

Arab teens need ‘protecting from Israeli justice’

Judge warns of Israel’s two-tier legal system

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Theme: [Law and Justice](#)
In-depth Report: [PALESTINE](#)

An Israeli judge made an historic ruling last week when he decided that an Arab teenager needed “protection” from the justice system and ordered that he not be convicted despite being found guilty of throwing stones at a police car during a protest against Israel’s attack last winter on Gaza.

Prosecutors had demanded that the juvenile, a 17-year-old from Nazareth in northern Israel, be convicted of endangering a vehicle on the road, a charge that carries a punishment of up to 20 years’ imprisonment, as a way to deter other members of Israel’s Arab minority from committing similar offences.

But Judge Yuval Shadmi said discrimination in the Israeli legal system’s treatment of Jewish and Arab minors, particularly in cases of what he called “ideologically motivated” offences, was “common knowledge”.

In the verdict, he wrote: “I will say that the state is not authorised to caress with one hand the Jewish ‘ideological’ felons, and flog with its other hand the Arab ‘ideological’ felons.”

He referred in particular to the lenient treatment by the police and courts both of Jewish settler youths who have attacked soldiers in the West Bank and who violently resisted the disengagement from the Gaza Strip in 2005, and of religious extremists who have spent many months battling police to prevent the opening of a car park on the Sabbath in Jerusalem.

Abir Baker, a lawyer with Adalah, a legal group for Israel’s 1.3 million-strong Arab minority, said the ruling was the first time a judge in a criminal court had acknowledged that the state pursued a policy of systematic discrimination in demanding harsher punishments for Arab citizens.

“We have known this for a long time, but it has been something very hard for us to prove to the court’s satisfaction,” she said. “Now we have a legal precedent that we can use to appeal against convictions in similar cases.”

The youth was arrested during a protest on a road near Nazareth a few days after Israel launched its operation in Gaza last December.

Dozens of demonstrations took place in Israel during the four-week attack, leading to the arrests of 830 protesters in what human rights groups described as often brutal Israeli police action.

The overwhelming majority of those arrested, say the rights groups, were Arab citizens, despite the participation of Israeli Jews. Adalah reported that 250 protesters were subsequently indicted, almost all of them Arabs and half of them minors.

Judge Richard Goldstone, in his United Nations fact-finding report into the Gaza assault published in September, wrote that he had been “struck” by the fact that despite many counter-demonstrations by right-wing Jews that had turned violent the police appeared to have made “no arrests” in those cases.

He also noted that, according to the information he had seen, most Arab protesters had been refused bail and held in detention for lengthy periods, even in cases where they faced relatively minor charges.

Of the court system, Mr Goldstone concluded that “the element of discrimination between ... and differential treatment of Palestinian and Jewish citizens of Israel by the judicial authorities, as reflected in the reports received, is a substantial cause for concern”.

The ruling by the Nazareth juvenile court appeared to confirm those findings.

Mr Shadmi wrote in his verdict that, in recent years, the Israeli authorities had been “working on two fundamentally different enforcement levels in relation to crimes perpetrated by [Israeli] minors”.

He pointed out that in cases of violence by Jewish youths against the security services, legal proceedings were usually frozen or cancelled before the indictment stage. He said he had not heard of a single instance of a Jewish minor being sent to prison for such offences, even though most Arab minors were convicted and jailed.

The judge admitted that he had nearly been swayed by prosecution demands for a lengthy jail term for the youth, who cannot be named because of his age. But ultimately, he said, he had been persuaded by the defence’s argument that similar cases of “ideological violence” involving Jewish youths — such as settler attacks on soldiers — rarely, if ever, merited jail terms.

“If the state feels that ideological offences justify relatively forgiving enforcement for minors, then this should be the policy towards all minors regardless of nationality or religion.”

Earlier this year the justice ministry recommended that 40 Jewish settlers convicted of resisting the disengagement from Gaza be pardoned on the grounds that their acts “were prompted by an unusual historical event and that the perpetrators are not felons”. According to Israeli media reports, many of the settlers arrested over the disengagement will never be brought to trial.

Mr Shadmi ordered the Nazareth youth to refrain from committing any offence against the police for two years against a bond of \$1,300. In a procedure mainly reserved for juvenile offences, he sentenced the youth to 200 hours of community service without convicting him.

The verdict was greeted with surprise by the youth’s family. The father told the Israeli media: “Thank God we had a judge like him, who is not motivated by racism. This may lead the state of Israel to understand that it’s time to stop treating the Arab population like enemies.”

The prosecution announced that it would appeal against the decision.

Gideon Fishman, a sociology professor at Haifa University who has made a study of criminal sentencing policies in Israel, said he was not aware of research into discriminatory policies by prosecutors towards juvenile offenders. However, he said he was sure that there was systematic bias.

“The judge is right to raise his voice against a policy that is more lenient towards Jewish offenders. This is a policy being pursued by state prosecutors intentionally and not by accident, and it undermines trust in the system.”

Judge Shadmi referred only to discrimination in sentencing in Israeli criminal courts.

Palestinians from the occupied territories are tried in Israeli military courts under different legal rules and procedures that have been severely criticised by human rights groups.

Jonathan Cook is a writer and journalist based in Nazareth, Israel. His latest books are “Israel and the Clash of Civilisations: Iraq, Iran and the Plan to Remake the Middle East” (Pluto Press) and “Disappearing Palestine: Israel’s Experiments in Human Despair” (Zed Books). His website is www.jkcook.net.

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