Jewish Legal Autonomy in the Middle Ages: an Unchallenged Institution?

Up till now Jacob Katz’s statement that ‘the acceptance of an alien jurisdiction was considered as the discarding of an integral part of the Jewish heritage’ has been generally accepted.¹ Katz referred to Rashi on Exodus 21:1: ‘These are the suits [mishpatim] you bring before them [lifnehem].’ Because lifnehem is accentuated but unclear, Rashi explained it on the basis of the Babylonian Talmud and the midrashim: ‘He who brings a suit between Jewish litigants before gentiles thereby desecrates the Name [of God] and glorifies the name of idols.’² According to Katz there existed ‘an unqualified prohibition of appealing to non-Jewish courts’ with an ‘uncompromising character’;³ breaking this prohibition was considered a ‘religious crime’⁴ because jurisdiction was always linked with religious concepts and ceremonies; therefore ‘the term arka’ot (gentile court) gained a negative emotional content to be equated almost with a non-Jewish house of worship’.⁵

Guido Kisch had taken it for granted that in the medieval court decisions ‘there is, in fact, not a single instance of a Jew’s bringing suit against a fellow-Jew in a non-Jewish court, not even as the result of mutual agreement or of a Jewish defendant’s refusing to appear before a Jewish court’.⁶ Kisch referred to a taqqanah (‘ordinance’) decreed under

³ Katz, Exclusiveness and Tolerance, 53.
⁴ Katz, Tradition and Crisis, 82f. (English), 122 (Hebrew).
⁵ Katz, Exclusiveness and Tolerance, 53; idem, Tradition and Crisis, 83 (quote).
⁶ G. Kisch, Jews in Medieval Germany. A Study of Their Legal and Social Status (Chicago 1949) 175.
the auspices of R. Jacob ben Meir (Rabbenu Tam, d. 1171): under the penalty of excommunication it was declared ‘that no man or woman may bring a fellow-Jew before Gentile courts or exert compulsion on him through Gentiles [...] except by mutual agreement made in the presence of proper witnesses’.7 According to Kisch after the herem (‘ban’) of Rabbenu Gershom’s (960-1028) taqqanah against polygamy, this taqqanah ‘was probably the only rabbinical ordinance that was universally accepted by all Jewish communities throughout France, Germany, and elsewhere’.8

Kisch’s view was adopted by a recent study on Jews in Cologne in the Middle Ages, which claimed that Jews who used the Christian authorities for their interests had more or less explicitly left the legal and solidary community.9 By contrast, in 1929 Ismar Elbogen had argued more cautiously that the issue of the actual exertion of Jewish jurisdiction, the relationship between the Jewish and the municipal court was still so obscure that the slightest contribution should be carefully considered.10

An incident reported in a recently published manuscript11 sheds new light on the significance of Jewish judicial autonomy. At the end of the twelfth century, a widow named Bella of Duisburg asked R. Joel ha-Levi of Bonn12 to sue her son-in-law Simon. According to R. Joel’s plaint Simon was accused of having broken an agreement which he had contracted with Bella. The case at issue was a security of the sum of 48 marks, each mark à 234 gr., to a total of more than eleven kilo’s of silver. Since Simon owed her more than double according to the agreement, this valuable security owned by Simon should remain in Bella’s possession until they would have resolved their mutual claims on outstanding money before the Jewish court in Cologne, on a date already agreed on by

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7 Quoted according to the translation by Finkelstein, Jewish Self-Government, 133f.
10 I. Elbogen, ‘Hebräische Quellen zur Frühgeschichte der Juden in Deutschland’, Zeitschrift für die Geschichte der Juden in Deutschland 1 (1929) 34-43.
12 On him see E.E. Urbach, Tosaphists: Their History, Writings and Methods, 2 vols (Jerusalem 1986) 209-212 (Hebrew).