

The Growing Trend of Divorcés without Divorce

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In this article we would like to point to a significant development in the field of family law in Israel, one that has so far remained largely unnoticed: the recognition of individuals as being divorced, without their having had a formal divorce, or in other words, treating those who are, in effect, living as divorcés as though they were indeed divorced for almost all legal purposes, even though a formal divorce (the *gett*) has not been arranged between them. Two rulings, issued closely together about a year ago—one by the District Labor Court in Tel Aviv and the other by the District Rabbinical Court in Jerusalem—serve as the basis for surveying a series of developments in both legislation and case-law. We propose that these developments demonstrate the formation of a reality-based legal system. This system has adopted an approach that distinguishes between official status (which continues to be determined by religious law, and is reflected in the records of the Population Registry) and its civil, socioeconomic, and other implications for the relationship between the couple themselves or between them and the state authorities, which hinge on the question whether the marital tie continues in fact to exist. The examples that we bring relate to financial and property matters, and even to the question of testimony of one spouse against the other. We will also point out necessary future developments in this realm.

The approach described here follows that which underlies recognition of de facto unions, namely the recognition of non-marital couples as married. In our view, this should also be the case in respect of couples where one of them refuses to give or accept a *gett*: they should be seen as “de facto divorcés,” both for the purpose of allowing the spouse who has been refused a *gett* to obtain certain rights, and for denying certain rights to the spouse refusing to divorce. Adoption of a “mirror image,” which establishes a parallel between the existence of the marital bond and the termination of that bond, thus gives expression to a uniform, holistic system. Such a move sends an important message in relation to the situation of women who have been refused a *gett*, and in effect *gett* refusal as a whole: it is no longer a dead end, from which only a religious act (delivery of the *gett*) or divine intervention (death) can provide relief. It is also an important step toward reducing the inconsistency between the reality of individuals and couples in Israel, and the way in which the state relates to them and the legal implications, particularly in the socioeconomic sphere, of that reality.