Objectionable work in Israel

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OBJECTIONABLE WORK IN ISRAEL

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I. INTRODUCTION AND CONTEXT

It is perhaps no coincidence that the Israeli Law Review, the oldest Israeli law journal published in English, chose to dedicate two special issues to matters that fall on opposite ends of the socio-legal realm. The first special issue of the Israeli Law Review, in 1989, focused on torture—a practice that cannot be implemented without a high degree of deference and conformity.1 The other special issue, published in 2002, was dedicated to the matter of conscientious objection (CO) in the context of military service in the Israeli Defense Forces.2 Between the two lie the day-to-day lives of Israeli society, normality within a reality of extremes, an intense mixture of conformity and radicalism, secularism and fundamentalism.

This context is important to the matter at hand. Legal reasoning—“ordinary reasoning applied to law”—in one sphere is intimately related to legal reasoning in another sphere.3 Insofar as the case at hand is concerned, decades of social and legal preoccupation with matters of CO that relate to military engagement in general4 and to specific military decrees in particular5 have formed a body of jurisprudence with respect to the limits of tolerance to “comprehensive doctrines,” a term defined by John Rawls to include...

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“conceptions of what is of value in human life, and ideals of personal character.”

Therefore, in the Israeli context at least, military CO serves as a seemingly convenient background for a discussion of objectionable work. However, while the themes are similar, we should be wary not to force the analogy. Indeed, it may be that the dissimilarities between CO in the military and in the employment relationship map the relevant factors that this article will address. First, the order to perform “objectionable work” may come from a private enterprise or from a public sector employer. The military conscientious objector, on the other hand, always faces the power of the state. In other words, one should ask if a distinction is, or should be, drawn between the public sector in general, the public sector employer, and a private sector employer.

Another matter concerning the peripheral rights may or may not be mixed in the fray. While the military conscientious objector presents the clear case of the limits of conscientious objection, the employee’s refusal to perform an employer’s directive is often (if not even better) understood in terms of other rights, such as privacy, freedom of speech, and equal protection. In addition, the employment contract (obviously irrelevant in the military context) may also impact the limits and justification of objection to particular directives set by the employer.

Finally, consideration will be given to the legal remedy sought. While the military conscientious objector seeks to be exempted from a particular engagement, or from conscription altogether, the range of remedies that the court considers in objectionable work issues is much wider. More importantly, as we will see, there is a strong inter-relationship between the remedy that the court is considering and its willingness to accept the substantive charge.

Before trying to decipher the Israeli jurisprudence on this matter, a qualification is in order: while this paper will discuss all the Israeli cases dealing with objectionable work, their number, over the course of Israel’s relatively young legal system, is not overwhelming. An analysis of the themes identified above (the background to the objection, the public or private nature of the employer, and the remedy sought) with the background of one or two relevant cases at a time should be done with caution. Naturally, each case involves overlapping themes, thus making it difficult to pinpoint the determining factor of the judicial decision. For this reason, I will

make use of some related case law that does not always deal with objectionable work *strictu sensu*, to support the normative assumptions that underlie the cases.

II. GROUNDS FOR OBJECTIONS

Are Israeli courts more receptive to claims for exemption on the grounds of religious CO than on other grounds of CO? On the face of it, such a distinction seems ill-founded. Both secular and religious objections surely may have "sufficient 'cogency, seriousness, cohesion and importance' to warrant protection,"7 Mark Freedland and Lucy Vickers note that, under European law, "it is clear" that political beliefs, atheism and other non-religious viewpoints are covered.8

Yet, an interesting judgment delivered by the Israeli High Court of Justice (HCJ) in 2004 suggests that such a distinction, indeed, exists. In *Milo v. Minister of Defense*,9 the HCJ had to deal, for the first time, with the case of a female conscientious objector whose request for exemption from military service was related to moral reservations, concerned with Israel's occupation of the West Bank and Gaza (at the time), and not to religious grounds. This matter is important, since Israeli law allows women, but not men, to be exempted on "conscientious or religious grounds."10 The HCJ preferred to interpret "conscientious grounds" in a way that required evidence of religious or traditional constraints that prevent a woman from performing military service.11 The judgment was criticized because it opted for an unnecessarily narrow interpretation of a rare statutory exemption on the grounds of conscience, and one that could easily include secular grounds.12

While the analogy to objectionable work is important, its consequences are not straightforward. One could surmise that institutional experience with CO in life-threatening situations would lead to greater tolerance in cases that are much more mundane in

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10. Defense Service Law, 5746-1986, S.H. 39(c) (Isr.).
comparison. This rationale would suggest that if the legal system is willing to tolerate a limited range of acts of CO in the military context, the scope of motives that would be deemed legitimate would plausibly be greater in employment and social security matters.

On the other hand, we may find that courts would view “objectionable work” cases as trivial in comparison. The courts may prefer to address sensitive constitutional dilemmas only in the most extreme cases of political friction, thus dismissing claims for ideological exceptions in cases that deal with, for example, the employment relationship.¹³

A sense of the judicial attitude may be gained by comparing two cases. In *Irit Aroussi v. the Employment Agency*, a claimant of unemployment insurance was referred by the Employment Agency to a job as a seamstress in a clothing shop.¹⁴ When she approached the employer, she realized that the work would involve sewing “immodest” clothing. Being an orthodox Jew, she sought guidance from the municipal Chief Rabbi, who submitted an opinion to the Court, stating that

sowing immodest clothing is tantamount to aiding and abetting a crime. According to Jewish rule (Halacha) a person is not allowed to perform an act that assists others to commit a crime. Immodest clothing is an offence by the woman who wears them and by men who see what should not be seen. She who sews such clothing therefore aids the commission of many offences.

The Employment Agency objected that Jewish law was not the law of the land, and that the relevant provision in the National Insurance Law, section 163, stated that a claimant must accept job offers under particular conditions (the job the claimant performed over the past three years, a wage that is not less than his unemployment benefits, etc.), but these do not include conscientious or religious objections. The regional Labor Court accepted the claimant’s position in a strikingly brief judgment, stating that “it is clear that a person cannot be required to perform work that would require him or her to perform offences according to the tenets of the religion he or she lives by.”

The second case involved the rights of journalists to refuse to comply with a new editorial line, which was initiated by a takeover of

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¹³. The American Supreme Court, for example, in *Wisconsin v. Yoder* 406 U.S. 205, 215 (1972) was clearly more favorable to exemptions that stem from religious motivations. The Court stated that “subjective evaluation and rejection of the contemporary secular values accepted by the majority” in a manner that rests on “philosophical and personal [choice] rather than religious” would not allow for legal exemption. *Id.*

the paper.\textsuperscript{15} The \textit{Jerusalem} (formerly Palestine) \textit{Post}, a left-leaning paper owned by the Israeli General Union (the Histadrut), was sold in 1989 to a group of conservative tycoons, including Conrad Black and Robert Maxwell. Following the takeover, the journalists felt increased pressure to change the paper’s agenda. They resigned and demanded redundancy pay, normally awarded to employees who are dismissed, but not to those who resign. The National Labor Court’s (NLC) decision here was much more nuanced than the one described above.

On the one hand, the NLC ruled that the owner of a paper may instruct a journalist to write an article on a matter that the owner sees fit, and may offer the journalist guidelines for the expected result. Under Israeli law, an employee is entitled to redundancy pay when “conditions of work are such that he should not be expected to continue working.”\textsuperscript{16} Citing the case of \textit{Shemli v. Israeli Communist Party},\textsuperscript{17} the NLC ruled that “a person’s position on matters of state, society, economy, etc. does not constitute ‘conditions of work’ in the sense of section 11.”\textsuperscript{18} Moreover, the employee “may not refuse to write the piece just as an associate in a law firm cannot decide which clients he will handle and which client he will refuse to handle.”\textsuperscript{19}

On the other hand, the NLC states that the above does not hold “when the employer’s instructions conflict with the law, ethics \textit{or with his conscience}.”\textsuperscript{20} The NLC refers, by way of example, to section 318 of the Israeli Penal Code of 1977, that states that a doctor “does not have to perform an abortion if the act conflicts with his conscience.” This rare exception is interesting in and of itself, but it is not clear how relevant it is to the case at hand. First, the doctor in question would probably be faced with a request from a patient, and not a demand from an employer. Second, and more importantly from a legal perspective, the exemption here is stated explicitly in legislation. Does the same apply when no such legislation exists? The court’s decision is unclear. The NLC clarifies that the owner’s freedom of speech grants him the right to choose an editor and journalists as he sees fit, and if “their style, bias or political opinion are not to his liking”—he may terminate their employment.\textsuperscript{21}

\begin{itemize}
  \item \textsuperscript{15} NLR 93/3-223 Palestine Post v. Yehiyel [1994] 27 PDA 436 (translation by author).
  \item \textsuperscript{16} Severance Pay Law, 1963, S.H. 11(a).
  \item \textsuperscript{17} NLC Judgments, Shemli v. Israeli Communist Party [1974] 6, 42 (translation by author).
  \item \textsuperscript{18} \textit{Id.} at 447.
  \item \textsuperscript{19} \textit{Id.}
  \item \textsuperscript{20} \textit{Id.} at 451 (emphasis added).
  \item \textsuperscript{21} \textit{Id.} at 449.
\end{itemize}
Yet, as sometimes occurs, the whole does not necessarily include its parts. While the employee's political opinion may serve as grounds for dismissal, it does not legitimize meddling. The NLC states that if the publisher decided not to fire an editor, he cannot intervene in the latter's work on a regular basis, because that would undermine the editor's freedom of expression.

Therefore, the difference between the courts' decisions in the two cases may be explained on the grounds for CO: religious doctrine, in the first case, and political opinion, in the second. A different perspective is also possible. In the first case, the nature of the legal dispute posited the individual and the state on opposing sides. Alternatively, the second case involved two private actors. A related matter is the fact that the legal remedy sought in each case was quite distinct. We turn to these matters below.

III. THE EMPLOYER: PUBLIC OR PRIVATE

When mapping the factors that should be considered in objectionable work cases, the identity of the defendant as part of the public sector or the private sector is quite relevant. The reason for this distinction is that "where the employer can be viewed as part of the public sector there may be additional factors that affect the question of the proportionality of any restrictions on non-discrimination rights." The reason for this distinction may be obvious, but should be explicitly mentioned. It is quite common, especially among those who are not labor law scholars, to think of the private sector workplace as part of the "free market," as "quintessentially private" and, thus, as legitimating regulation only in exceptional cases of market failure. The public sector, on the other hand, is not part of the economic market and therefore may legitimately pursue other goals. Specifically, these goals may include granting little weight to profit maximization, and though constraints of efficient government are and should be taken into account, "government cannot be run just like a business in part because its elaborate procedures are meant to

23. Freedland & Vickers, supra note 7, at 618.
OBJECTIONABLE WORK IN ISRAEL

produce something else besides the specific services that the private sector provides." Therefore, it would stand to reason that the public service, which is charged with the advancement of public interests, would take some of these interests into account when acting as an employer. If government, in general, aims to advance, for example, equality and freedom of conscience, it would make sense that it does so also in its role as a public sector employer. Focusing on religious freedom, Freedland and Vickers note that “public sector employers may need to provide a level of protection to religious interests in order to uphold the public policy of promoting diversity.”

In addition to promoting diversity, it should be remembered that the public sector serves as a monopoly of sorts where certain occupations are concerned. Thus, for example, since all police officers and teachers in Israel are employed in the public sector or in organizations funded by the public fisc, forcing them to perform acts that, for them, are unconscionable, may compel them to leave their occupation altogether. While this consideration was not serious enough for Justice Holmes when he quipped that “a policeman may have a constitutional right to talk politics, but he has no constitutional right to be a policeman,” one may wonder whether this comment is misleading. The state’s ability to attach unconstitutional conditions to employment is, in fact, quite troubling when no parallel alternatives exist.

Arguably, however, this logic goes both ways. Indeed, the NLC in Palestine Post stated that a paper’s refusal to publish a journalist’s contributions does not violate his freedom of speech, since he may “find himself another platform, or even establish a new one.” It may be suggested, then, that the private employer’s ability to set the terms of employment, including the ability to demand, what the employee deems to be, objectionable work is greater because of the employee’s ability to work elsewhere. Yet, it is not unrestrained. The courts seem more inclined to limit the employer’s prerogative where freedom of conscience is buttressed with additional concerns that favor the employee’s case, such as constitutional rights (other than freedom of conscience), and the contract of employment.

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26. Id. at 38.
27. Freedland & Vickers, supra note 7, at 618.
29. AMIR PAZ-FUCHS, WELFARE TO WORK: CONDITIONAL RIGHTS IN SOCIAL POLICY chs. 3 & 4 (2008); G. EDWARD WHITE, OLIVER WENDELL HOLMES 117 (2000).
IV. CONSCIENCE, CONTRACT, AND RIGHTS

In *Shemli,* four employees of the Israel Communist Party asked to resign because they felt that the party changed its ideological position significantly following the war of 1967. They asked to receive redundancy payments as if they were dismissed. The party's position was, first, that it was the party that remained true, while the employees distanced themselves from the Communist ideals. Second, the party's code dictated that an employee must accept and adopt the party line, including ideological, political, and organizational loyalty. As noted above, the NLC began by stating that, in general, a person's positions on matters of state, society, religion, or economics are not "considerations of employment relations" that justify granting redundancy pay to an employee who voluntarily quit his job. However, this was not the NLC's final word on the matter. The court continued: "the situation is different when the employee is accepted to a job, and the employee agrees to work, specifically because he holds a particular religious or political position, and the ideological identification is one of the preconditions, if not the main precondition, for the establishment of the employment relation."

Deciding in favor of the employees, the court clarified that in cases where such an ideological precondition exists, the identification operates in reciprocal fashion. In other words, just as the employer should not be expected to work with the employee who has had a change of heart, an employee should not be forced to continue working for an employer whose political, religious, or social affinities have changed. For this reason, the court found the question of blame (which side "remained true" and which change political allegiance) to be irrelevant.

The *Shemli* case suggests that the personal employment contract and the preconditions that underlie it, whether explicitly or implicitly articulated, may set the limits on an employer's prerogative to demand performance of objectionable work. Yet, does the same logic work in both directions?

*Tzipi Yaacobi v. Proportion Ltd.* involved the case of an employee who worked for a private cosmetic surgery facility for over

32. *Id.* at 44-45.
33. *Id.* at 45.
35. Labor Case (TA) 9465/05 Tzipy Yaacobi v. Proportion Ltd. [2008] (translation by author).
five years. It was revealed that, as a matter of common practice, employees in Proportion were requested to discuss the facelift procedure that they had undergone with clients, as a way of persuading them in their deliberations. At some stage, Yaacobi had a change of heart, and decided that she would not divulge such information. Her manager dismissed her the following day and Yaacobi filed for damages.

Should the employee’s prior consent to this questionable practice bind her to continue a practice that she feels uncomfortable with, to say the least? The court did not think so. Expounding a fundamental paradigm of employment law jurisprudence, the court stated

relying on the employee’s consent is not enough. The employee’s unequal bargaining power, relative to the employer, means that in many occasions, his consent is not true consent. Here, it was the employer’s initiative to present personal details. As such, we may see the “consent” as an improper use of bargaining power by the employer towards the employee.\(^{36}\)

Strong words indeed. So strong, in fact, that one wonders if the court would have reached the same conclusion if the employee’s conscientious objection was not supported by another constitutional right—the right to privacy. While Yaacobi’s personal reservations motivated her to refuse the manager’s order, the court’s emphasis was on the violation of her right to privacy.

This is not to say that the court’s reliance on the right to privacy is forced. The International Labour Office (ILO) adopted a broad definition to the term: “Privacy is a broad value, representing concerns about autonomy, individuality, personal space, intimacy, anonymity and a host of related concerns.”\(^{37}\) Israeli labor courts have been confronted, on a number of occasions, with the need to set the balance between the employer’s dictate and the employee’s right to privacy. Most prominently, these matters concern the requirement to undergo health, psychological, and personality testing.\(^{38}\) Since such tests are often preconditions to employment, and not part of the job itself, they are not the focus of this paper. Yet, the fact that most challenges to such practices were not successful is instructive. The
courts found that the employee’s right to privacy could not serve as sufficient grounds for challenging the employer’s business interest in accepting a healthy, competent employee. Only in one case, where the test of the employee’s physical condition was found to be too intrusive, did the court intervene.  

In sum, where the employment contract, or the employee’s constitutional right, is bound together with the employee’s CO, the case appears to be stronger. As may be expected, the employee’s political, ideological, or religious reservations cannot always dictate the operational decisions in the firm. However, it may serve as a “tie breaker” where the employee’s constitutional right balances out the employer’s constitutional right to property. It opens the possibility of assessing the reasonableness and proportionality of the employer’s order. Where the employee’s constitutional right is negatively affected by an employer’s order, the fact that it is plausible to view such an order as “objectionable” (at the very least—that the employee may rationally view it in such a manner) makes the employer’s business case, to attract customers and to prefer more competent employees, less persuasive. The employee’s constitutional right, in other words, is the legal mechanism that enables restricting the employer’s practices to those that are not, on some interpretation, objectionable.

V. THE REMEDY: PRINCIPLES AND PRAGMATICS

On the face of it, the remedy sought by the plaintiff is irrelevant to the legal analysis. According to accepted positivist wisdom, it appears at the end of the syllogism that juxtaposes the facts of the case with the legal norms, and yields a legal, normative decision. The court then returns to the facts of the case and applies the normative conclusion to the particular case at hand. In the present context, for example, the court will consider, either implicitly or explicitly, the relevant elements outlined above: the nature of the objection, the identity of the employer, and the existence of a supporting right or contract to the employee’s case. Only then will the court turn to deal with the remedy sought.

Legal realism contests this methodology. Realists suggest that judicial decisions respond to “situation types”—the “distinctive

factual pattern)—that determine the outcome.\textsuperscript{40} Realists share the 
"assumption . . . that judges—stimulated, primarily, by the fact before 
them rather than by the rules to which those facts might be fitted—
work backwards, 'from a desirable conclusion to one or another of a 
stock of logical premises'.\textsuperscript{41}

Though this position can easily be characterized as "judges decide 
first, and rationalize later" or even as something along the lines of 
"judicial decisions are based on judicial mood," it is, in fact, much less 
exciting. It would simply mean that judges take into account, at the 
very early stages, the consequences of ruling one way or the other and 
that these consequences have an impact on their legal reasoning.\textsuperscript{42}

For example, if we return to the matter of military CO that 
opened this paper, the court’s decision not to legitimate ideological, as 
opposed to religious, CO may be explained by the practical need to 
limit the range of grounds for objection, driven by the fear that 
national security may be jeopardized if CO became the norm.\textsuperscript{43}

In the context of the employment relationship, it is possible to 
distinguish not only the final decision, but also the court’s resolve, by 
utilizing the remedy sought as a determining factor. Such an analysis 
would suggest three levels of remedies.

First, and most problematic for the court to accept, is the 
employee’s insistence to continue to work under her terms. Since 
none of the cases that deal directly with objectionable work include 
this feature, it would be useful to expand the perspective and include 
the related case of \textit{Daniel Ben-Simon v. Magen David Adom} (MDA).\textsuperscript{44} The plaintiff was a paramedic, employed by MDA, the 
national provider of first aid services. Following years of negotiation, 
MDA and the national workers’ union signed a collective agreement 
that required all employees to attach insignia designating their 
personal rank in the organization. Ben-Simon asked to be exempted 
from the obligation to wear the insignia, based on his CO, but this 
request was rejected, and he filed suit. The fact that the court refused 
to accept the claim is not surprising. It could have done so, quite 
easily, by referring to the collective agreement and the reasonable 
procedures that had taken place when assessing Ben-Simon’s request.

\textsuperscript{40} Brian Leiter, \textit{Legal Realism and Legal Positivism Reconsidered}, 111 \textit{ETHICS} 278, 281 (2001).
\textsuperscript{43} See Nehushtan, \textit{supra} note 8, at 256.
\textsuperscript{44} Labor Case (Hi) 403/07 Ben-Simon v. Adom [2007] (translation by author).
The interesting aspect, for present purposes, was that the court briefly noted these features of the case, and then moved on to state the employer’s managerial right to change the terms of employment unilaterally (even though the issue in the present case was settled by a collective agreement), as long as this is done in a proportional and reasonable fashion. More importantly, the court concluded that there was “no basis to the claim that the obligation to wear insignia violates the petitioner’s freedom of conscience.” It is stressed that the court does not state that the violation is reasonable and legitimate under the circumstances, but rather suggests that no such violation exists. Similarly, Freedland and Vickers give the example of a religious individual who refuses to work with women. Though he would be “virtually unemployable . . . his religious freedom is not infringed by his failure to find work . . . His belief is protected by his freedom to decline to be employed.” It is submitted that a determining factor to such an attitude was the fact that the employee sought measures that would allow him to continue working under his particular conditions.

At the other end of the continuum is the Irit Aroussi case. As explained earlier, this case did not involve two sides to an employment relationship at all. The court was not asked to force two sides into an employment relationship under certain terms. In fact, the interaction between Ms. Aroussi and the clothing shop was as limited as possible, and neither side expected the employment relationship to continue. Moreover, even the monetary claim did not seek extensive compensation from the private employer, but rather minimal unemployment benefits from the government. The court’s decision was a mirror image of the one in Ben-Simon. It may be worthy to repeat the sentence that concluded a one-page description of the facts: “it is clear that a person cannot be required to perform work that would require him or her to perform offences according to the tenets of the religion he or she lives by.”

45. Id.
46. Freedland & Vickers, supra note 7, at 619.
47. See text accompanying supra note 14.
49. Labor Case 9465/05 (TA) Tzipy Yaacobi vs. Proportion Ltd. [2008] (emphasis added). As noted, other criteria differentiate these two cases, the different ground for objection. The fact that the courts are more receptive to religious objection was previously noted. This fact is also manifested by a recent case, Reg’l Labor Court (TA) 4785/02 Kashni v. Mun. of Ra’anana [2002] (Isr.), where plaintiff asked the court to invalidate the dismissal and to restore his position. The plaintiff, an orthodox Jew, was employed in the municipal park and refused to work on Saturdays. Even though his colleagues were willing to accommodate him by exchanging...
In between the two extremes, we find most of the cases: the claim for redundancy payments (and, in recent years, minor punitive damages) from the employer after the employee resigned. In doctrinal parlance, at issue is whether the employer's refusal to accommodate the employee constitutes circumstances that make it unreasonable to expect the employee to continue to work. Under Israeli law, only employees who are dismissed or who resign under such circumstances, are entitled to redundancy benefits. However, from a broader perspective, it is noted that many employers in Israel tend to save for their employee's redundancy payments, and release the money for the employee's benefit even if the employee resigns. While this is not commonplace, the existence of the practice suggests that, in the current context, requiring the employer to extend redundancy payments in such circumstances is not overly burdensome. This analysis may explain why the NLC in *Palestine Post* and in *Shemli* struggled with the decision, but eventually decided to award the redundancy payments. Similarly, when Ms. Yaacobi was dismissed from Proportion for refusing to discuss the plastic surgery that she had with potential clients, she was awarded minor damages (20,000 NIS, or $5,000) in addition to the redundancy payment, that she was entitled to by law.

A challenging new scenario may soon be added to this list. In July 2009, a religious woman filed suit in the Tel-Aviv Labor Court against an H&M franchise that was set to open shop in Israel. According to the lawsuit, after a series of interviews with H&M officials, the plaintiff was accepted for the position of commercial manager, and was sent a contract of employment. In the meantime, the plaintiff was asked to accompany two senior H&M officials who were scheduled to visit Israel, and she was expected to escort them to Israeli shopping malls and other fashion stores. During the visit, the officials asked to eat in restaurants and frequent nightclubs. The plaintiff suggested several Kosher restaurants, that would enable her to join the dinner, but declined to join them at night clubs. A few days

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50. NLC 93/3-223 Palestine Post vs. Yehiyel [1994] 27 PDA 436. To be precise, the workers' contract entitled them to redundancy payments even if they resign, so the court did not see the need to decide the matter conclusively. However, the NLC added that it was plausible that if the facts of this case were different, the employees would have been entitled to redundancy payments by law. *Id.*


52. The following is based on the plaintiff's brief, which was forwarded to the author at his request.
later, the plaintiff was informed that she would not be employed with H&M after all. According to the lawsuit, her refusal to join the senior officials in non-Kosher restaurants and in nightclubs constituted an irreconcilable "cultural gap" that prohibited H&M from employing her. She filed for significant damages (400,000 NIS, or over $100,000) for breach of contract and discrimination. At the time of writing, the defendant has not yet responded. This case is unique not only in the fact that it involves an employee who faces a prospective employer for whom she only began to work, but also in the monetary compensation sought, which exceeds in great measure the amount typically granted in redundancy payments suits.

VI. FINAL THOUGHTS

Theorizing objectionable work case law in Israel is far from trivial. There are very few cases but each has its own traits. This paper focused on four of them: the grounds for viewing the employer's order as objectionable, the identity of the employer, the particular contract and additional rights involved, and the remedy sought. Of course, each case involved its own combination of these characteristics, which made it difficult to extrapolate a clear judicial doctrine.

Yet, this caution should not be overstated. The character traits noted above comprise the staple analysis of constitutional and employment law. Their relevance is clear and, independently, they are discussed in a thick body of case law and academic analysis. While the objectionable work cases may require a distinctive approach, to be developed over time, the judicial approach at the moment seems to address them as a particular case in a general narrative, rather than a *sui generis* phenomenon.

This still leaves a question unanswered: Why do so few cases of objectionable work find their way to the courts? Is it really plausible that the number of military CO cases exceeds the number of cases brought by employees, even though the sanctions in the former situation are potentially much more severe, and the number of soldiers in the army is far lower than the number of employees in the workforce? Another way of phrasing this question is to ask: What *really* happens in the workplace (as opposed to the courts) in terms of objectionable work? Assuming there are dozens, if not hundreds, more cases of employees asked to perform duties that, because of the sincere, comprehensive doctrines that they hold, they are far from comfortable with, how do these matters get settled? In what
percentage of cases do they simply give up, when do employers offer them an alternative route, how often are employees forced to leave their job (and do not sue), are unions involved in such dispute resolutions, and if so—to what effect? All of these issues are well worthy of more research.