consensual divorce. In such cases, the Qadi's decision to annul the marriage is constitutive. In some cases, the court can force the parties to engage in mediation under the provisions of marriage law, which shall be overseen by two religious officials, in an attempt to prevent the marriage's annulment (Kabalan 2016).

3. Mediation

3.1. Mediation – Background

Mediation is increasingly becoming a more central and important feature of conflict resolution outside of and in parallel to the court system, both in Israel and around the world, including in the context of international disputes, business disputes, business relations and family law. In the United States, the 510 largest corporations have signed a treaty that requires them to seek mediation proceedings before they institute legal proceedings. In a survey conducted in the United States in 1989 by the Center for Public Resources (Alroi, 1992), it was found that 76% of all disputes in which those companies were involved were concluded by way of negotiations and mediation.

Mediators intervene in a variety of contexts: diplomacy and international relations, workplace matters, [disputes] between members of management and unions or workers committees, departments within an organization, disputes between managers, and disputes between managers and subordinates. Mediators are also involved in interpersonal matters such as divorce, sexual harassment, disputes between homeowners and tenants, and disputes at schools. Mediation is a negotiation management model that is based on interests (in contrast to the common method of conducting negotiations, which is based on "positions"), which was developed by Roger Fisher William Ury from Harvard University. In addition, mediation is a legal proceeding that is established in Section 79c of the Courts Law, 5744-1984, the Courts Regulations (Settlement), 5753-1993, and the Courts Regulations (Appointment of Mediators) (Amendment) 5759-1999.

Mediation proceedings are defined as follows: “Proceedings in which a neutral third party intervenes in the disagreement in question. [That third party] assists the adversaries in reaching a voluntary resolution of their differences so as to resolve their dispute” (Alroi, 1992). A similar definition is proposed by Wall & Lynn (1993), who note that [mediation] is an instance of intervention by a third party that controls the interaction between the parties, but has little control over the outcome. Other scholars (Amzaleg-Bahar and HaCohen-Wolf, 2009) defined mediation as a communicative process in which the parties solve practical and emotional issues, with the purpose of each of them being to resolve the dispute while obtaining the greatest benefit possible that would meet their present and future needs. In essence, the mediator performs his role by way of convincing [the parties], although it is possible to exert various types of pressure on the parties in order to force them to take measures to resolve their dispute (Amzaleg-Bahar and HaCohen-Wolf, 2009).

The role of mediators focuses on the present: providing assistance with reconciling the parties concerned from a certain point onward. In other words, [mediators] help [the parties] to reach an agreement by way of communicating with each other, thereby putting an end to the dispute and beginning a new chapter. In the framework of that proceeding, the [dispute evolves from a conflict that is based on competition to a dispute that is characterized by partnership and sharing]. The agreement that is [eventually reached] constitutes a binding contract in case proceedings are [later] instituted in courts, or that puts an end to the judicial proceeding, usually by way of judgments in case the proceedings are conducted in court. The number of meetings determined for the purpose of the mediation process depends on the mediation model, the framework in which it takes place, the complexity of the topics that are in dispute and the personality of the parties. Mediators distinguish between various stages of this proceeding, and it is commonly held that every participant in such proceedings undergoes each and every one of those stages, although in different orders. The mediation proceeding is a means of negotiations between parties to a dispute that is intended to reach a settlement. It is a voluntary proceeding that takes place out of court, in which a neutral third party – the mediator – assists the parties to a conflict in engaging in direct negotiations, and creates a satisfactory and consensual solution to the dispute in question, without having the power to enforce any solution on them. The entire proceeding takes place in strict adherence to [the principle of] confidentiality, which is one of the foundations of its existence. Nothing stated in the framework of the mediation proceeding can serve as evidence in court – on the part of the mediator or the parties – in case they withdraw from the mediation process. The parties, including the mediator and others who play a part in the proceeding, sign a confidentiality clause that forms part of the Mediation Agreement. The parties’ consent is the essence and cornerstone of the mediation process. The need for consent applies at every stage of the process, including every hearing and the [final solution] that is agreed upon by the parties (Amzaleg-Bahar and HaCohen-Wolf, 2009). From a social standpoint, mediation is more than another tool that facilitates negotiations between parties to a conflict. Mediation is a life philosophy whereby [all humans are to support each other] (Chief Justice Aharon Barak). According to this philosophy, it is within the nature of society to witness the emergence of solvable disputes. Mediation reflects such values as communication, attentiveness, acceptance and openness, and it instills educational values and shapes a better and more tolerant society. The success of dialogue and mediation breeds hope for the resolution of conflicts at the state level (Mironi, 2012).

Tools were also developed in earlier times and within different cultures, and attempts were made to resolve disputes by way of communication and negotiations. In many

cases, these approaches were a form of tradition and the cultural basis for the development of today's mediation proceedings. Jewish Law, for example, encourages settlement as a basis for the resolution of disputes under a model that combines both [acts of] grace and [adherence to the] law, both justice and peace. Biblical law emphasizes compensation for victims more than punishment and retribution, with the purpose being the establishment of peace, which is a fundamental principle of Judaism and reflects a will to reconcile and establish good relations among the people, or, in the words of Rabbinical Sages: "Disputes should be resolved in the heart and not only in the mind." A [notable] feature of Arab culture is the *Sulkha*, which is supported by the authorities, which know that the arrangement that this proceeding entails, rather than punishment in the form of criminal proceedings, is the best and perhaps only tool that can stop the bloodshed. The Mauri in New Zealand habitually held conferences, a process that was eventually enacted into law as a means of handling delinquency among adolescents (Court Legacy Museum, 2007).

Alternative conflict resolution methods have been in existence for a long time, and constitute an element of many religions. In Judaism, Moses, the "Father of all religious judges," [decreed]: **"Let the law cut through the mountain,"** On the other hand, Aharon the Priest argued for **"the love and pursuit of peace, and the establishment of peace among men."** Aharon, who, due to his personal traits, refrained from being a judge, sought instead to resolve disputes as a private mediator, and would try to convince parties to reach a settlement (Ottolenghi, 1994). Christianity also clearly decrees as follows: "Blessed are the peacemakers, for they will be called children of God." The Quran contains a similar [passage]: "If you fear that a dispute has arisen between the two, send an arbitrator from each family and, if they wish to resolve the dispute, God will assist them in that endeavor."

Mediation is currently perceived as an alternative dispute resolution method (ADR). ADRs consist of dispute resolution proceedings and techniques that do not necessarily use the court system. In fact, these methods have also been recognized by the general public, the legal community and the law. Many judges have considered these methods as a conventional way to reduce the court system's workload, and is a fair way to resolve disputes (which also happens to be cheaper for the litigants themselves) (Kabalan 2016).

Mediation is one of the alternative methods of conflict resolution, in the framework of which the parties to the dispute engage in negotiations in order to resolve their disagreements. The process is conducted by a mediator, who serves as a professional and neutral third party (Gabrieli, Zimmerman and Alberstein, 2019). The mediator helps the parties to engage in dialogue, but they lack the authority to decide on the dispute. The mediation proceeding and the solution achieved by it are strictly subject to the parties' consent. Each party may decide to discontinue the proceeding at any time and stage. The mediation proceeding gives the parties an opportunity to communicate with each other in a setting that enables them to proceed towards a solution and to cooperate. The parties can determine their preferred outcome by means of a mediator, in full cooperation, and without there being any external authority, and in lieu of placing their fate in the hands of a judge (Silura and Sharon, 2018).

Mediation can be viewed as a tool that is suitable for resolving many types of disputes: familial disputes, divorce, workplace disputes and even international disputes. The end result is a mediation arrangement that consists of joint and individual decisions that are made by the parties, which can be filed with the court and be given the force of a judgment. Each of the parties will believe that they benefited [from the process], and mediation agreements tend to be honored. However, if the dispute is not resolved by the proceeding, the parties will still maintain the right to petition the courts. On the other hand, it should be

understood that legal proceedings can end in a decision whose result is a "zero-sum game," which leaves both parties feeling like they lost, or dissatisfied with the court's judgment. This is in contrast to the mediation proceeding, which leaves the control over and the solution to the dispute in the parties' hands, and this enables the parties to experience a certain measure of relief and liberty in making their own choices, and they thereby facilitate their own negotiations among themselves or between them and the other parties, thus [enabling them to reach] an agreement (Finkelstein, 2007).

Mediation proceedings are widely recognized in Israel and around the world and they have evolved from a voluntary proceeding to a compulsory and binding proceeding, whose purpose, *inter alia*, is to examine an alternative way to conduct the dispute out of court. It appears that most parties, including other actors such as social workers and attorneys, have been satisfied with the outcomes of this proceeding (Bayer-Topilsky and Sorek, 2019), even though the authority of binding law looms above it, and it is possible for an arbitration proceeding to commence involuntarily in some courts, such as the Family Court, and in religious courts pursuant to the Information, Assessment and Coordination Meetings (*Mahut*) Law. Throughout the process, the parties may decide whether to continue or not, and this therefore does not actually violate the autonomy of any party or their free will, and particularly their right to terminate the proceeding should it fail to meet their expectations at any time (Ben Nun and Gabrieli, 2004).

The Druze Religious Courts are part of the Israeli justice system. In 1957, the then Minister of Religion, Chaim Shapira, recognized the separate status of the congregation as an independent religious congregation by virtue of his [ministerial] authority (Religious Congregations (Organization) Ordinance, 1926). The Druze Religious Courts Law was enacted in 1962, and, since its enactment, these religious courts have been established and members of the congregation have litigated before Druze Religious Courts, and Druze Qadis rule in them in accordance with the rules of marriage law, which are taken from the Druze congregation's religious law and its customs.

The Druze religion has also recognized the concept of mediation, and particularly in disputes between spouses, because of the substantial value that religious law attributes to marriage. Druze religious law requires religious officials, spouses and their parents to attempt to reconcile the spouses and/or reach an amicable resolution [of their dispute] by means of mediators and/or arbitrators (Kabalan, 2016), as reflected in the Druze Marriage law, pursuant to which Qadis rule at Druze courts so as to prevent cases of divorce. Under Druze religious law, when a man divorces his wife, he is then precluded from ever remarrying her. The IACM Law can also be an efficient and safe method of resolving disputes between spouses, and for identifying other alternatives that will facilitate an agreement between them, [and this is one of the fundamental purposes of that law]. The mediation proceedings [that are conducted through the assistance of Support Units] are mandatory under the aforementioned law, and they take place either at family courts or at religious courts. To this day, no pertinent minister has issued an order that addresses the matter of Druze religious courts.

3.2. The Information, Assessment and Coordination Meetings (IACMs/*Mahut* Meetings) Law, and the application of mandatory mediation proceedings

The Litigation of Family Disputes Law, 5775-2014, or the IACM Law, entered into force in July 2016 as the temporary provision (whose duration was three years). At the end of that period, the Knesset will decide whether and how to permanently apply the law. This law constitutes a revolution in the way that family disputes are conducted in Israel. It means

that, for the first time, the filing of a legal action in family matters in Israel will be conditional on a preliminary proceeding at the Support Units of the Family Court and the religious courts, such that the law requires disputing family members to participate in Information, Assessment and Coordination Meetings with a social worker at the Support Unit (Section 3 of the Information, Assessment and Coordination Meetings (Mahut) Law).

The purpose of the law is to help spouses, parents and their children to amicably resolve familial disputes, and to reduce the need for litigation, while taking into consideration every aspect of the dispute and the benefit of every child (Section 3 of the Information, Assessment and Coordination Meetings (Mahut) Law). The law states that, in familial disputes, instead of filing an action with a court, a "Motion to Resolve a Dispute" is first filed without specifying the subject matter of the dispute or the claims against the other party. The court summons the parties to a first meeting at the relevant Support Unit. The Support Unit holds additional meetings with the parties in order to provide them with relevant information that would facilitate the resolution of the dispute, completes the family's "intake" process, and provides the parties with suitable recommendations with respect to the conduct of the dispute, and seeks to coordinate the continued management of that family's dispute. After the meetings at the Support Unit, the parties can decide whether to file an action with the court, or resolve the dispute consensually using tools that are not legal-adversarial.

In practice, under this new law, the parties are offered a mediation proceeding that consists of four meetings, at which the parties will meet with a mediator, who serves as a neutral third party. The important information that is provided to them [includes], *inter alia*, the implications of the divorce for the parties and their family members in view of its legal ramifications and its emotional, financial and social effects. Moreover, the parties will receive an explanation about the nature and principles of the proceeding, an explanation about the role of mediators in identifying the dispute as well as possible alternative solutions to the dispute. It will include separate meetings with each party [that are designed] to identify their genuine needs, and to enable the parties to engage in negotiations until they reach a satisfactory agreement. Moreover, only the two parties can determine the outcome of the proceeding. The information provided by the mediator to the parties will be freely presented in colloquial language rather than "legalese," [in an attempt to] create a direct, personal and open involvement and a discussion with all parties about every single matter that is in dispute. Throughout the negotiations, the parties will be able to control the [way decisions are made with regard to the dispute], in view of the pace and individual schedule of each [party]. Another advantage of this proceeding is its relatively low cost compared to legal proceedings. In addition, the parties have the right of to decide [on the manner in which the dispute is resolved by themselves] – a significant right that reinforces the parties' sense of safety and their reliance on the [ability to maintain] their autonomy as individuals (Gabrieli, Zimmerman and Alberstein, 2019).

Extensive powers were entrusted to the Support Units upon the entry into force of the IACM Law, which effectively turned them into a "gateway" to family courts. The Support Units of the family courts are comprised of professional therapists whose role is to provide the courts with a variety of services that are based on their expertise, including diagnoses, consultation, treatment and mediation. Thus, professional therapists sit next to the judges, and work together with them under a single institutional roof. In this fashion, the work of the Support Units with the courts becomes a fascinating platform on which these two professional fields interact – the legal and the therapeutic (Meller-Shalev, 2016).

In his essay, *The Law and Settlement* [Hebrew], Judge Y. Tirkel describes the advantages of settlement. In his view, the settlement [approach] has systematic importance, and it extinguishes the fire of conflict and leaves no embers that could be reignited. It also has educational and social significance in the form of fostering the habit of resolving disputes by way of settlement and avoiding argumentativeness, clashes and litigation. Settlements not only fairly resolve disputes from a legal standpoint, but they also entail mutual compromises in the face of factual or legal uncertainty, and they enable the parties to restore the [daily] routines of their lives. They can also enable the parties to save the costs entailed in protracted litigation. In his view, the large-scale adoption of the settlement [approach] also confers benefits upon society as a whole (Tirkel, 2002). The mediation proceeding gives the parties a chance to acquire new tools that enabled them to deal with disputes, both when they choose to [dissolve their familial ties], and in the future (the Draft Litigation of Family Disputes Law, 5775-2014).

3.3. Mediation in cases of divorce

Over the years, mediation has become a tool that can be used in almost every legal context in both Israel and other countries, including disputes between countries and the signing of peace treaties, mediation in criminal proceedings, mediation at the workplace between employees and employers, and familial disputes and divorce proceedings. In Israel and in other places in the world, mediation is perceived as a particularly suitable substitute for adversarial proceedings, and particularly in divorce cases that entail far-reaching implications for the litigants-spouses and their children (Bogush, Halperin, Kadri and Ronen, 2002; Kobo, 2017).

Under the IACM Law, the parties are referred to a dispute-resolution proceeding, in which they are provided with information about the advantages of the proceeding. In fact, it also entails tremendous social value and an overarching purpose, in the form of reaching an amicable and peaceful agreement, while improving the efficiency of the proceedings in a way that benefits the family from both a financial and emotional perspective. On the other hand, it can be deduced that – because the mediation proceeding is compulsory – it could be interpreted as a violation of autonomy. On the other hand, the application of compulsory mediation proceedings on the parties stems from the justice system's need to provide the parties with **significant information** about alternative proceedings of whose advantages they were not aware. Moreover, after they are presented with the advantages of this proceeding, the [litigants are then able] to make a [positive] and informed decision as to whether [they should] use an alternative dispute-resolution proceeding.

The IACM Law also indicates that the legislature wanted to encourage negotiations between litigants such that the responsibility for the proceeding and its outcomes rests with the litigants. This proceeding does not violate the autonomy of the parties, and serves more as an opportunity for the litigants to choose their individual solution independently and freely, and to resolve the dispute amicably (Deutsch, 1998).

In her book, *Settlement – The Giant Awakens* [Hebrew], Dr. Orna Deutsch (1998) describes the mediation proceeding as follows: "The mediation proceeding consists of… strengthening the social safety of the participants: the belief that they have the power to control their own fate, to overcome difficulties by themselves, without an external authority." This approach reinforces the view that shifting responsibilities to the parties in the context of dispute-resolution will encourage them to negotiate freely until they fully resolve their disputes.

It should be noted that, in every mediation proceeding, the parties maintain the right to have their day in court. This instills a sense of safety among litigants in [the sense that they may] continue the mediation process without having concerns about [their being unable to petition the courts]. If the mediation attempt fails, that will not be the end of the matter, and the parties can petition the court at all times and freely, or, in the alternative, they may choose a different way to resolve the dispute. On the other hand, if the mediation proceeding succeeds, the [wishes of everyone involved] are quickly met and at relatively low cost. In any event, the significant reduction of costs [consists of removing] the mental distress and pressure that are entailed in litigation (Alroi, 1992).

3.4. Arguments in favor of incorporating mediation proceedings in court

In Israel and other world countries, mediation is perceived as a suitable substitute for adversarial proceedings, particularly in divorce cases that aggressively affect both spouses and their children. Therefore, many arguments have been made that justify the application of compulsory mediation proceedings in courts and religious tribunals, including the following:

A. Adversarial proceedings naturally intensify the conflict, exacerbate the dispute, are replete with tensions, and their sole purpose is to optimally meet the client's material demands, e.g., a divorce agreement that benefits the husband. On the other hand, mediation proceedings emphasize the need to continue the relationship between the parties after the divorce (Bogush, Halperin, Kadri and Ronen, 2002).

B. In mediation proceedings, the promise entailed in a mutual agreement between the parties to resolve the dispute in a reconciliatory fashion is based on mutual agreement and not on competition, and this enables the continuation of good relations between the parties after the end of the proceeding, such that the outcome of the mediation proceeding consists of more than the [drafting] of a divorce agreement, but it also includes the parties' sense of control and emotional stability, and the creation of a greater commitment on their part to adhering to the agreements that they reached on their own through the assistance of the mediator (Bogush, Halperin, Kadri 2007).

C. [Arguments in favor of] the application of compulsory mediation proceedings within the court system [state that it] will enable a high percentage of claims that end in settlement (Silura and Sharon, 2018).

D. The purpose of the mediator is to reach a fair and just arrangement between the parties, and not to reach a decision that is enforced on the parties (Regulation 1 of the Courts Regulations (Mediation), 5753-1993).

E. Although the mediator can be viewed as having a considerable effect on the parties, because the parties turn to the mediator consensually, this could facilitate the purposes of the mediation proceeding (Deshe, 2019).

F. Unlike the litigation of parties in court, in which their hostilities could escalate because of various legal tactics that they need in order to gain a judicial advantage, and whose purpose is to achieve a legal victory that is in line with the wishes of each party, by turning to a mediation proceedings, the parties prepare themselves for a suitable environment in which the dispute would be resolved, and which reduces the extent of hostilities and increases the chances of amicably resolving the dispute (Alroi, 1992).

G. In adversarial proceedings, the parties stand before a judge, and the case is directed at the attorneys by the court system, without the parties having any right to determine the identity of the judge, as is the case in mediation proceedings (Zamir, 2002).

H. In legal actions – including divorce cases – statements of claim are filed by the parties that state the causes for the divorce, and they usually contain serious and mutual accusations. The parties must be examined and cross-examined, witnesses and evidence must be brought, and the parties are occasionally examined in a way that leads them to highly emotional litigation processes (Bogush, Halperin, Kadri and Ronen, 2002).

I. The involvement of courts in familial disputes in general and in disputes between spouses in particular, which also entails emotional involvement, will disrupt and block the relationship between the spouses, and will lead to hostility and arguments that preclude mutual discussions, and this will make it difficult to resolve the dispute and conclude the legal proceeding, it entails costs that are incurred by both parties and place a burden on the court system. In cases where the spouses still live under the same roof, the legal proceeding often has negative effects on the emotional state of the children who live with their disputing parents. However, mediation proceedings, unlike legal proceedings, are free of the burden of time and money that affects parties to a legal proceeding, which increases the tension that serves as a barrier to the resolution of the dispute (Bogush, Halperin, Kadri and Ronen, 2002).

3.5. Arguments against the incorporation of mediation proceedings in courts or tribunals

Notwithstanding all the advantages that are conferred by mediation proceedings, many scholars have warned against the disadvantages of mediation and the problematic nature of this proceeding, and particularly when it is forced on the parties, e.g.:

A. Some are of the opinion that compulsory IACMs are contrary to the purpose of mediation proceedings as a natural and free process that is designed to reach agreements about the dispute. Even though – in practice – its purpose is to provide information about mediation proceedings and to examine the parties' suitability for the proceedings, considerable concerns still exist that mandatory IACMs could turn into *de facto* mandatory mediation proceedings (Finkelstein, 2007).

B. The pressure of reaching agreements by way of mediation, and particularly when the parties are forced to institute mediation proceedings by law, will often undermine the most important element of mediation, i.e., the freedom and control of the parties, while nullifying the defenses they have in ordinary adversarial proceedings, such as the disclosure of information and faithful representation, and without finding an alternative to them. Moreover, mandatory mediation puts battered women at risk (Bogush, Halperin, Kadri, 2007, page 336).

However, far from resolving the problem, this proposed solution has created another and far more serious threat. Mandatory mediation puts battered women at risk.

C. Some have argued that, notwithstanding the generally accepted opinion, not only are mediation proceedings not truly controlled by the parties, but the concealed effect of the mediator is also nothing more than a substitute for the judges' decision (Connelly, 2019). At times, the sacrifice [that the mediation proceeding entails] as a result of the parties' bargaining originates only in one of the parties, and that is certainly not fair:

To the degree that a continuing relationship is needed following divorce, values of trust and empathy are probably necessary ingredients. Sometimes former spouses must make sacrifices that assist the family. The problem is that if the wife is willing to make concessions to benefit the divorcing family, while the husband is not, bargaining becomes inherently unfair." (Brinig, 1995. p 29).

D. Mandatory mediation proceedings are contrary to the essence of mediation, which is based on strengthening the autonomy of private will and the parties' ability to make

decisions [independently]. In that framework, some have raised concerns that compulsory mediation proceedings could lead to coercion in mediation proceedings and the formulation of their outcome. This matter is of particular importance in cases of power gaps between the litigants. There are concerns that mandatory mediation could [reinforce] and even increase the power gaps, and, in the framework of divorce-related negotiations, women are usually still weaker than men (Finkelstein, 2009).

An informal process that places the low powered spouse, usually the wife, fully at the mercy of her more powerful husband.

E. Moreover, in mandatory mediation proceedings, the focus will be on the positions of the parties, while pressure is exerted such that the consent and free will of the parties to such proceedings will be deficient (Deshe, 2019).

F. Another argument against mandatory mediation originates in the concern that parties in a mediation proceeding that was forced on them will refrain from cooperating, and, in any event, their degree of openness will be smaller, and this would result in suboptimal arrangements (Finkelstein, 2007; Deshe, 2019).

G. The failure of mediation proceedings could increase tensions and the lack of trust among the parties, the costs of the parties' litigation and the court system's workload. Moreover, there are concerns about flooding the courts with litigation cases that deal with the refusal of one of the parties to participate in mediation proceedings, and there are many studies that confirm this (Finkelstein, 2007).

H. It has also been argued that mandatory mediation makes it difficult to access the court, and this adversely affects the right to petition the courts (Finkelstein, 2007).

I. The court system is a source of precedents, it interprets and applies laws and case law, serves the litigating public, and determines binding norms for the public interest. The incorporation of mandatory mediation proceedings in the court system will invalidate the role of adjudication.

3.6. Mediation in Druze religious courts:

The Druze religion has also recognized the concept of mediation, and particularly in disputes between spouses because of the substantial value that religious law attributes to marriage. Druze religious law requires religious officials, spouses and their parents to attempt to reconcile the spouses and/or reach an amicable solution [to their dispute] by means of mediators and/or arbitrators (Kozlov, 2017) & .(, 2016), as reflected in the Druze Marriage law (Section 47 of the Marital Status of the Druze Law, 5762-1962), which forms the basis of rulings by Qadis at Druze courts, and, to the extent possible, [it is used to prevent] harm to the proper continuation of marriage life and/or the occurrence of divorce. Under the Druze religion, a man may never remarry the woman he divorced, regardless of the circumstances of the divorce (Sections 11, 38 of the Druze Marriage law).

3.7. The application of the IACM Law in Druze religious courts

Following are key facts about the present situation:

A. The purpose of the aforementioned law is to encourage family members to resolve their familial disputes in alternative ways rather than adversarial litigation by determining mandatory participation in an alternative and preliminary proceeding, i.e., forcing the litigants to receive information and assess the state of the family before legal proceedings are instituted. A mandatory preliminary proceeding that takes place before an action is filed makes it possible to force the parties to participate in IACM meetings at the

Support Units of the court (the Family Court and religious courts) at a relatively early stage of the familial dispute, without exceedingly harming the fundamental right to access the courts, to the exclusion of situations that necessitate a judicial decision, e.g., cases of domestic violence (Explanatory Notes to the Draft Litigation of Family Disputes Law (Early Resolution of Disputes), 5775-2014.

B. The IACM Law, as previously demonstrated, can also serve as an efficient and safe tool for resolving disputes between spouses. However, under that Law, IACM meetings at the Support Units are mandatory for the parties, both at family courts and religious courts, and the IACM Law (Definitions) also includes the Druze religious courts, and, to this day, no pertinent order has been issued by the Minister of Justice.[1] the Druze religious courts do not force Druze litigants to attend IACM meetings at the Support Unit, which has already been established at the Druze court (and is now [operational]). We therefore ask the question of whether it is nevertheless possible to apply mandatory mediation proceedings and/or force litigants to file a Motion to Resolve a Dispute with the Support Unit of the Druze court – and prior to the institution of ordinary legal proceedings? Is that justified and does it benefit the divorce proceeding?

C. The aforementioned review of divorce laws under the Druze Marital Status Law indicates that there are cases in which spouses arrive in court with a finalized divorce, as defined in Section 37 of the Marital Status Law. Therefore, in view of the [aforementioned] and absolute religious prohibition, the possibility of attempting to reconcile the two spouses in such cases, and, *inter alia*, [of attempting to] restore their [family unit], is completely out of the question. It therefore follows that there is no point in forcing the parties to attend IACM meetings for that purpose, and that the provisions of Section 3 of the IACM Law – which stipulates the filing of a Motion to Resolve a Dispute in divorce claims – [cannot be applied] from a religious perspective, and so it is not possible to apply divorce hearings outside of the Druze religious court even if the Motion does not include any facts or claims that pertain to the dispute, including claims that pertain to jurisdiction.

D. In addition, the above also indicates that religious law also includes "familial disputes" (Section 47 of the Marital Status Law, 5723-1962), which are referred to in the Marital Status Law as *Naza'a* and *Shikak* (نزاع وشقاق), a purely religious proceeding that forms part of the Druze religion, its application entails religious conditions, and its resolution and management are also governed by religious law and religious conditions. There is no doubt that the "familial dispute" proceeding between Druze spouses falls under the exclusive jurisdiction of Druze religious courts because it forms part of "marriage and divorce" affairs under Druze religious law (Section 4 of the Druze Religious Courts Law). Therefore, such disputes between Druze individuals could not be brought before a family court, even if the Motion to Resolve a Dispute under the IACM Law (Section 3 of the IACM Law, 5775-2014) does not include claims or facts that pertain to the dispute, including such that pertain to jurisdiction because – under religious law and as stated above, any claim that is filed with the court that pertains to divorce, whether it is a *Naza'a* and *Shikak* claim, a family dispute claim, a divorce claim or otherwise – the court will be the one that decides whether to refer the parties to an Arbitrators Committee, mediators, the Support Unit, to

[1] Section 7 of the IACM Law states as follows: "This law will enter into force on 11 Tammuz, 5776 (July 17, 2016) (in this law, the "Application Date"). With regard to religious courts for which a support unit was not established before the publication of this law, the provisions of this law will apply on the date determined by the Minister of Justice, by way of issuing an order, in consultation with the pertinent head of the religious court, after a support unit has been established for it, or if the provisions of Section 8(c) of the Support Units Law apply to it.

consultants or to any other advanced proceeding at its discretion and in the framework of Druze religious law.

E. Therefore, unless the referral to the Support Unit is presented by the religious Qadi and not by any other external party, the provisions of the IACM Law nullify the court's exclusive jurisdiction in the framework of the religious prerogative it has under the Law (Section 47 of the Marital Status Law, 5723-1962) of hearing marriage and divorce cases because, from a religious law perspective, not every proceeding is suitable for the Support Unit, and only the court is authorized to determine the cases that can be referred to the Support Unit.

F. Needless to say, one of the purposes of the IACM Law is to [resolve the] "Race of Jurisdictions" problem – which exacerbates family disputes that are adjudicated in courts – by preferring the prevention of escalating family disputes, in a genuine attempt to resolve the dispute in alternative ways that replace legal litigation, instead of other mechanisms of acquiring jurisdiction (The Explanatory Notes to the Draft Litigation of Family Disputes Law (Early Resolution of Disputes), 5775-2014). The Druze religious court has exclusive jurisdiction in marriage and divorce cases (Section 4 of the Druze Courts Law, 5723-1962), and its jurisdiction to hear other marital status-related cases, e.g., cases that involve spousal support, the division of property, custody, seeing arrangements, etc., is acquired with the consent of the parties (Section 4 of the Druze Courts Law, 5723-1962), i.e., there is no "race of jurisdictions" with respect to the aforementioned tribunal, and, in this context, the IACM Law will therefore contribute nothing to the Druze religious courts, but will only take away from its authority and create a proceeding that runs in parallel to the purely religious proceeding and that takes place before the Family Court, and will even create a race of jurisdictions that has not existed before.

4. Mediation among minorities in Europe

Mediation and arbitration are different types of alternatives to litigation that are permitted by law, and they are known as "alternative dispute resolution" mechanisms (ADR). Mediation is one of the most common forms of ADR, and it offers an alternative to adjudication and arbitration. The most basic difference between these mechanisms consists of notices, in contrast to adjudication and arbitration, in which an authority or an authorized third party (judges) execute a legally binding judgment after a violation of a judicial decision or an existing norm. Mediation can be used at every stage of the dispute. Mediators are not authorized to hand down decisions, and the parties themselves are the ones that defer [sic] the arrangement. Moreover, unlike binding judicial decisions, mediated agreements do not serve as precedent, and they do not establish an authoritative rule or pattern. Instead, each agreement is unique to the dispute in question and could be completely different in two similar cases (Küss, 2010).

Mediation in Hungary is currently at its earliest stages. Although it is governed by parliamentary laws and is employed in a variety of civil cases, there is a small number of nongovernmental organizations that seek to provide this service with respect to disputes that involve minority rights (European Judicial Network in Civil and Commercial Matters, 2008). Moreover, there is no single national and governmental entity that provides mediation services in the context of minority rights violations, apart from international offices such as the HCNM of the OSCE. The two most important government institutions in connection to the protection of minority rights in Hungary – with some potentially capable of providing this service – are the Equality Authority and the parliamentary

commissioner (in other words, the ombudsman) for the rights of national and ethnic minorities.

At present, there are Islamic websites in Europe that provide normative content for European-Muslim minorities. These websites present analyses of their fatwas, i.e., legal and religious recommendations that were provided in the context of family-related matters. This technological and online accessibility enables the creation of new public spaces in which various and at times contradictory terms are negotiated (with regard to coexistence between Islam and the state). This enables the incorporation of terminology that is taken from fatwas into existing legal frameworks through the institutions of arbitration and marriage contracts. At the same time, these websites strengthen the role of the individual and facilitate the voluntary observance of Islamic law. Undoubtedly, these websites [make it technologically possible] to redefine the politics of religious authority (Šisler, 2009).

The expansion of Muslim communities in Europe and their increased strength in countries whose cultures are largely non-Muslim: such circumstances breed confrontations that stem from the concurrent existence of state legislation and sharia norms in a [certain] territory. "Muslim Sharia Courts" [can be] found in secular and non-Muslim countries, which offer various divorce-related mediation proceedings and thus enable the resolution of issues that are derived from conflicts between the laws of Islam and the laws of the country in which the community resides (Mukhametzaripov & Kozlov, 2017).

Liberal countries now have non-state legal arrangements [for] minorities such as Jews and Muslims as a parallel legal system. Some view these institutions as a threat to the political and liberal order. In practice, the presence of "quasi-legal" institutions that constitute a feature of some minority communities is best described as a "legal order of a minority." However, reality shows that the legal orders of minorities have always coexisted with the laws of the state. A liberal democracy does not need to eliminate or criminalize the legal orders of minorities in order to pursue a "single law for all" vision. Instead, more pluralistic methods and approaches have now been adopted, which are suitable for minorities in increasingly more diverse communities. One of them consists of mediation in marriage law cases, which facilitates the alignment of interests while maintaining the framework of normal conduct that confers benefits on all parties involved (Maleiha, 2014).

In this essay, I will analyze the process of mediation among minorities in democratic and liberal countries. I will present how balances are struck between the marriage laws of minorities and the laws of the state.

5. Conclusion

[In this chapter I will attempt to provide an] informed answer to the question, "is it still justified to apply mandatory IACMs and/or mediation proceedings at the Druze Court?"

It has already been demonstrated that Druze marriage law requires litigating spouses and the Qadi to make every possible effort – including by way of mediation through religious officials or as deemed appropriate by the Qadi – to prevent the occurrence of the divorce. Moreover, the Druze religion ascribes great significance to marriage, and it permits divorce only in necessary cases, and, if the divorce indeed takes place, [that process is irreversible], as reflected in the Druze Marital Status Law (Sections 11, 38 and 47 of the Marital Status Law, 5723-1962) – which justifies [cases in which] litigants file divorce claims with the Druze Court, e.g., *Tafriq Batarachdhi* (consensual divorce), *Naza'a* and *Shikak* (familial dispute), etc., and after it is proven to the court that no finalized divorce is in place in accordance with religious law, by way of a motion that is filed with the Support

Unit by the Qadi, and even by way of mandatory decision,[2] as a possible way of resolving the dispute and delaying a potential divorce, which. The therapists that work together with the court can contribute to the continued and strong existence of the family unit and facilitate the [welfare of the family's children], and can serve as a middle ground between the duty to participate in mediation proceedings as prescribed in Section 47 of the Marital Status Law, 5723-1962 and leaving that as a completely voluntary option of the parties, who choose a professional and external mediator through the assistance of the Support Unit. I believe that this entails many advantages, including a proper transition from the voluntary mediation model to a model under which the proceeding also becomes mandatory under marriage laws, such that the social worker at the Support Unit could provide professional assistance [in] removing the barriers and hostilities between the parties, assuage their strong emotions, and facilitate their mutual communication before they agree to the mediation proceeding. It will thus become possible to ensure a productive and proper mediation proceeding that [culminates in] a durable and sound agreement.

The IACM meeting exposes litigants to controlled mediation proceedings in an attempt to resolve the dispute, and leaves them with the option of returning to the court. Moreover, the IACM entails an important social message, according to which, in many cases of conflict, such as those that involve custody and visitation arrangements, and financial disputes in the context of divorce, attempts should be made to reach solutions by way of mutual discussion and agreement, without the need for a judicial decision.

Moreover, it is difficult and even impossible from a religious and legal perspective to generally apply the IACM Law to litigants in the Druze Religious Court through an external authority. However, and given the religious and constitutional barriers, we noted the justifications and how, in certain cases, the Qadi can exercise his authority under civil and religious law, and refer the parties to the Support Unit.

We therefore conclude – notwithstanding the fact that the IACM Law does not apply in its present form to Druze Religious Courts – that the Support Unit of the Druze Religious Court should be used – such that, if the Qadi finds – after conducting an examination on the basis of religious law and the specific cases before him – that it is justified and proper to do so, he may refer litigants who presented him with a divorce claim to the Support Unit. The Support Unit can serve as a possible way of resolving the dispute and delaying the occurrence of divorce. This therapeutic profession can assist in protecting the continued and sound existence of the family unit and the [enduring welfare of children among their families], and this [could serve] as a middle ground between imposing the duty to participate in mandatory mediation proceedings under marriage law, and leaving it as a voluntary option of parties who choose a professional and external mediator through the Support Unit. I believe that this entails many advantages, including a proper transition from the voluntary mediation model to a model under which the proceeding also becomes mandatory under marriage laws, such that the social worker at the Support Unit could provide professional assistance [in] removing the barriers and hostilities between the parties, assuage their strong emotions, and facilitate their mutual communication before they agree to the mediation proceeding. It will thus become possible to ensure a productive and proper mediation proceeding that [culminates in] a durable and sound agreement. Moreover, the IACM entails an important social message, according to which, in many

[2] The Druze court is a judicial tribunal, and a violation of an order or decision of this tribunal constitutes an offense and/or a violation of Section 6 of the Contempt of Court Ordinance and Section 7a of the Religious Courts (Enforcement of Compliance and Adjudication Methods) Law, 5716-1956.

cases of conflict, such as those that involve custody and visitation arrangements, and financial disputes in the context of divorce, attempts should be made to reach solutions by way of mutual discussion and agreement, without the need for a judicial decision.

In the context of mediation, it should be remembered that the privilege and necessity of understanding, assessing and being creative belongs to the parties. Therefore, the [facilitation] of agreements and the "closure of files" are not the true standard by which the success of mediation proceedings is measured in terms of their social-educational aspects. The true standard consists of the degree of transformation experienced by the parties in all matters that pertain to their belief in their ability to manage their relationship and their disputes in the future. This personal empowerment of the parties should strengthen the community as a whole and reinforce its social [ties]. If this proceeding fails, the parties [may still avail themselves of the court], and they will have the right to pursue the adversarial path.

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