



המוקד להגנת הפרט

HAMOKED

Center for the Defence of the Individual

هموكيد - مركز الدفاع عن الفرد

Position Paper

Health Insurance and Temporary ID Numbers for Children Residents of East Jerusalem

HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) is a human rights organization which is located in Jerusalem and has worked on the rights of East Jerusalem residents for many years.

One of the issues which HaMoked addresses is health insurance for children who are residents of East Jerusalem. Some of these children are not registered in the population registry for reasons which are detailed below and, as a result, are unable to obtain health services. This has lead the National Insurance Institute (hereinafter: the **NII**) to give these children temporary identifying numbers for the purpose of receiving health services.

In the past, due to various problems relating to the issuing of these temporary numbers, HaMoked filed a petition to the High Court of Justice jointly with the Association for Civil Rights in Israel and Physicians for Human Rights. The petition led to a change in the NII's policy. In addition, some 15 claims filed by HaMoked on the issue of health insurance and temporary numbers have been pending before the Regional Labor Court during the past year.

Recently, apparently in view of the many legal actions on this issue, we have received word that the relevant agencies – the NII, the Ministry of Interior and the Ministry of Justice – are holding consultations in order to reach an agreed solution to the problem.

In view of its many years of work on this issue and its deep familiarity with it, HaMoked proposes that a presentation of the situation and of HaMoked's position would make an important contribution to promoting a suitable solution to the problem.

In addition to this position paper, HaMoked proposes to make an oral presentation of the issue to the relevant officials and to serve both as a source of great experience and information and as a voice for the residents who are affected.

The factual background

The children at issue are residents of East Jerusalem, born to one parent who is a permanent resident and registered as such in the Israeli population registry (hereinafter: **resident**) and one parent who is not a resident. Children both of whose parents are residents receive a serial number at birth, at the hospital. This number later becomes their official Israeli ID number. Children with only one resident parent receive no number whatsoever. The Ministry of Interior claims that these children do not receive ID numbers because their residency status must be examined prior to registering them in the population registry. The resident parent is required to go to the Ministry of Interior in person and arrange for the child's registration in the population registry and receipt of an ID number. The registration process is lengthy, which is why the NII issues temporary numbers for children upon their parents' request. These temporary numbers allow the children to register with health funds and receive the health services to which they are entitled under the National Health Insurance Law.

HaMoked's work on temporary numbers

A. The petition

Up until 1999, HaMoked received many complaints regarding children with one resident parent who are entitled to health insurance benefits. Due to protracted bureaucracy at the NII (often involving residency investigations), issuing of temporary numbers took a long time, anywhere between weeks and months. During this time, the children remained uninsured and were denied health services. Many of HaMoked's cases involved parents of children who had been denied urgent and vital medical care because they had not yet received temporary numbers and were turned away by hospitals because they had no health insurance.

In 1999, in view of this harsh reality, which was not resolved through correspondence between HaMoked and the NII, HaMoked petitioned the HCJ with other human rights organizations. The petition sought recognition that children who are residents of East Jerusalem and have at least one parent who is an Israeli resident, holds an Israeli ID card and is a member of a health fund are eligible for health services from birth (HCJ 2100/99 **Physicians for Human Rights, HaMoked: Center for the Defence of the Individual et al. v. Minister of Health and the National Insurance Institute**, hereinafter: the **petition**).

Subsequent to the issuing of an order nisi by the court and the Justices' position that the matter must be resolved immediately, the Petitioners and the Respondents reached an agreement on a **streamlined protocol for the issuing of temporary identifying numbers by the NII**. The arrangement, which the court turned into a ruling (July 3, 2001) (hereinafter: **the HCJ arrangement**). According to this arrangement, the **child** of a resident parent who appears on the health insurance database **will be issued a temporary number within a week from birth, and in cases of urgent medical care, immediately. The child shall receive medical services even in cases where the NII has prima facie evidence that the registered parent is not a resident of Israel in practice, until such time as the NII completes its examination and arrives at a final decision.**

The judgment on the petition is attached and marked A.

B. Developments subsequent to the petition – erosion of the HCJ arrangement by the NII

First retraction – the HCJ arrangement applies only to children who are under 12 months old

As stated, the remedies, as defined in the HCJ petition, related to temporary numbers and health services for “children” of all ages. The same holds true for all communications between the Petitioners and the Respondents both prior to filing the petition and while the petition was being heard; the same holds true for the arrangement, which, as stated, was endorsed by the Court as a judgment and the same holds true for communications between the NII and HaMoked subsequent to the petition.

As an example, the letter of Adv. Altschuler of October 28, 2001 is attached. The letter states: “from the aforesaid and from the general spirit of the petition, it was clear to everyone involved that **the issue concerned health insurance for newborn children, or those in early childhood at most**” – marked B.

Despite this, at a later stage, **the NII took the position that the HCJ arrangement referred to infants aged up to 12 months only** and that it would not issue temporary numbers past this age. The Petitioner’s protests regarding the **drastic change in policy and the distorted and belated interpretation of the HCJ arrangement** were to no avail.

As an example, letters written by Adv. Landau of HaMoked protesting the retreat from the HCJ arrangement dated January 1, 2002 and December 3, 2002 are attached – marked C and D.

Subsequently, on December 31, 2003, the legal advisor for the NII published an opinion entitled “**Requiring ensured persons to be registered in the population registry as a condition for obtaining rights**”. Among other things, the opinion states that children with one resident parent would receive a temporary identifying number for the purpose of health insurance only during the first year of their lives. Upon receipt of the temporary number, the families are to be informed of the requirement to have the child registered in the population registry. “**However, a child will not be taken off the health insurance program so long as his parent is not deleted from the health insurance database, even if the child has not received an ID number**”. The opinion also notes that **confirmation of submission of an application to the Ministry of Interior shall be deemed as registration in the population registry**, based on the understanding that “**the insured parties have done all they could to complete the registration and the delay in registration is a result of circumstances which are beyond their control**”.

The NII’s explanation for this policy is that the Population Registry Law requires a resident to provide information of a live birth and that the temporary numbers issued by the NII were designed to prevent harm to eligible individuals in the exceptional cases in which an ID number could not be obtained from the Ministry of Interior immediately. In the past, it is stated, the NII issued temporary numbers liberally, without making the rights of insured individuals conditional on registration in the population registry. However, creating a separate registry file is problematic as it can lead to errors and malfunctions and provide avenues for “circumventing” the obligation to be registered in the population registry. Therefore, the NII should rely on the population registry like all other authorities.

We would like to note at this point, and we expand on this below, that in the case of the children in question here, a situation in which it is impossible to obtain an ID number from the Ministry of Interior immediately is the rule rather than the exception.

The opinion “Requiring insured persons to be registered in the population registry as a condition for obtaining rights”, dated December 31, 2003, is attached and marked E.

Following publication of this opinion, HaMoked contacted the legal advisor and requested the decision be reconsidered in view of the severe harm it causes children.

The letter of Adv. Landau dated March 21, 2004 is attached and marked F.

Some months thereafter, on April 2, 2004, following the legal advisor’s opinion, a protocol entitled **“Issuing identifying numbers according to registration in the population registry”** was published. The protocol specifies how identifying numbers are to be given to children who are required to register in the population registry but have yet to receive ID numbers. This protocol repeats the position that children over the age of 12 months are not to be given temporary numbers and that their parents should be instructed to have the child registered in the population registry. Confirmation from the Ministry of Interior that an application to register the child has been filed serves as proof that the applicant has fulfilled the registration obligation and that it is possible to provide him with a temporary number, even if the child is older than a year. In any case, a temporary number would remain on record for a limited period of time, following which the status of the application at the Ministry of Interior will be examined.

The NII’s protocol dated April 2, 2004 is attached and marked G.

The NII followed this protocol until 2009. In other words, the NII issued temporary numbers to children under 12 months old following the streamlined procedure in accordance with the HCJ arrangement. Children over 12 months old were issued temporary numbers subject to their parents’ submitting an application for registration with the Ministry of Interior.

To HaMoked’s best knowledge, temporary numbers were not revoked even if the registration application was delayed by the Ministry of Interior for a protracted period of time.

Second retraction – the temporary number is revoked when the child reaches the age of 12 months

On September 2, 2009, another protocol was published: **“Issuing temporary numbers to children prior to their registration in the population registry – update”**. This protocol relates to follow up on children who received temporary identifying numbers and are required to be registered in the population registry. In this protocol, the NII takes another bite out of the HCJ arrangement and determines that once children reach the age of 12 months (or, at most, 18 months) their temporary numbers will be revoked and their health insurance will be cut off (unless the NII is presented with an assurance from the Ministry of Interior that the matter is still under processing, in which case, the cancellation of health insurance will be delayed by 90 days).

The NII’s protocol dated July 2, 2009 is attached and marked H.

Thus, following this protocol, the NII has refused to issue temporary numbers to children who are older than 12 months, even if an application to register them had been filed with the Ministry of Interior. Additionally, the NII has begun revoking the temporary numbers of children who reach the age of 12 or 18 months.

To conclude this section, we state that the NII's conduct and the instructions it issues constitute a **unilateral breach of the HCJ arrangement**.

HaMoked's position

The NII's policy, whereby registration in the population registry is a condition for insuring children under the national health insurance plan is not only a gross and unilateral breach of the HCJ arrangement, but it is also a breach of the interpretive principle whereby texts must be interpreted in a manner that is consistent with human rights.

The right to medical services, as part of the right to bodily integrity and the right to life, is a fundamental right. Denying it may cause severe and irreversible harm. In addition to the violation of the right to health, the NII is also violating the right of Israeli residents' children to equality.

This policy is neither reasonable nor proportionate. It is inconceivable that a minor will not be eligible for health insurance when one of his parents, with whom he lives in Israel, is recognized as a resident and is registered in the health insurance database. Even if the resident parent has failed to take action to have his child registered in the population registry, for whatever reason, the child's eligibility for health services should not be made provisional and he must not be punished for his parent's acts or omissions. In addition, one has to remember that this is a disadvantaged population and the difficulties it faces are often objective – lack of financial ability, lack of awareness of the importance of registration, illness, incarceration, drug addiction etc. – all of which may delay the parent's application to the Ministry of Interior to have his child registered.

The policies of the NII and the Ministry of Interior

However, in most cases, it is not the parent's omission that leads to the delay in the child's registration. Even if the parent takes the necessary measures to have his child registered in the population registry promptly and flawlessly, registration may still be delayed. It is well known that the Ministry of Interior, for its own reasons, makes registering the children of this population very difficult. Even if a child is ultimately registered in the population registry, the procedure takes many months, sometimes years, and requires the parents to devote all their time and effort to the process and to insist on its completion. Thus, the ostensibly simple act of informing the Ministry of Interior of the birth of a child turns into a complicated, exhausting and protracted process which includes contacting the ministry repeatedly, filing many documents and sometimes seeking legal advice and taking legal action.

The Israeli born children of Israeli residents are entitled to residency under Regulation 12 of the Entry into Israel Regulations. For children who have only one parent who is an Israeli resident, whether they are born in Israel or not, the Ministry of Interior issued an internal protocol in 2007. Under this protocol, the child will be registered only if the parents prove that they maintained a center-of-life in Israel during the two years preceding the application. The protocol lists many requirements and conditions that resident parents must meet in order to be able to file the registration application. Among these requirements are the provision of many documents, payment of a fee in some cases, the parent's physical presence, evidence of a center-of-life, etc. In practice, the Ministry of Interior only reviews applications for registering children once two years have passed since the parent was recognized as a resident by the NII. Applications filed

before the two year period are denied. The Ministry of Interior processes application only after the two year mark, and then too, processing takes at least a few months.

The Ministry of Interior protocol on registering and granting status to children with only one parent who is registered as a permanent resident of Israel is attached and marked I.

Despite the fact that this is well known, the NII ignores the complex reality of registering in the population registry in its instructions on temporary numbers and relates to registration as if it were a simple formality and ID numbers were issued immediately. As stated, for the population which uses the services of the East Jerusalem population administration bureau, a situation in which an ID number is not issued immediately is the rule rather than the exception.

The NII's conduct with respect to this matter is vexing. In the instructions it issued in 2003 and 2004, the NII acknowledged the fact that child registration can be delayed through no fault of the insured parent. This is why it determined that a child would remain insured even if he did not receive an ID number. Yet, in 2009, after the Ministry of the Interior made the conditions for child registration tougher and after it issued the 2007 internal protocol requiring proof of a two year center-of-life in Jerusalem as a condition for filing an application for registration, the NII decided that the temporary numbers would be revoked at the age of 12 months (or 18 months). This decision contradicts the NII's instructions of previous years and it is inconsistent with the Ministry of Interior's 2007 requirement for proof of center-of-life for two years.

It is also perplexing that the NII is ostensibly willing to take the difficulties in registering in the population registry into account only so long as the child is under 12 months old but no later. Yet, as stated, this period of time, which the NII allots for having the child registered in the Ministry of Interior, is inconsistent with Ministry of Interior protocols as well as with the time it **actually** takes to complete the process.

Additionally, the NII's requirement for confirmation from the Ministry of Interior that the registration is still in process as a condition for delaying the revocation of the temporary number by 90 days is inconsistent with the conduct of the Ministry of Interior. The Ministry of Interior does not admit applications for processing without proof of a two year center-of-life, and even if there is proof and the application is admitted for processing, the Ministry of Interior does not normally provide confirmation that an application to have a child registered has been filed.

Thus, the repercussions of the NII's unilateral breaching and undermining of the HCJ arrangement are exacerbated in view of the Ministry of Interior 2007 protocol which requires evidence of a center-of-life in the two years prior to submission of the application as a condition for reviewing the application.

This leads to absurd situations in which a child whose parent is an Israeli resident and recognized as such by the NII and who lives with said parent in Israel does not receive national health insurance benefits for over two years.

The National Health Insurance Law

A child who has one parent who is a permanent resident and is recognized as being insured by the NII is eligible for national health insurance benefits under Section 3 and 4(a) of the National Health Insurance Law 5754-1994 (hereinafter: **the Health Insurance Law**). Such a child, who

lives with his resident parent in Israel, is eligible for health insurance even if he is not yet registered in the population registry.

Section 3a(b)(1), which the NII uses as the basis for its current policy of denying health insurance benefits to children over the age of 12 months who are not registered in the population registry, does not detract from this right. We shall explain.

First, as is known, statutory provisions must be interpreted in a manner that is consistent with the right to equality and the right to health. Therefore, the amendment in Section 3a(b)(1) of the Health Insurance Law must not be interpreted as imposing a duty on a newborn baby to seek confirmation of his residency status and his registration with a health fund, when one of his parents is registered in the population registry and with a health fund, simply because bureaucratic reasons have thus far prevented said baby's registration in the population registry. This interpretation contradicts the spirit of the Health Insurance Law and the principle of equality and results in denying children's right to health insurance.

Second, this section was enacted subsequent to the HCJ arrangement and naturally does not contradict the arrangement in any way, since the HCJ arrangement does not exempt the resident parent from filing an application for determining the residency status of the child or registering him in the population registry. The HCJ arrangement merely compels the NII to provide the child with a temporary number for the purpose of entering him into the database of individuals insured in the national health insurance program, until such time as his status in Israel is determined or he is registered in the population registry. In other words, registering a child in the population registry does not constitute a condition for entering him in the national health insurance database. It is solely a condition for exempting the family from filing an application for determination of status for the child under Section 3a(a).^{*} To put it a different way - a minor who is registered in the population registry is exempt from filing an application to have his residency status determined. A minor who is not registered in the population registry is not granted this exemption.

It follows that the Law does not make the right to health services conditional on being registered in the population registry and that the absence of such registration does not provide cause for denying these services. The HCJ arrangement was formulated based on this interpretation, which respects the rights to equality and to health. Under this arrangement, a child who has one resident parent, will receive health insurance upon birth (by way of the NII issuing a temporary number) like any other child who is a resident of Israel. The child is to receive these benefits until such time as his residency status is determined by the NII or he is registered in the population registry and issued an ID number by the Ministry of Interior. This was the purpose of the petition. This

^{*} Section 3(a) of the National Health Insurance Law stipulates: "a person who is not registered with a health fund and wishes to register with a health fund, shall file an application to the National Insurance Institute for confirmation that he is a resident (hereinafter: the applicant), and application to register with a health fund, including an application for his minor child, in a form issued by the National Insurance Institute...". Pursuant to such application, the NII conducts an investigation to determine whether the applicant actually lives in Israel irrespective of his status, or lack thereof, in the population registry. This determination is made for NII purposes and is separate and apart from registration in the population registry which is carried out by the Ministry of Interior. The Ministry of Interior may rely on the findings of the NII investigation to decide whether or not a person will be registered in the population registry, but it is, nevertheless, a separate process and separate decision.

was the purpose of the arrangement. Any other interpretation of the Health Insurance Law results in the violation of fundamental rights and is therefore not meant to achieve a proper purpose and disproportionate. It must therefore be rejected.

The lawful and proper arrangement

In light of all the aforesaid, the appropriate arrangement is clearly that a child with at least one resident parent would be eligible for health insurance from the moment of birth until such time as he is registered in the population registry, irrespective of how long this process takes, including during the course of proceedings in an appeal of the Ministry of Interior's decision, if such is filed.

This arrangement is consistent with the undertaking made before the High Court of Justice and with the National Health Insurance Law. It respects fundamental human rights.

Convenience also clearly and unequivocally tips the scales in favor of an arrangement that provides children with health insurance benefits until such time as they are registered in the population registry. Even if the State does sustain financial losses in cases in which the child is ultimately found ineligible for registration in the population registry (a rare situation considering one of the parents is a recognized resident), the harm suffered by a child who does not receive necessary health services is far worse and irreversible.

In response to the NII claim that having insured individuals register in the population registry is helpful to it from an administrative perspective, we say that making the rights conferred by the National Insurance Institute Law and the National Health Insurance Law conditional on registration in the population registry is incongruent with the NII's role and powers and that the administrative interest is balanced against risking children's health and possibly causing severe and irreparable harm.

March 7, 2011
Adv. Sigi Ben-Ari