

GENERAL ARTICLES

TO RAISE OR NOT TO RAISE: THIS IS THE QUESTION OF JUDICIAL COMPENSATION

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The issue of raising judicial compensation as a cornerstone for improving (or at least maintaining) the quality of the judiciary has been the subject of a longstanding debate engaging judges, politicians and scholars. Some argue strongly for raising compensations in order to attract highly qualified people to the bench while others argue that higher compensations are not a major concern for the judiciary. A "natural experiment" design was used here to examine the effect on judges of a rather unique real-life case of a reduction in judicial compensation in Israel. A group of presiding judges, who received reduced compensations, served as a "study group" and was compared to a group of presiding judges whose compensations were not reduced, serving as a "control group". Thus, this paper analyzes empirically a unique actual case of a change in judicial compensations, using a "natural" experimental design lending validity to the results.

The results indicate that the lowered compensations did not affect the courts' quality and were not a major consideration for judges and lawyers (potential candidates) in their decision to join the bench. The results shed important empirical light on the "raising or not raising of judicial compensation" debate.

Keywords: judicial compensation; judicial quality; satisfaction with compensation; judges; lawyers; natural experiment; judicial motivation

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I. INTRODUCTION

1. General Background

This paper aims to understand the impact of changes to the level of judicial compensation on the quality of adjudication systems. To investigate such impacts the paper examines an actual and rare case of a decrease in judicial compensation. Utilized here are a "natural field experiment" methodology and a longitudinal research approach covering a period of ten years, to assess the implications of the compensation decrease.

A suitable level of judicial compensation is critical for insulating judges and preserving their independence from external influences and financial pressures. It is considered essential for maintaining judicial proper functioning, integrity, and quality. Judicial independence and quality are foundational concerns in democratic societies.¹ For example, they were regarded by the European Union as a general concept to be adopted by all

¹ For example, the American Constitution acknowledges its importance by stating in the Compensation Clause that judges: "receive for their services, a compensation, which shall not be diminished during their continuance in office." U.S. Const. art. III, § 1; see also, James E. Pfander, 'Judicial Compensation and the Definition of Judicial Power in the Early Republic', 107 (2008) Michigan Law Review 1. Other constitutions also secure judicial compensation; see for instance, Article 35 section 5 of the Constitution of Ireland: "The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section," <<http://www.irishstatutebook.ie/eli/cons/en/html>> (accessed 22.2.2017). Similar provisions are part of states constitutions, e.g., New York State Constitution's Compensation Clause, see *Matter of Maron v. Silver*, 925 N.E.2d 899 (N.Y. 2010). In a case dealing with temporary and general salary in economic emergency circumstances the European Court of Justice declared that "every Member State must ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection", Case C-64/16, *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, ECLI:EU:C:2018:117 (Feb. 27, 2018). The ECJ, actually declared the maintaining judicial independence (including protection of judicial salaries) is a general EU principle that direct all state members and the legislation.

member states². Yet, empirical research analyzing the impacts of judicial compensation on the judiciary is quite scarce.

Given its importance, the issue of the level of economic compensation for judicial staff (hereafter: judicial compensation) has been deliberated for decades by prominent members of the judiciary³ and scholars.⁴ It has been long debated whether or not higher levels of judicial compensation are vital for maintaining a well-functioning and high-quality judiciary. As described in further detail below (section II: The Debate), proponents of judicial compensation claim that a higher level of judicial compensation is mandatory for facilitating the recruitment and retention of high-quality judicial cadre. On the other hand, there are scholars who argue that an increase in compensation is not necessary for attaining these ends, as higher compensation is not a major consideration in potential candidates' decision

² See Case C 619/18 *Commission v. Poland*, EU:C:2019:531; *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, (n 1); See also, Leloup Mathieu 'Who Safeguards the Guardians? A Subjective Right of Judges to their Independence under Article 6 (1) ECHR' (2021) 17 European Constitutional Law Review 394.Judicial independence is also a cornerstone of the Israeli legal system, see HC"J 188/96 *Tsirinski v. Sharon*, PD"1 52 (3), 721, 732-3 (in Hebrew); see also BASIC LAW: THE JUDICIARY (5748 - 1984), (<https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawTheJudiary.pdf>).

³ Already in the mid-1980s, "Chief Justice William H. Rehnquist submitted his first year-end report. He specifically focused on the inadequacy of judicial compensation," Chief Justice Roberts, *2006 Year-End Report on the Federal Judiciary*, p. 4 (hereinafter: *Roberts, 2006 end year report*), <https://www.supremecourt.gov/publicinfo/year-end/2006year-endreport.pdf> (accessed 25.1.2017). See Paul M. Bator, 'The Judicial Universe of Judge Richard Posner', (1985) 52 University of Chicago Law Review 1146, 1148 , stating that the federal judiciary as a group "complain more about their pay than any other group I have ever encountered."

⁴ See for example, Stephen J. Choi, Mitu G. Gulati, and Eric A. Posner, 'Are Judges Overpaid?: A Skeptical Response to the Judicial Salary Debate,' (2009) 1 *Journal of Legal Analysis*, 47 (hereinafter - 'Are Judges Overpaid'); Anderson James M. and Eric Helland, 'How Much Should Judges Be Paid-An Empirical Study on the Effect of Judicial Pay on the State Bench', (2012) 64 *Stanford Law Review* 1277 (hereinafter - 'How Much Should Judges'); Scott Baker, 'Refining the Judicial Salary/Judicial Performance Debate: A Response to Professors Cross, Czarnezki, Henderson, Marks, and Zorn,' (2008) 88 *Boston University Law Review*, 855.

whether to join the bench or not. Hence a rise might not have the proposed effects.

Either way, there are important implications of the quality of the judiciary on societal welfare, social order, conduct and more. For example, the perceived judicial quality may affect the propensity of individuals to commit crimes or behave fraudulently. Recent research surveying 25 European countries showed that the individuals' perception of higher judicial quality serves as deterrence to illegal activity.⁵

2. The Present Study

Despite its importance, neither side to the debate on judicial compensation have sufficient convincing empirical evidence to support their arguments. While the theoretical and practical significance of the issue is high, the systematic empirical research investigating it is insufficient.⁶ With few exceptions,⁷ the available scholarly empirical research on judicial compensation has not directly examined the perceptions of the judges themselves on this issue. Rather, the impact of judicial compensation on judges has been mostly inferred or derived from indirect sources where effects of judicial compensation on aspects of judicial behavior and courts' quality may have been suggested rather than directly measured.⁸

⁵ Mocan Naci, Samantha Bielen, and Wim Marneffe. 'Quality of Judicial Institutions, Crimes, Misdemeanors, and Dishonesty.' *European Journal of Political Economy*, (2020): 61 101815.

⁶ "So far neither theory nor evidence has played a large role in the public debates", 'Are Judges Overpaid,' (n 4), 48.

⁷ See for example, Thomas Cheryl, *2016 UK Judicial Attitude Survey - Report of Findings Covering Salaried Judges in England & Wales Courts and UK Tribunals* UCL Judicial Institute, February 2017, <<https://docs.google.com/viewer?url=https%3A%2F%2Fwww.judiciary.gov.uk%2Fwp-content%2Fuploads%2F2017%2F02%2Fjas-2016-england-wales-court-uk-tribunals-7-february->> (accessed 1.4.2017).

⁸ See for example, 'Are Judges Overpaid', (n 4), 48, showing that salary has little influence of the performance of state courts, using citations as an indicator to estimate the impact of judicial salary impacts; 'How Much Should Judges', (n 4); Scott Baker, 'Should We

This is the purpose of the present study: to examine judicial compensation empirically and directly based upon the rather unique, standalone case of actual judicial compensation reduction that occurred in Israel. The relationships between compensation reduction and judicial behavior and perceptions were studied here. This case of the actual remuneration-cut has bearing on the compensation debate. If following the compensation-cut the functioning of the judiciary is impaired, it may support the raise-proponents' argument that compensation does play an important role, and a raise may improve the judiciary. If on the other hand the reduction does not impair judiciary's functioning (e.g., law retention rates) it may, even more so, support the position that compensation rise is not required to maintain a well-functioning judiciary, at least where judicial compensation is significantly higher than average income. Examining the consequences of the reduction in compensation over a period of ten years, as done here, allows to test the impacts of decrease compensation upon the quality of the court-system and examine if new judges could be hired and whether those hired after the reduction were of lower quality or not.

Although rare, this case is valuable from two aspects: a) unlike many studies it entailed a real and authentic reduction in judicial compensation;⁹ b) the longitudinal perspective adopted here allows to establish time-order (cause-effect relations: i.e., the change in compensation is the cause of the effect). Whereas other studies use correlation analyses that can establish correlational

Pay Federal Circuit Judges More?' (2008) 88 Boston University Law Review 63, 65 , concluding that low pay has no effect on judicial performance in terms of voting patterns, opinion quality, etc.; Albert Yoon, 'Love's Labor's Lost? Judicial Tenure Among Federal Court Judges: 1945-2000,' (2003) 91 California Law Review 1029, showing that the value decline in judicial pay, compare to partners in law firms did not affect the tenure of presiding judges; see also: Stefan Voigt and Nora El-Bialy, 'Identifying the determinants of aggregate judicial performance: taxpayers' money well spent?' (2016) 41 European Journal of Law and Economics 283.

⁹ The only other case of compensation reduction we know of, was in the United Kingdom, a reduction that was later reversed and compensation reinstated. See *McCloud v. Lord Chancellor*, <<https://www.judiciary.gov.uk/wp-content/uploads/2017/01/mccloud-v-moj.pdf>>(accessed 15.4.2017).

relations among them only. Such correlations may be due to other external variables and coincidental. The research design here, allows for the examining of the consequences and reactions of presiding judges to the compensation change under relatively controlled conditions.

Thus, the study here focuses on two main research questions:

- a) Does lower judicial-compensation affect willingness to serve on the bench?
- b) Does lower judicial-compensation affect the quality of the judiciary?

To examine these questions the natural experiment design¹⁰ compared a "study-group" – judges who received reduced compensation – to a "control-group" of judges whose compensation remained unchanged. The comparison is made a decade after the reduction was introduced so one can examine the long-term effects of the reduced compensation on judges, as well as the implications for the quality of the judiciary. The two judges' groups were identical in their work on the bench and their exposure to real-life judicial as well as societal environments, except for the different compensation packages they received based on their tenure: before or after the cut (see Appendix A). The analyses of the effects over time are based on statistical data and data collected through attitude-survey among presiding judges, conducted a decade after the reduction introduction.

Also examined are the perceptions of lawyers re the quality of the judges as measured before the reduction, compared with lawyers' perceptions of judicial quality a decade after the reduction as measured through identical attitude surveys before and ten years after the reduction (for details see Appendix A). Further, since lawyers are the cadre for recruitment to the

¹⁰ For an elaborated description of the surveys, see Appendix A: Research Methods; for an elaborated description of the natural experiment research approach see: Earle R. Babbie, *The Practice of Social Research*, Cengage Learning Pub. (2015), 242; or Frederick J. Gravetter and Lori-Ann B. Forzano, *Research Methods for the Behavioral Sciences*, (3rd ed. Cengage Learning 2009).

bench the consequences of the reduction for their judicial aspirations were measured.

There is almost no research utilizing this meticulous methodology in the context of judicial compensation.¹¹ Hence, the results of the present study in Israel may contribute significantly to the understanding of these important issues.

II. THE DEBATE ON JUDICIAL COMPENSATION

As suggested above, the core question of the debate is: will a significant raise in judicial compensation substantially affect the quality of the court system? Proponents of the call to raise compensation argue that present compensations are not high enough. They claim that a substantial raise in judicial compensation is crucial for attracting high quality candidates to the bench and to assure the quality of the court-system.¹² In the U.S.A for example, it has been argued (even by Supreme Court Justices) that the level of judicial compensation has reached the level of a threat to the independence of the judicial system and its quality and therefore, a raise is a necessity.¹³

¹¹ E.g., Jennifer M. Jensen, 'Career Satisfaction and State Trial Court Judges' Plans to Leave the Bench', (2011) 95 *Judicature* 116. See also, Richard A. Posner & Albert H. Yoon, 'What Judges Think of the Quality of Legal Representation,' (2011) 63 *Stanford Law Review* 317, 338–339.

¹² See quotes in 'Are Judges Overpaid' (n 4), 48. In Israel, demands to raise judicial salary in order to facilitate recruitment of quality candidates to the bench, were presented by a representative of the judiciary to the Knesset's (Israeli parliament) finance committee in 2007, following the decrease in compensation discussed in this paper, see report in <<https://www.ynet.co.il/articles/0,7340,L-3427302,00.html>>, visited 5.11.21, (in Hebrew)

¹³ Roberts, *2006 Year-end report*, (n 1), 1: "the issue has been ignored far too long and has now reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary. I am talking about the failure to raise judicial pay." Justice Breyer stated that without a pay increase, the judicial system will lose quality and predicated the results to be "truly extraordinary and frightening," as quoted in Michael J. Frank, 'Judge Not, Lest Yee Be Judged Unworthy of a Pay Raise: An Examination of the Federal Judicial Salary Crisis', (2003) 87 *Marquette Law Review* 55, 56 (hereinafter – 'Unworthy of a Pay Raise'). Similarly, the U.S.A Bar supported the call for a judicial pay raise, see for example, James Podgers, 'Time for Raise', (2007) March issue, *A.B.A. Journal* 63.

Demands for increase of judicial compensation were also made on behalf of the Israeli judges¹⁴ and were supported by the Minister of Justice that reasoned such requested increase as necessary to protect judicial independence and quality.¹⁵ Judges' demands for a raise of salaries were also raised in several European Union countries.¹⁶ High levels of dissatisfaction may reduce motivation to perform the judicial work or lead even to judges resigning from the bench for higher pay options. In such a case, less qualified candidates who do not have high-pay options would be attracted to the bench, thus eroding judicial quality.

In essence, the proponents of a compensation rise assume that high compensation is a most significant factor in judges' utility function. The underlying argument assumes that as rational decision-makers, people are sensitive to price changes and react to them. Thus, a judge or judicial candidate facing several similar employment opportunities will opt for the one that provides the highest compensation. However, utility may also be a function of non-pecuniary rewards, hence the argument that without substantial compensation increase the quality of the court will decline is not necessarily correct.

Notwithstanding, it has been argued that judicial compensation must reflect the distinct nature of the judicial office. Judicial pay is determined with the

¹⁴ See judges' request to the Israeli parliament raise their salaries, in 2010, and during 1994-1995:
https://main.knesset.gov.il/Activity/committees/Finance/News/Pages/pr_2976_09022010.aspx, and, https://fs.knesset.gov.il/13/Committees/13_ptv_470438.DOC (both in Hebrew).

¹⁵ See https://knesset.gov.il/tql/knesset_new/knesset14/HTML_27_03_2012_06-21-01-PM/19941121@19941121015@015.html (Hebrew).

¹⁶ Examples are, G. Szabó, Dániel: *A Hungarian Judge Seeks Protection from the CJEU – Part I*, *VerfBlog*, 2019/7/28, <https://verfassungsblog.de/a-hungarian-judge-seeks-protection-from-the-cjeu-part-i/>, DOI: 10.17176/20190728-200951-0>; See also, Platon, Sébastien, and Laurent Pech. "Court of Justice Judicial independence under threat: The Court of Justice to the rescue in the ASJP case." *Common Market Law Review* (2018) 55.6; Torres Pérez, Aida. "From Portugal to Poland: The Court of Justice of the European Union as watchdog of judicial independence." *Maastricht Journal of European and Comparative Law* (2020) 27, 105-119.

aim of establishing and maintaining judicial independence and impartiality, since judicial independence is a cornerstone of the court system.¹⁷ Judges' decisions should follow only their objective judgment and their assessment of the facts and the law. Hence, they have to be free from any external pressures, influences, or constraints including income issues. To assure that judges are indeed independent in their rulings and free from personal economic concerns, judicial compensation should be high enough to secure a respectable standard of living. Inadequate compensation may jeopardize judicial independence.¹⁸ The proponents of compensation raise argue it ought to be raised beyond this. As indicated above, however, these lines of arguments have not been substantiated by sufficient empirical evidence.¹⁹

The counter contention in the debate argues that judges and judicial candidates are not necessarily attracted to the bench by the level of pecuniary compensation only. Scholars have claimed that a raise is unnecessary since it will not have a meaningful impact on the quality of the courts.²⁰ Lawyers aspiring to become judges are not driven just by pecuniary remuneration but may also have other motivations such as altruistic values of service to the

¹⁷ "Judicial independence is a cornerstone of American constitutionalism," Michael D. Gilbert, 'Judicial Independence and Social Welfare', (2014) Michigan Law Review 112, 575, 577. See also, *United States v. Will*, 449 United States 200, 217–18 (1980). "A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government." This is well known, and the compensation clause in the American constitution was interpreted as aimed to secure judicial independence: "This Court has recognized that the Compensation Clause also serves another, related purpose. As well as promoting judicial independence, it ensures a prospective judge that, in abandoning private practice—more often than not more lucrative than the bench—the compensation of the new post will not diminish.", 220–21 (1980); See also, Van Elsuwege, Peter, and Femke Gremmelprez. "Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice." *European Constitutional Law Review* (2020) 16 8–32.

¹⁸ See 'How Much Should Judges', (n 4) at 1381 and references there.

¹⁹ See 'How Much Should Judges', (n 4), showing a small significant effect of salary upon the resignation of judges.

²⁰ Scott Baker, 'Should We Pay Federal Circuit Judges More?', (n 8); 'Unworthy of a Pay Raise' (n 13); Blake Denton, 'The Federal Judicial Salary Crisis, Drexel Law Review (2009) 2 152. As suggested later, in Civil Law judicial systems this issue may be different.

community, the challenges involved, interest in the judicial work, status, ideology, job security, and more.²¹ For each individual, the relative weight of such motivations may vary.

Furthermore, some have emphasized the potential negative effects associated with a raise. They claim that a substantial increase in compensation may provide an incentive for candidates that value mostly pecuniary consideration over the "aptitude of the job and attract them to the bench."²² Hence, reasonable, not too low, judicial compensations serve as a "filtering" mechanism that differentiates candidates that are price motivated from candidates that are motivated by the judicial task.²³ Therefore, it was argued, the compensation should be high enough to attract qualified candidates, but not too high as to fill the bench with opportunists whose interest is solely the compensation. From a societal perspective, raising judicial compensation significantly without enhancing judicial quality may be considered a social waste. Moreover, as most judicial systems are public, they cannot afford to raise compensation to the level of the compensation at the private market. Therefore, the public system cannot compete with the private market based on compensation anyways.

However, as indicated earlier, neither side of the debate provides sufficient empirical and reliable evidence to support their claims. Hence, it is important to study empirically the impact of judicial compensation on judges and on

²¹ See for example, Richard A. Posner, 'What Do Judges Maximize? (The Same Thing Everybody Else Does)', (1993) 3 Supreme Court Economic Review, 2; Richard A. Posner, *Overcoming Law*, Harvard University Press (1995), 109–144; Fredrick Schauer, Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior, (2000) 68 University of Cincinnati Law Review, 615.

²² Thomas J. Forr, 'Want Less Ideology on the Federal Bench? Pay Judges More.' (2010) 158 University of Pennsylvania Law Review, 859; Richard A. Posner, *How Judges Think*, Harvard University Press (2008) 162; see also, Moshe Bar Niv, Ran Lachman, 'Justice You Shall Pursue': The Motivation of Judges to Join the Bench' (2017) 24 Hamishpat, 139–172 (In Hebrew).

²³ Paul E. Greenberg & James A. Haley, 'The Role of the Compensation Structure in Enhancing Judicial Quality', (1986) 15 Journal of Legal Studies, 417.

the judicial quality in order to better understand this issue and clarify its implications. The Israeli case provides an opportunity for doing that.

III. THE JUDICIAL COMPENSATION IN ISRAEL

As the focus of this study is the judicial compensation in Israel it ought to be described in more detail. The Israeli judicial system is an adversary one and in essence, is based upon the Common Law court pattern.²⁴ It is built on three instances' hierarchy: Magistrate (First instance), District (Second instance) and Supreme courts.²⁵ The district court serves as a trial court for matters that are beyond the jurisdiction boundaries of the first instance, as well as a court of appeals over the judgments of the magistrate court (first instance). Judges are all law-school graduates and are required to have at least five years' experience practicing law before being considered for nomination to the bench.

As for the judicial compensation, as government employees, Israeli judges and their judicial compensation are subjected to the general compensation policies for all government employees. As a result, Judges' direct wages have been rather limited. To circumvent this limitation, and allow for higher judicial compensation their compensation included unique and generous (if not exceptionally high) government financed social benefits, such as a very

²⁴ The Israeli court system resembles common law countries such as the United Kingdom and Canada. See for example, Mary L. Clark, *Judges Judging Judicial Candidates: 'Should Currently Serving Judges Participate in Commissions to Screen and Recommend Article III Candidates Below the Supreme Court Level?'* (2009) 114 Penn State Law Review 49, 59; see also, Bruce Peabody (ed.), *The Politics of Judicial Independence: Courts, Politics, and the Public* (CG Geyh, 2011) 208–9, "The United States and Israel share some features (they are both democracies with a common law tradition". See also, "courts based on the British derived common law adversarial system practiced in Israel", Angeline Lewis, *Judicial Reconstruction and the Rule of Law*, 96 (2012); Yoav Dotan, *Lawyering for the Rule of Law: Government Lawyers and the Rise of Judicial Power in Israel*, (Oxford University Press 2013) 18ff.

²⁵ There are other courts and tribunal systems in Israel, such as religious courts, industrial relations tribunals etc., but these are considered special courts systems, while the main criminal and private litigations, as well as the residual jurisdiction are the jurisdiction of the general court system.

lavish pension plan, an exclusive lifetime healthcare plan, etc. Further, the compensation was linked to the cost-of-living index and included additional individual allowances and increments (e.g., tenure and seniority increments, overtime increment) to further increase it. Of these, the most significant benefit was the very generous government budgetary pension plan.²⁶ Several features made this an exclusive plan. First, the judges' pension accumulation rate has been an exceptional rate of 7% per year (as compared to 2% among other employees). Second, pension payments were based upon the judge's last salary in office (rather than upon the average salary during the service). Third, it was a budgetary "risk-free" pension plan fully paid by the government with no exposure to the risks of financial markets fluctuations. The judges themselves did not contribute to this budgetary pension plan.²⁷ Considering all these the average judicial compensation in Israel has risen beyond that of the other government employees, and far over the average labor market compensation.

In order to examine the issue of compensation raise using Israel as a "case study" it is important to assess the actual level of the judicial compensation. The perspective on the issue may be different if the compensation is indeed low. It is difficult to determine whether a nominal compensation level is "high" or "low". To assess that a comparative "yard-sticks" ought to be used, preferably a comparison which judges themselves may use in assessing their own compensation level. One may be their compensation relative to others in Israel: i.e., the ratio of judicial compensation relative to the average wage in the Israeli labor market. Another, most probably more relevant for judges is the compensation of private law firms' lawyers.

²⁶ No other group in the public sector received such generous terms.

²⁷ It ought to be noted that federal judges in the US enjoy similar pension rights and also do not contribute to their pensions; federal judges can retire at the age of 65 after 15 years on the bench, or after 10 years at the age of 70, and obtain a full lifetime salary. See: Richard A. Posner *How Judges Think*, (n22) 166; Albert Yoon, 'Federal Judicial Tenure', in: Lee Epstein, Stefanie A. Lindquist (ed.) *The Oxford Handbook of US Judicial Behavior*, (Oxford University Press 2017) 96.

Incidentally, such parameters can also assist in comparing judicial compensation levels across judicial systems, a perspective where the nominal judicial compensation is of no value. Such a comparison may perhaps also help support the generalizability of the results here.

It was not possible to obtain the exact compensation of judges in Israel. The official data on governmental employees' salaries, published by the Director of Wages and Labor Agreements, in the Ministry of Finance, reports judges' base salary only, so it is difficult to know what the precise average compensation (including the various increments and benefits) is.²⁸ Hence, approximations were used here. The salaries of judges in 2010, in terms of the ratio of average wage over the national average salary, were (approximately): for a magistrate (First Instance) 3.8 times the national average wage; for a District Court judge (Second Instance) 4.3 and for a Supreme Court justice 4.9 the average wage in Israel. Unfortunately, in Israel there is no formal data on the compensation of senior partners in private law firms so it cannot be compared to that of the judges.²⁹ Hence, perhaps another relevant comparison, within Israel, is that with the average earnings of the top decile of the Israeli market wages: for a magistrate 1.1 times the average at the top decile, for a District Court judge 1.2 and for a

²⁸ We have requested this information from the Director of the Court System, under the Freedom-of Information Act, but were turned down based on the Personal Privacy clause. Hence, the figures here are estimates calculated based on data published on government employees' salaries and the incremental rates following the official directives of the Director of Wage and Labor Agreements, the Israeli Ministry of Finance, see: <hozrim.mof.gov.il/doc/sachar/sachar_hozrim.nsf/.../\$file/2010-9.doc> (accessed 9.1.2017). The estimates may deviate from the actual figures by approximately 10%. In addition to their base salaries, judges are entitled to various individual allowances and additional payments. In estimating the compensation, we assume that, on average, these additional pay-increments may raise the monthly base salary by 10-15%.

²⁹ Few private surveys indicate that senior partners in leading law-offices earn substantially more than first and second instance judges, e.g. <<http://www.glawbal.com/upload/Year%202010%20-%20Short%20Summarize.pdf>>, (2010 data – in Hebrew); a similar result is reflected in a different private survey, <<https://www.themarker.com/law/1.1938123>> (2010 data- in Hebrew) .

Supreme Court justice 1.4 the average.³⁰ Either way, judicial compensation in Israel is among the highest in the Israeli labor market as well as among the highest compensations in the government service.

Incidentally, the ratio to the labor market average can also assist in comparing judicial compensation levels across judicial systems, a perspective where the nominal judicial compensation is of no value. A cross-cultural perspective with other similar judicial systems may perhaps also help support the generalizability of the results. Thus, a succinct cross-cultural perspective can be presented. For example, in the US, the average salary of a US Federal District Court judge in 2010³¹ was 4.18 times the average US wage; the ratio for a Circuit Judges was 4.42, and that for Supreme Court justices was 5.13 times the US average wage.³² To wit, the level of judicial compensation (relative to the labor market) in Israel is not much lower than the US one. In the UK, the ratio of judicial compensation of high-level-courts justices reached a peak of 7.7 times of the UK labor market average wage.³³

Given this perspective, the judicial compensation level in Israel (in relative terms) is not low at all, relative to the earnings in Israel, and in line with that in the US but lower than the UK one.

As indicated, Israel constitutes a good Test-case of reducing judicial compensations. In 1999 a new governmental policy to eliminate budgetary pensions for all governmental sector employees was introduced. The new

³⁰ The ratios were calculated based on the above estimation of the judicial compensation on the one hand and the published (the Israeli Central Bureau of Statistics) average monthly wage for a salaried worker in Israel as on the other, <http://www.cbs.gov.il/www/y_labor/e4_01.pdf> (accessed on 9.1.2017).

³¹ We refer to this year as the base for discussion since the data we analyzed was collected during the end of 2010 and the beginning of 2011.

³² <<http://www.uscourts.gov/judges-judgeships/judicial-compensation>> (accessed 15.1.2017)

³³ For information regarding US salaries see, <<https://www.ssa.gov/oact/cola/AWI.html>>, (accessed 15.1.2017); for compensation re UK justices salaries see, European judicial systems Efficiency and Quality of Justice, CEPEJ STUDIES No. 23, p.20 <<https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788228>> (visited 5.11.21).

policy eliminated all budgetary pension plans for employees and replaced them with accumulative plans. Thus, in 1999, like all government and public sector employees, judges' compensation had changed into a conventional cumulative financial pension fund to which both the employer (governmental entities) and the employee (judges) made monthly contributions. This new pension plan constituted a considerable reduction in judicial compensation as its unique features were drastically changed, as well as a cut in the monthly pay³⁴ However, this drastic reduction in compensation was adopted only for future judges to be recruited after mid-1999. Judges already presiding were not subjected to this change and continued to enjoy the previous compensation terms.³⁵ This differential adoption resulted in the segmentation of the judiciary into two compensation "tiers":

- 1) The "old-time" veteran judges who retained their previous compensation (tier A);

³⁴ The drop in pension entitlement for Tear B meant a significant loss on their part. For example, Tear B judges have to serve 35 years in office to gain the maximum pension of 70%, rather than 15 years at the previous budgetary pension program. Further, the new pension program is calculated based on each judge's average salary over the years in service rather than the previous basis determining the pension according to pre-retirement salaries that were much higher. The new pension program is no longer risk-free and is a function of investments in financial markets. Also, new judges now have to contribute approximately 7% of their monthly salary to their pension, directly deducted from the gross monthly payments reducing their net fluent income. In addition, management fees are deducted from their pension fund reducing the net accumulation of the pension at least by 6-7%. The financial value of these cuts has been very significant and means that the budgetary pension could be valued more than twice than the new program. This difference may amount to a cut of about 25% of the total compensation flow (including retirement) of a tier B judge. The budgetary judicial pension provided also for 100% pension to the spouse of a deceased judge which is also a meaningful decrease of the net value of the judicial pension program.

³⁵ A similar pattern of differentiation between judges has been implemented recently in England: Newly appointed judges were entitled to an accrual pension (unlike the previous budgetary one that is still payed to previously appointed judges). The newly recruited judges sued the government on the basis of age discrimination in their pension schemes. See, *Judges sue UK government over pension reform*, Financial Times 15.11. 2016 (accessed 24.1.2017). The judges won the case, <<https://www.judiciary.gov.uk/wp-content/uploads/2017/01/mccloud-v-moj.pdf>> (access 1.6.2017).

- 2) The newly recruited judges, joining the bench after mid-1999 under the scheme (tier B), who receive reduced compensation, even though they are performing precisely the same functions as their veteran colleagues, even sit, at times, on the same bench.

It comes as no surprise that the judges objected to this change and tried to reverse it.³⁶ However, as of now, the reduced compensation remains unchanged.³⁷

The decrease in judicial compensation, calls for an examination of whether or not, as a result, the Israeli court system faced a shortage of judicial candidates; erosion in the quality of the new judges; and an increased dissatisfaction of tier B judges with the compensation.

Hence, it is hypothesized that:

- 1) Tier B judges will be less satisfied with their compensation than tier A judges;
- 2) The quality of tier B judges (who were willing to be appointed under a reduced compensation) will be lower than that of tier A judges.

The reduction in judicial compensation, as described above, was substantial enough to allow for testing these hypotheses by comparing tier A and tier B judges. The methodology adopted for the comparison is a "natural experimental design".³⁸ The reactions of a "study-group" (tier B) exposed to

³⁶ The Israeli judges objected this change and tried to reverse it. In response to the judges' resistance and complaints, two public committees were appointed: one in 2007 and the second in 2012, to review the issue and submit recommendations. Both committees acknowledged that tier B judges suffered a very significant financial loss that can reach the amount of several million NIS. Both committees concluded that the judges' pension arrangements ought to be improved.

³⁷ Recently the justices' struggle against the reduced pension plan has reached the point of a threat of a strike for the first time ever (which eventually was not realized), See, <<http://www.ynetnews.com/articles/0,7340,L-4942101,00.html>> (accessed on 1 Apr. 2017) (in Hebrew)

³⁸ For a description of the "natural experiment", see appendix A: research methods.

the compensation change were compared to those of a "control-group" (tier A) who were not, in a case where the "experimental intervention" was a real-life and significant compensation reduction, not a simulated laboratory experimental manipulation.

In sum, an important question in the study is whether or not the new, reduced level of judicial compensation is sufficiently high to enable the recruitment of the necessary number of justices. An even more important question is: do current levels of reduced judicial compensation (that were claimed to be insufficient for maintaining quality) erode the quality of the judiciary? More precisely, do current levels of compensation and even more so reduced one, enable the recruitment of quality judges or not.

IV. THE STUDY RESULTS

The impact on judges of the actual reduction in the judicial compensation in the Israeli Court System in 1999 which provided a rare opportunity to examine it in "real-life" situation, is examined here.³⁹ First, the availability of qualified judicial candidate was examined. Second, the judges' reactions and attitudes regarding the compensation and judicial quality were measured by the responses to a survey of a sample of presiding judges in Israel a decade after the change was introduced.⁴⁰ Third, the quality of presiding judges was also assessed by the lawyers; and lastly, judicial compensation as a factor of judicial motivation was examined.

³⁹ Indeed, as indicated above, the judges' objection to the change necessitated the appointment of two committees to deal with it, which means the change left an impact

⁴⁰ Since the change in compensation was implemented only for newly recruited (after 1999) judges, we had to allow time for a sufficient number of novice judges to join the court. Therefore, the satisfaction with the judicial compensation and quality were measured in 2011, about a decade after the change was implemented. For details, see Appendix A: research methods.

1. The Availability of Candidates

The first issue to be examined here is whether or not following the reduction in judicial compensation the court system faced difficulties in recruiting judges. This can be tested by examining if indeed there are enough candidates for the open judicial positions, despite the lower compensations.

A survey we conducted on a large representative sample of Israeli lawyers (N=2897), in 2011 (a decade after the reduction), shows that even under the reduced judicial compensation many lawyers said they were willing to be nominated as judges.⁴¹ Asked if they were prepared to be nominated to the Magistrate court (First Instance, usually the entry level to the bench) 29% said they are definitely willing to join the bench and additional 26% said they are almost certainly willing to do so; i.e., half the lawyers answered affirmatively. The response regarding nomination to the District court (Second Instance) was even more enthusiastic: 33% said they definitely were willing to join the bench. Given that in 2010, there were over 40,000 lawyers in Israel it appears that at least 12,000 lawyers were willing to join the bench. Moreover, of the more senior lawyers (over 15 years of practice experience) 37% said they were willing to become judges.⁴²

At the same time, a rather small number of judicial positions were opened: in the decade at hand, on average 14 positions opened each year, mainly due to retirement of judges. That means, more than ten thousand lawyers were ready to compete over the few available positions.⁴³ However, not all the interested lawyers actually applied for the positions. Each year between the years 2000 and 2010 there were, on average, 110 "contending candidates"⁴⁴

⁴¹ For detail on this survey, see, Moshe Bar-Niv and Ran Lachman, 'Lawyers' Satisfaction with the Court's Functioning: A Three Decades Perspective', *Hapraklit*, (2016) 54, 413 (in Hebrew).

⁴² *ibid.*

⁴³ Upon our request, the Director of the Courts provided the total number of judges who had left the bench in the last 25 years

⁴⁴ "Contending candidates" are candidates that after initial screenings have formally been considered for candidacy. This means that on average there were almost ten, *prima facie*, qualified candidate per vacant judicial position.

for the a few judicial openings.⁴⁵ Very seldom, new judicial positions were opened due to expansions of the courts' system and therefore are not relevant for this study. Given that, the court system has had, on average, about eight contending-candidates (and potentially even more) for each opening to select from. And indeed, all the new vacancies were filled by new judges who joined the court system in spite of the lower judicial compensation offered to them. It appears therefore, that the Court-System did not face any difficulty in recruiting new judges: the reduction in judicial compensation did not hinder the recruitment of a considerable number of qualified candidates to the bench.

This conclusion is further supported by the statistics that during the 27 years (1989–2016), only 11 judges have left the system before their retirement time.⁴⁶ That is, 0.4 judges per year (1.2 judges per three years) have left office early. This rather surprising statistic suggests that current judicial compensation may suffice for retaining the judges in their judicial positions.

One possible interpretation to these findings is that judges, who joined after the new judicial compensation scheme was implemented, knew what their judicial compensation would be and consented to it. Those who did not like the reduced judicial compensation scheme probably did not apply for the nomination. Hence, those who decided to accept the nomination as a judge were content with the reduced level of compensation and were found here to be satisfied with it (see below). If this interpretation is correct, it means that there are sufficient candidates, as shown here, who are ready to accept a judicial nomination even though the compensation is lower than that of their veteran colleagues and of their "market value", would they pursue a career as partners in law firms.

This in itself suggests one of two interpretations: One, the new judges were lawyers of lesser quality who had no better alternatives and were ready to accept the lower compensations; two, judicial compensation was not the

⁴⁵ The figures were provided by the Director of the Courts in Israel.

⁴⁶ The figures were provided by the Director of the Courts.

most important motivator for candidates. As for the first interpretation, given the fairly large number of potential and actual candidates, it is not very likely that the quality of the bench was diminished by selecting "under-qualified" new judges from all these candidates. The other possible interpretation may be that the judicial compensation was not the most important motivator for candidates to the bench and hence, they were prepared to join the bench even for a lesser pay. These interpretations are empirically tested and discussed later.

2. Judges' Satisfaction with Their Compensation.

The first research question was: how will reduced judicial compensation affect judicial satisfaction? We hypothesized that the judges who received lower compensation, will be less satisfied with compensation than judges whose compensations remained unchanged.⁴⁷

The judges' satisfaction with their compensation was measured using a question that was part of the opinion-surveys we conducted early in 2011 among all presiding judges in the trial courts of Israel. The judges were asked to rate their satisfaction with their judicial compensation. The response-range was: 1. *Very satisfied*; 2. *Satisfied*; 3. *fairly satisfied*; 4. *Not so satisfied*; 5. *Not satisfied at all*.

First examined here was the level of satisfaction with compensation of all the judges together. The results show that overall, the judges in Israel in 2011 were rather satisfied with their compensation: Only 17% said they were not satisfied with the compensation whereas 45% said they were fairly satisfied and 38% were satisfied with their compensation (Table 1). Given that the vast majority of the judges are fairly satisfied with their compensation, the question is: are tier B judges less satisfied than tier A judges?

⁴⁷ It is important to emphasize though, that the newly recruited judges knew upon recruitment that their compensation would be lower than those of the "old-timers." In this sense, they have not experienced a reduction of their previous compensation but had to contend with a lower level of compensation relative to their colleagues.

A. Judicial satisfaction among tier A and tier B judges (2011)

We compared the judicial compensation satisfaction of tier B judges (37 judges) who received the reduced compensations to that of tier A judges (34 judges).⁴⁸ The comparison shows that there are hardly any differences between the two groups, even though the judicial compensations of tier B are lower than those of tier A judges (Table 1).

Table 1: Judicial compensation satisfaction of Tier A & B judges

How satisfied are you with your compensation?	Tier B judges (0-10 years)	Tier A judges (11 and over)	Total
Very satisfied	5 13.5%	1 3%	6 8%
Satisfied	7 19%	14 41%	21 30%
Fairly satisfied	18 49%	14 41%	32 45%
Not so satisfied	5 13.5%	5 15%	10 14%
Not satisfied at all	2 5%	0	2 3%

⁴⁸ A total of 86 judges answered the questionnaire. However, 7 did not respond to the question on tenure as a judge, so it was not possible to classify them by tiers. Of the remaining 79, 8 did not respond to the question on satisfaction with the compensation. See Appendix A for a discussion of this issue.

Total	N=37 100%	N=34 100%	N=71
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The observed differences between the two groups of judges are not statistically significant and therefore, cannot be considered different.⁴⁹ A more valid presentation would be one where categories with small numbers of responses are combined.⁵⁰ Combining such categories, the differences appear even smaller. Among the tier B judges 18.5%, compared to 15% of tier A judges, were not so satisfied with the judicial compensation; 41% of tier B and 49% of tier A judges were fairly satisfied; and 32.5% of tier B as compared to 44% among tier A were satisfied with their judicial compensation. These are minor statistically insignificant differences.⁵¹ They show that the satisfaction distributions of the two groups are essentially not different from each other.⁵² To wit the satisfaction of tier B judges with their judicial compensation is not different from that of their much higher

⁴⁹ The reader ought to bear in mind that these percentile differences are reflecting small numbers of judges, and a shift of few judges from one category to the next may lead to a fairly large difference in percentage. The χ^2 value indicates that the observed differences were not statistically significant: $p= 0.12$, i.e., the probability that these differences reflect an error is too high to be relied upon. However, the χ^2 calculation here can be distorted as some cells in the table have less than 5 observations.

⁵⁰ To avoid empty or cells with less than 5 respondents, the response of "very satisfied" can be combined with that of "satisfied", as both reflect satisfaction with income and a judge's choice to answer one or the other may also reflect personal style of expression. The same may be true for "not satisfied at all" and "not so satisfied."

⁵¹ The χ^2 value for the combined categories (which is a more reliable value) was: $\chi^2 = 1.04$, d.f.=2; $p= 0.59$ i.e., not statistically significant.

⁵² It can be argued that the small N (86) here is insufficient for obtaining significance. However, in a study of the motivation to join the bench conducted on the same data and the same sample (N=86), significant differences were found. For example, there was a difference in viewing compensation as a motivation to join the bench between judges who came from the public sector and those coming from the private one. This indicates that the sample at hand has sufficient statistical power. See, Bar Niv (Burnovski) Moshe and Ran Lachman 'Judges' Perspective on Level of Punishment' European Journal of Legal Studies, (2017) 9, 171-208.

compensated colleagues (tier A), although they do the same judicial work and serve on the same bench as their tier A colleagues.

Thus, our hypothesis that judges who received lower remunerations for doing the same work would be less satisfied, was not supported. The significant reduction in judicial compensation for the newly recruited judges (tier B) did not affect their actual satisfaction with it. It ought to be stressed here that the lower compensation is lower relative to tier A judges: this lower compensation is still very decent and falls within the upper 5% of the income distribution in Israel.⁵³ Hence, even though they may experience deprivation relative to their tier A colleagues and certainly relative to partners in law firms, the tier B judges were still satisfied with their compensation.

The "natural-experiment" design used here lends credibility to these results as they reflect a real-life situation. The comparison between a "study group" and an identical "control group" in a non-laboratory situation makes the findings more robust and valid. Also, this design rules out any compounding effects of other external variables that might have affected the result.

3. Reduced Compensation and The Quality of Judges.

An important question raised here is: does the reduction in judicial compensations affect the quality of the judges? Or, is a raise in judicial compensation needed in order to attract capable lawyers to the bench as well as retain them? As indicated earlier, the proponents of compensation raise claim that unless compensation is raised the "capable" lawyers who can earn a much higher income in private practices would be reluctant to give up their lucrative income for a much lower compensation as a judge. This would be all the more so if compensations are reduced, as was the case here.

⁵³ The research unit of the Israeli parliament:
<https://www.knesset.gov.il/mmm/data/pdf/m03346.pdf>.

A. The quality of the newly recruited judges

Tested here is the hypothesis that the estimated quality of the newly recruited judges will be lower than that of the veterans. There are various ways, but no commonly accepted one, to gauge empirically judicial quality.⁵⁴ Hence, we chose to gauge judiciary quality here using the perception and assessment of presiding judges and Lawyers. Judges and lawyers are highly skilled Judicial professionals who know the judiciary well and could be used to evaluate the quality of the Judiciary as a whole, and changes in quality, if any, that took place over the five preceding years (the possible response-bias in such assessment is discussed below). We find the judges themselves as the most qualified to assess the quality of the judicial decisions as this is what they themselves do. It is particularly true in our case as most Second Instance judges are veterans (tier A) and the Second Instance also serve as an appeal instance on First Instance court decisions. Most First Instance judges are tier B judges, as this is usually the entry level to the system. Hence, as an appeal instance, Tier A judges evaluate First Instant decisions regularly and are familiar with judicial quality.

In the 2011 judges' attitude-survey, the judges were also asked to assess the quality of the first and second instances' judges (in general not their own quality) during the five years preceding the survey. The possible responses were: the judges' quality 1. *Risen to a large extent*; 2. *Risen somewhat*; 3. *Did not change*; 4. *Lowered somewhat*; 5. *Lowered to a large extent*.⁵⁵

Given this question, we can examine the quality of the newly recruited judges as estimated by the judiciary itself.⁵⁶ Almost Two-thirds (62%) of the judges suggested that the quality of the judiciary had risen (at least

⁵⁴ See 'How Much Should Judges Be Paid', (n 4), 1282.

⁵⁵ In the question, the judges were asked to respond regarding the First Instance and Second Instance separately. The data here is presented for the First Instance, as it is, in most cases, the "entry point" of new judges to the system.

⁵⁶ We wish to reiterate here that these judges are the most qualified to assess the quality of the judicial decisions, particularly in the Israeli case where the Second Instance judges also serve as an appeal instance on First Instance court decisions.

somewhat) during the five years preceding the survey (Chart 1). If we add to these the judges who felt the quality of the judges did not decline ("has risen" combined with "has not changed") then one can see that the vast majority of the judges did not think the quality of the judiciary was compromised due to tier B judges joining the bench under lower compensation.

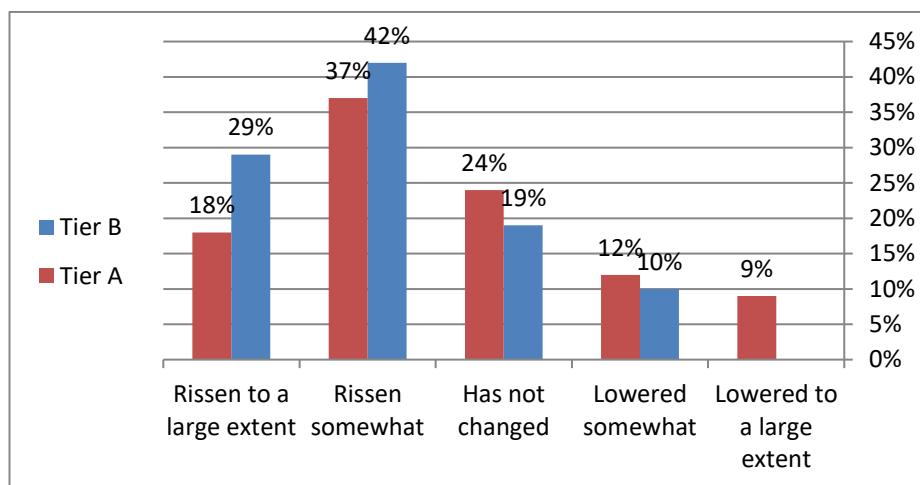
Arguably, the results may be favorably biased as the tier B judges' assessment implicitly included "their own" quality as part of the overall judicial quality. While in the survey judges were not asked to assess their own quality as judges, but changes (if any) in the general quality level of the judiciary, there is a chance, however small, that their responses might have been biased. Yet, it is unlikely that in answering this question, judges (who were categorized by us as tier B) did associate judicial quality with the fact that in analyzing the data (10 years later) it will be correlated with the fact that they received lower compensation as a group. Therefore, it is unreasonable that these judges would overly "praise" the judicial quality to appear of high quality. Nonetheless, to test for this unlikely bias, we have singled out the responses of tier A judges, and compared their quality assessments to those of tier B judges (Chart 1).

The findings show that tier A judges' assessments of the change in judicial quality were not statistically different from those of tier B judges: over a half (55%) of them thought the quality of the judiciary has risen (somewhat or to a large extent) during the five preceding years.⁵⁷ If we add to that judges who felt the level of quality did not change (i.e., was not lowered), we see that the vast majority (79%) of tier A judges thought that the quality of the judiciary was not compromised over the preceding five years (the time when

⁵⁷ To calculate the significance of the differences using χ^2 the category of "lowered to a large extent" was combined with "lowered somewhat", to avoid empty cells and minimize cells with count of less than 5, who may distort the calculations (Fisher correction was applied). The differences are statistically insignificant: $\chi^2 = 4.01$, d.f. =3, $p>0.25$. The differences in percentages appear quite large but given the relatively small N a change in cell count by a single judge could change the percentage by 3-4%.

the tier B judges joined the court). Only 21% of tier A judges, and 10% of tier B judges, thought the quality level has dropped.

Chart 1: Judges' assessment of judicial quality in the five preceding years (2011 data)



These results do not support the proposition that unless raised, the compensation would lead to a decrease in judges' quality. Hence, the call to considerably raise judicial compensation in order to attract good lawyers to the bench is not supported by the results here. The Israeli case indicates that good candidates can be, and evidently were, attracted to the system even when the compensation was lower than that of their veteran colleagues and much lower than the income of senior partners in law firms. Yet, these judges were found to be as qualified and satisfied with the lower compensation as were the judges with higher pay. These unexpected findings merit further examination.

B. Judicial Quality from the Lawyers' Perspective

An important perspective on judicial quality is that of the lawyers. Lawyers are legal professionals who are in a position to evaluate the quality of the judges they appear before. Therefore, their perspective on the issue provides a valid, independent assessment of a possible change in the judiciary's quality. How do they see the level of judicial quality after the compensation was reduced?

Parallel to the 2011 judges' survey, we conducted an opinion survey among Israeli lawyers.⁵⁸ One of the questions in this survey referred to the quality level of the judiciary as they, the lawyers, assessed it. A decade earlier, in 1999, we also conducted a similar opinion-survey of a representative sample of Israeli lawyers, where the identical question regarding the quality level of the judiciary was asked.⁵⁹ Given that the same question was asked we can compare the lawyers' assessments of the judges' qualifications before and after the change in judicial compensation (Table 2).

Table 2: Lawyers' assessments of judges' qualifications in 1999 and 2011.

First Instance judges have the qualifications for the job	2011	1999
Not at all	101 3.8%	5 1.6%
To a small extent only	285 10.9%	60 18.6%
In part	1270 48.4%	186 57.8%

⁵⁸ As noted earlier the survey sample included 2890 lawyers who responded to an internet questionnaire. See, Moshe Bar-Niv and Ran Lachman, 'Lawyers' satisfaction with the court functioning' (n 41).

⁵⁹ The question the lawyers were asked were a little different than the one the judges were asked. It referred to their assessment of the quality of the First Instance judges. Since most of the newly appointed judges are appointed at the Magistrate (first instance) level, the answer to this question may even better reflect the quality of the newly recruited judges. The question in the lawyers' survey was: "To what extent, to your assessment, have the judges the appropriate qualifications to perform their job?" The possible responses were: "1. Not at all; 2. To a small extent only; 3. In part; 4. To a considerable extent; 5. To a large extent; 6. To a very large extent".

To a considerable extent	668 25.4%	57 17.7%
To a large extent	248 9.4%	13 4%
To a very large extent	53 2%	1 0.3%
Total	⁶⁰ N=2625 100%	N=322 100%

The distributions of the lawyers' assessments of judges' qualifications show that the lawyers assessed the judges' qualifications after the reduction in compensation as better than before the change.⁶¹ In 1999, about a fifth (22%) said that the judges have the appropriate qualification "to a considerable extent" or more, whereas in 2011 (37%) of them expressed the same assessment. At the same time, the proportion of lawyers who assessed the judges' qualifications as "partial" only or as not having the required qualifications, dropped from 78% in 1999 to 63% in 2011. The difference is statistically significant. While these assessments are not very flattering to the judiciary, either in 1999 or in 2010, the results indicate that the quality of the judiciary, as assessed by the lawyers, has not decreased but rather increased a bit a decade after the compensation reduction. In any case, the reduction certainly did not compromise the judicial quality, as proposed.

⁶⁰ In order to prevent statistical distortions due to differences in sample sizes, a sub-sample of 318 lawyers was randomly drawn from the large sample of 2897 and was also compared to the 322 responses of 1999. Comparing the sub-sample to the 1999 one with the same distribution, significant differences were found ($\chi^2 = 27.8$, d.f.=5, $p<0.000$).

⁶¹ The differences are statistically significant ($\chi^2 = 45.2$, d.f.=5, $p<0.000$). To avoid empty cells or ones with very small N, the significance was also calculated after collapsing together the categories of "very large extent" and "large extent" and the categories of "not at all" and "to a small extent only". The differences were still found to be significant.

It can, therefore, be concluded that after the reduced judicial compensation plan was introduced: a. there has been no problem in recruiting new judges under the reduced compensation package; b. the new judges were assessed by the veteran judges as well as by the lawyers, to be of a similar if not higher quality, but not of lower quality.

The fact that the assessments by the lawyers were congruent with those of the judges regarding the quality level of the new judges lends the findings here high credibility and reliability. The "natural experimental" design used provided further robustness to these results.

The results bring into doubt the claim re the importance of high judicial compensation as a motivating factor for becoming a judge. Perhaps above a certain compensation level, judges become somewhat less concerned about the compensation and other factors come into play as pivotal in motivating them.⁶² If indeed it is so, tier B judges who earn less than tier A judges may be satisfied with their still fairly good compensations (still among the highest in the civil service) and consider other job-related factors. If judges are motivated by factors other than the judicial compensation, somewhat higher compensations may play less significant role in their decision to become a judge or retain the post. This proposition can be tested here.

4. The Importance of Compensation as a Motivator for Joining the Bench.

In the survey questionnaire the judges were asked to rate nine factors related to the position of a judge, in terms of the importance each had in their decision to join the bench. Compensation was one of these factors. The judges were also asked: "*At the time, to what extent did each of the following factors motivate you to accept the judicial nomination?*" The responses were: 1. *Not at all*; 2. *A little*; 3. *To a certain extent*; 4. *To a large extent*; 5. *To a very large extent*.

⁶² Richard A. Posner, 'What Do Judges Maximize? (The Same Thing Everybody Else Does)', (n 21); Moshe Bar Niv and Ran Lachman, (n 22).

The mean rating for the compensation as a motivator was found to be very low: 2.19 on a scale of 1-5. That is, compensation was rated as having little importance in the judges' decision to accept nomination. In fact, it was rated as the second lowest motivating factor out of seven work-related factors. The factor rated the highest in importance was viewing judgeship as an interesting job (with a mean rating of 4.5). The challenge of the job was similarly rate (mean rating of 4.4). These findings suggest that judicial compensation was of little significance in the decision of candidates to accept the judicial nomination, whereas factors such as interest or challenge in the judicial job were much stronger motivators. Therefore, for judges whose motivation was not financial but job-intrinsic one, the reduced compensation was of lesser consequence. Hence the ability of the court system to hire new judges, as well as the quality of the judiciary were retained despite the reduced compensation, given that the compensation was still fair and reasonable.

V. CONCLUSION

The paper provides empirical insights into the long-standing controversy: whether or not a significant raise in judicial compensation is required to maintain the quality level of court systems. There is no debate about the need for a competent and qualified judicial system - the question has been how this can be attained given its utmost importance for enhancing the good of society at large and its well-being. The prediction that without a considerable pay raise the quality of the courts would deteriorate is not empirically supported by our results.

The study here took advantage of a rather rare opportunity to explore the issue in a real-life case of a reduction of judicial compensation in Israel and examine its consequences using a natural experimental design. The analyses of the perspectives of both judges and lawyers, the two main participants in the judicial process, provide validity and credibility to the study's findings.

In sum, this paper indicates that:

- a) Judicial compensation was not a primary incentive in the judges' decision to either join the bench or leave it. Judges were as satisfied with their reduced compensation as were their colleagues whose compensation remained uncut (i.e., higher). Hence, the reduction in compensation did not affect judges' satisfaction with judicial compensation and did not increase judges' drop out.
- b) Further, both, judges and lawyers in our study indicated quite clearly that the quality of the judiciary was not compromised in the period (a decade) after the reduction in compensation. Some of them even suggested the quality of the judges rose in the decade after the compensation reduction. Hence, the results here suggest that judicial quality will not be compromised or eroded if judicial compensation is not substantially increased, as repeatedly claimed. This bleak claim that the future of the court system is endangered unless judicial pay is raised is not consistent with and not substantiated by the findings here.
- c) The results suggested, quite clearly, that judges are not money-oriented⁶³: once they receive respectable compensation, they seem to maximize utility by pursuing other facets of the judicial position. Intrinsic aspects of the judicial office such as professional challenges, the interest they find in the job, and the value of pursuing justice appear to be more dominant incentives to serve as a judge than increased compensation.
- d) The results indicated that in judges' utility function financial compensation has a relatively low weight. The answer to the question "what do judges maximize?"⁶⁴ is perhaps that judges do not seek to maximize compensation, but rather to maximize other intrinsic utility-increasing factors.

⁶³ At least within the range of a judicial pay scale that is 4-fold or more than the average salary, and within the range of judicial compensation changes examined here.

⁶⁴ Posner, (n 21).

It ought to be stressed that the findings do not suggest judicial compensation is of no value for judges, but rather that beyond a certain level, the monetary factor is not the sole or even the primary motivator for candidates aspiring to the judiciary. Hence even if judges are not highly satisfied with their compensation, this will probably not cause them to leave the bench since the financial element is not a decisive one. Raising judicial compensation may perhaps attract few more qualified candidates but the overall cost (associated with paying all judges) might not justify it as there appears to be no shortage of qualified candidates at the present compensation level. Furthermore, since other factors better attract candidates to the bench, the judicial system has to identify these factors and tailor the judicial office (e.g., enhance its intrinsic rewards) and recruitment policy so that under the current budgetary constraints the best candidates will be attracted to the judiciary.

APPENDIX A: THE RESEARCH METHOD

This study adopted a Natural field-experiment design. A natural-experiment is a study conducted in the real-life environment of the participants (or potential participants), aiming at measuring the possible effect of an actual event (the reduction of judicial compensation) that occurred irrespective of, and external to the study (i.e., without any manipulation or involvement of the researchers). Natural field experiments are rare as researchers can very seldom predict the occurrence of such events and measure ahead of time the relevant variables among those exposed to it. However, at times, it is possible to measure, after the fact, the relevant variables among those who were and those who were not exposed to the event (as an equivalent control group), compare them to each other, and thus assess the effect of the event.⁶⁵ This was done here.

Thus, the study compared a "study group" of judges who received reduced judicial compensation (tier B) to a control group of judges who received uncut compensation (tier A) in terms of their job satisfaction, change in the

⁶⁵ For details see: Babbie (n 10), 242; or Gravetter (n 10).

assessment of judiciary quality and more. Since the new compensation plan was introduced in 1999 affecting only newly recruited judges, we had to wait for a fairly long time period after 1999 to allow for new judges to join the bench. Therefore, judges' satisfaction and work quality were measured about a decade later, in 2011.

The major strength of the natural-experiment, and hence the strength of this study, is its very high realistic validity. Unlike the low realistic validity of reactions induced in a laboratory experiment, reactions in a natural-experiment reflect real-life behavior in the natural setting. Further, this design reduces the possible experimental bias and similar response biases, as participants (the judges) usually are unaware that they might be studied. The main weakness of the natural-experiment is that researchers have little control over the intensity of the independent variable's effect (the natural occurrence) and over extraneous variables such as some environmental influences with a possible compounding effect, which might bias the results. Here, this weakness is minimized as all respondents were judges presiding on the same bench, doing the very same job at the same work organization, and all exposed to the same socio-political environment during the period in question here.

1. The Sample and Data

Analyzed here is data previously collected through opinion-surveys conducted in early 2011⁶⁶ among Israeli presiding court judges. In the survey self-administered mail-questionnaires were sent to all the judges presiding at the First and Second court instances in Israel at the time. The comprehensive survey included questions regarding the judges' perceptions, evaluations, work-related attitudes and the functioning of the court system

⁶⁶ The study was designed and the questionnaires mailed out late in December 2010 so that they were filled and returned early in 2011. Hence the reference here is to 2011 survey.

as well as compensation.⁶⁷ In a parallel study of lawyers, in 2010, a very similar survey questionnaire was filled out by a large sample of 2897 lawyers and the data collected was used here as well.

2. Possible response biases:

The relatively small number of respondents could raise concerns that a self-selection bias may exist: i.e., judges decide whether or not to respond to the questionnaire based on their interest (or disinterest) in the study topic, compensation.⁶⁸ If respondents (judges) tend to respond to questions they have a high interest in or a strong opinion about, tier B judges would be more likely to respond as dissatisfied, than tier A judges. This however did not occur. First, as the results show tier A and B judges responded to this question in similar number (33 and 31 respectively) reflecting no self-selection on either tier A or B judges.

While secondary in importance, another concern may be the representativeness of the present sample of 86 judges. Given the natural field experimental design here, the question of how representative the sample is of the Israeli judiciary is of lesser relevance. The main focus in this design is on the compatibility of the study and control groups to avoid a distortion in the findings, not on how representative they are. Given the two compatible groups here, such a distortion is unlikely.⁶⁹

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⁶⁷ For a detailed description of the surveys and the samples of judges, and statistical characteristics of the responding judges see: Bar Niv (Burnovski) Moshe and Ran Lachman, (n 52).

⁶⁸ Babbie, (n 10).

⁶⁹ In any case, for a detailed discussion of the representativeness of the sample, see: Bar Niv (Burnovski) Moshe and Ran Lachman, (n 52).

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