

At the Supreme Court
Sitting as the High Court of Justice

H CJ 8031/12

- In the matter of:
1. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
 2. **Physicians for Human Rights - Israel, R.A. 580142214**
 3. **Israel Religious Action Center – the Israel Movement for Progressive Judaism – A.R. 58028285**

all represented by counsel, Att. Sigi Ben-Ari (Lic. No. 37566), and/or Noa Diamond (Lic. No. 54665), and/or Hava Matras-Irron (Lic. No. 35174), and/or Daniel Shenhar (Lic. No. 41065), and/or Nimrod Avigal ((Lic. No. 51583), and/or Benjamin Agsteribbe (Lic. No. 58088), and/or Bilal Sbihat (Lic. No. 49838), and/or Tal Steiner (Lic. No. 62448)
Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Director General of the National Insurance Institute**
2. **Minister of Social Affairs and Social Services**

The Respondents

Petition for Order Nisi

A petition for an *Order Nisi* is hereby filed, directed at the Respondents and instructing them to appear and show cause:

- a. Why they should not include professional interpreters in sessions held by committees that review claims for disability benefits filed by residents of East Jerusalem, including medical committees and incapacity committees;
- b. Alternatively, why they should not staff the medical committees with Arabic speaking physicians, and in the case of incapacity committees and other committees, staff who are fluent in Arabic;
- c. Why they should not establish and publish protocols concerning the obligation to include a professional interpreter in sessions held by committees that review claims for disability benefits filed by residents of East Jerusalem.

The Facts

The matter of the petition

1. This petition concerns the matter of the language barrier the Respondents place in the path of East Jerusalem residents as they seek to exercise their right to social security. This is a poor population that relies on social services, and mostly, does not speak Hebrew. Despite this, in an entirely unreasonable manner, these residents' entitlement to disability benefits is examined during meetings conducted exclusively in Hebrew.
2. As Arabic is an official language, in refraining from including a professional interpreter in the sessions held by the committees that review these applications, Respondent 1 is breaching his obligation as an administrative authority and his duty to exercise his powers equitably, reasonably and fairly.
3. In refraining from including a professional interpreter in the sessions held by the committees that review these applications, the Respondent might impede East Jerusalem residents from exercising their right to social security, which constitutes part of the right to the minimum conditions for living in dignity.

The parties

4. Petitioner 1, HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) is a human rights organization which is based in Jerusalem and works, *inter alia*, on the rights of East Jerusalem residents.
5. Petitioner 2, Physicians for Human Rights – Israel is a registered not-for-profit association that brings together physicians and other medical and health care professionals who work to promote human rights in general, and the right to health in particular, in Israel and in the Occupied Palestinian Territories (hereinafter: OPT).
6. Petitioner 3 is the public and legal arm of the Israel Movement for Progressive (Reform) Judaism. The Petitioner works to promote equality and social justice in Israel based on a Jewish liberal approach and on the values of democracy. In the course of this work, the Petitioner promotes the assimilation of the norms of good governance, transparency and equal distribution of public resources among all members of the public in Israel.
7. Respondent 1, the National Insurance Institution (hereinafter: the NII) is the administrative institution responsible for providing the right to social security. This includes examining a person's eligibility for a general disability benefits under the National Insurance Law.
8. Respondent 2, the Minister of Welfare and Social Services, is the minister in charge of welfare policy and the provision of welfare services to those in need, *inter alia*, through Respondent 1.

The social and language uniqueness of the Palestinian population of East Jerusalem

9. The Palestinian population of East Jerusalem is the largest urban concentration of Arabic speakers under the jurisdiction and administration of the State of Israel.
10. This is a poor and neglected population which relies on social services. According to the NII's 2010 report on poverty and social gaps, the Arab population of East Jerusalem has the highest poverty rate in the country, standing at 78.4% (this is 2.5 times the poverty rate among Jerusalem's Jewish population). The poverty rate among Arab children in the Jerusalem district is 84% (double the rate among Jewish children in the city).

http://www.btl.gov.il/Publications/oni_report/Documents/oni2010.pdf (Hebrew)

See also The Jerusalem Institute for Israel Studies, 2012 Statistical Yearbook:

<http://jiis.org/?cmd=statistic.458>

11. East Jerusalem schools are not subject to the Israeli education system. According to a report on education in East Jerusalem that was submitted to the Knesset Education, Culture and Sport Committee in October 2006, all official educational institutions in East Jerusalem follow the Palestinian curriculum. This is the case also in recognized but unofficial educational institutions. Private institutions serve many other students. All East Jerusalem students take the Palestinian matriculation exams.

<http://www.knesset.gov.il/mmm/data/pdf/m01568.pdf> (Hebrew)

12. According to the 2010 and 2012 reports of the Association for Civil Rights in Israel, East Jerusalem students who are enrolled in recognized schools study Hebrew as a third or fourth language. One quarter of all students are enrolled in private schools and learn very little, if any, Hebrew. Ten percent of all children do not attend school and 50% of students drop out of secondary education.

http://www.acri.org.il/en/wp-content/uploads/2012/05/The-Poverty-Policy-in-East-Jerusalem_ACRI_May-2012_ENG.pdf

<http://www.acri.org.il/he/wp-content/uploads/2011/03/eastjer2010.pdf> (Hebrew)

Thus, most graduates of the East Jerusalem education system do not speak Hebrew at all, or have very little knowledge of it.

13. Honorable Justice Mosheh Yoed Hacoheh, of the Jerusalem District Court, cited the state of Hebrew knowledge among East Jerusalem residents as part of the basis for his decision to dismiss the charges against a defendant who was not notified of the right to a hearing in Arabic:

... In East Jerusalem, unlike in other cities in Israel with a minority or majority of Arabic speakers, there is a unique phenomenon: learning to read and write in Hebrew is not a mandatory subject in most schools where teaching takes place in Arabic. These schools mostly follow the Jordanian curriculum. It follows that the expectation that the average person in East Jerusalem will be able to read Hebrew fluently is not entirely well founded, in exactly the same way as only a minority of the Jewish population of the city is able to read Arabic.

(CrimC (Jerusalem) 333/09 **State of Israel v. Siyad Zaki**, rendered January 5, 2010)

14. In view of the unique language characteristics of the Palestinian population of East Jerusalem, the City of Jerusalem decided to translate all the forms it uses (about 90) into Arabic in 2009. The City also put up an Arabic website which lists the municipal benefits to which city residents are entitled. To date, 80 forms have been translated into Arabic and they are available on the City's website.
15. The NII has also recognized the social and linguistic uniqueness of the population of East Jerusalem and seen fit to designate a special office to provide services for this population. The office employs Arabic speaking staff.
16. The uniqueness of the NII office that serves the population of East Jerusalem was reflected in a discussion held by the Knesset Internal Affairs Committee in 2007 on the issue of the NII accepting documents in Arabic. So, for example, MK Yoel Hasson:

... As we know – **the Arabic language is an official language in the State of Israel and there are many citizens for whom it is a main language...** Whether it is the Prime Minister's Office, or other places, ways have been found to address letters in Arabic, even if it was necessary to make some organizational or technical adjustments. People were certainly not asked to take back the letter and return it translated. **This is why I was amazed that the NII, of all places, which is an official state institution,** asks, according to what was written, **for translations of judgments issued by the Sharia Court.** First of all, I find this unacceptable, because, as I said, **Arabic is an official language in the State of Israel and people should be able to write in it and use it without any issues.** Obviously, there are costs involved, because if we demand that people translate documents, certainly people who seek the services of the NII are mostly people of meager means who usually cannot undertake to pay for translation etc. **I really do think this is a discriminatory policy, something that has to be corrected. I think Israel should respect the Arabic language out of respect for our Arab citizens here...** I would like to hope, first of all, that we soon hear that the NII has decided to change its policy and discontinue the practice of demanding translations, and also, that the Committee pass a resolution in this vein (emphases added by the undersigned).

The remarks of the director of the East Jerusalem office – then and now – Mr. Shmuel Paniel, still hold true today and remain relevant to the matter of this petition:

We have a great deal of difficulty filling out our clients' forms... I checked and saw – they go to have the forms filled out for them and pay 50 shekels. These are people who come to the NII and they need to pay 50 shekels to fill out a form. I said: this is it. We'll fill out the form with them. This is why **there are three interpreters who sit down with the people, talk to them in their language and ask them questions. They fill out [the forms] in Hebrew and can fill them out in Arabic as well. There's no problem.** There is not a single Arabic document that was returned to someone who was asked to translate it. No such thing, at least not during my time. I'm telling you loud and clear... we do the best we can. **We understand that we, as the National Security Institute, a social institution that must provide optimal service to these citizens, who are poor...** One of the most painful issues that come up time and again is the issue of the investigations. The complaint is that the person gets spoken to in Arabic, but the information is written down in Hebrew. When we reached the conclusion... we agreed to switch all of the systems to one language. Now, **we ask in Arabic, we write in Arabic,** and only then do we translate into Hebrew. **So you should know that the institution, at least in East Jerusalem, where we are, when I serve a population that speaks only Arabic – all the services are provided in Arabic** (Emphases added by the undersigned)

For the full transcript of the Committee session: <http://www.aisrael.org/Uploads/63212007-01-23.rtf> (Hebrew).

Translation of NII forms to Arabic

17. A petition to this Honorable Court was necessary in order to have NII forms translated into Arabic: HCJ 2203/02 **Defence for Children International – Israel v. National Insurance Institute**. In the petition, filed in 2001, the petitioners sought to have the NII forms translated into Arabic and made available in the NII East Jerusalem office. The petitioners also demanded that East Jerusalem residents be able to fill out the forms in Arabic and that notifications and letters sent to them from the NII be in the Arabic language.
18. On May 7, 2007, after the NII failed to deliver on its promise to translate the forms, the Honorable Court issued an *Order Nisi* regarding the three remedies sought in the petition. In the decision dated July 23, 2007, the Honorable Court harshly criticized the NII, stating, *inter alia*, that it was disregarding its obligations toward East Jerusalem residents.
19. The judgment in this petition was rendered on January 7, 2009. The Court issued an *Order Absolute*, instructing the NII to uphold its commitments with respect to receipt of forms in Arabic, complete the process of translation and make the translated forms available on its website. At the present time, most NII forms are available in Arabic on the NII's website.

Examination of eligibility for disability benefits by medical committees

20. As part of the general disability insurance, a monthly pension is paid out to individuals whose earning capacity has diminished as a result of a disability. Disability insurance is valid for any person who is a resident of Israel from age 18 until retirement age.
21. An individual who believes he is entitled to disability benefits submits a claim form to the NII, enclosing medical documents. After the claim is filed, the claimant is summoned to an examination by a medical committee and the disability is determined by a certified physician working on behalf of the NII.
22. An individual who is found to have less than 80% medical disability may appeal the disability rate attributed to him to the medical appeal committee and will be summoned to appear before this committee as well. The medical appeal committee may change or uphold the rate of disability determined by the certified physician.
23. If the rate of disability awarded to an individual is above the minimum requirement (60% disability, or 40% overall disability with one element of disability forming 25%, and a minimum 50% medical disability rate for a homemaker) and the NII claims official determines that the disabled person, or disabled homemaker has lost more than 50% of her earning capacity or ability to function in the home, they are eligible for disability benefits. In specific circumstances, they are also entitled to dependant benefits for a spouse and two children.
24. The medical committees before which disability benefit claimants appear are composed of one physician who specializes in a certain medical field and a session secretary who takes minutes. When a claimant suffers from a number of diseases or medical conditions, he may be examined by a number of expert physicians.
25. There may be situations in which the medical committee examination results are in a need of an examination by another expert, in which case, the claimant will be summoned for an examination by an additional medical committee. The opinions of the expert physicians is transferred to the NII "designated physician" who determines the weighted medical disability rate.
26. During the examination conducted by the medical committee, the claimant is required to specify his disease, list all his complaints, his difficulties performing at work and his reliance on the help of others for everyday actions. The claimant's complaints are detailed in the session minutes and he is

required to sign them to certify that these are his complaints. The physician decides if it is necessary to examine the claimant according to the type of disease or medical condition, taking into account the claimant's complaints. If it is necessary to perform an examination, the claimant signs a consent to be examined by the physician.

27. The NII's website informs claimants who are to appear before the medical committee as follows: **"If you require an interpreter or an escort to assist you with getting dressed – please bring the appropriate escort with you."** These and other details can be found on the NII's website at:
<http://www.btl.gov.il/English%20Homepage/Benefits/Disability%20Insurance/Pages/default.aspx>
28. Thus, a person who claims disability benefits appears before at least one medical committee during the first phase, and if he appeals the rate of disability he was awarded, he appears before another medical committee. In addition, he must appear before a committee that determines the degree of his incapacity to earn.
29. The success of a claim largely depends on the claimant's ability to clarify his medical condition - along with presenting medical documents - and on his ability to explain how this condition prevents him from earning a living. There is no doubt that a claimant who does not speak the language spoken by members of the committee would have great difficulty explaining his circumstances, and therefore less likely to be able to exercise his right to disability insurance, if entitled thereto.
30. To illustrate the situation of Arabic speakers who face committees whose members speak Hebrew, we might imagine ourselves, as Hebrew speakers, appearing before a panel of physicians and other officials, who speak only Arabic. We must describe our illnesses and conditions and explain how they prevent us from earning a living. We must answer the questions posed by members of the committee – asked in Arabic, and sign the minutes – written in Arabic – in order to certify that our claim has been recorded as we presented it. This is, indeed, an unreasonable situation, to say the least.
31. East Jerusalem residents who appear before a medical committee or an incapacity committee and who do not speak Hebrew have another option. They can look for an acquaintance who does speak Hebrew and who is prepared to go with them and spend quite a few hours meeting with the committee, and often, meeting with more than one committee.
32. If the claimant has an acquaintance, he must hope that this person is proficient enough in Hebrew – which is rather unlikely considering the level of Hebrew language education in East Jerusalem as presented above – and that his complaints are accurately conveyed to the committee. Clearly, accuracy with respect to the specifics and medical terms is paramount in these cases and unprofessional, stunted and uncertain translation undermines the claimant's chances.

The importance of professional translation in services relating to personal health

33. The importance of professional translation in health related services is expressed in Circular No. 7/11 of the Ministry of Health General Director, issued February 3, 2011. The circular addresses the issue of cultural and linguistic accommodation and accessibility of health care services. According to the circular, all health care institutions and organizations must make preparations to have interpretation services available in cases in which interpretation is required during medical consultation and/or treatment. The measures listed included using cultural mediators who speak different languages in the organization or institution and hiring staff who speak various languages.
34. With respect to assistance by family members and third parties, the circular states that **use of a patient's family member as an interpreter must be avoided as much as possible**. Family

members must not serve as interpreters in mental health services nor should passers-by or other persons be asked to assist with interpretation. The Director General recommends hiring staff members from cultural and linguistic minorities.

[http://www.equalhealth.org.il/wp-content/uploads/2011/02.2011-מנכ"ל-פברואר-pdf](http://www.equalhealth.org.il/wp-content/uploads/2011/02.2011-מנכ) (Hebrew)

Attached also as Exhibit P/1.

35. With respect to the damage caused by unprofessional interpretation by relatives or acquaintances, we quote from an opinion provided by the legal department of Public Trust with respect to the obligation health care institutions have to provide “linguistic accessibility”.
36. The opinion emphasizes that medical interpretation is an expertise that has developed around the world out of recognition for the fact that it requires specific training and that fluency in a given language is insufficient for translating medical information into that language. The opinion cites studies that point to the dangers of interpretation by individuals who have not been trained in medical interpretation – and in particular the dangers of interpretation by family members. In addition, these interpreters are not bound by medical confidentiality.
<http://www.equalhealth.org.il/wp-content/uploads/2011/02-חזות-דעת-בעניין-מידע-רפואי-בשפת-09-7-7-דחמטופל.doc> (Hebrew).
37. The expert opinion of Dr. Michal Schuster of Bar Ilan University which is attached to this petition also explains and emphasizes the dangers involved in using unprofessional interpreters. Unprofessional interpreters may impede a diagnosis or lead to misdiagnosis. They may mistranslate medical terms or add or omit information without understanding the limits of their role.
38. With respect to NII medical committees, the opinion states:

The medical committee to which a person claiming disability benefits is summoned is composed of a physician (or physicians, depending on the complaint) and a session secretary who takes minutes. The opinions of the expert physicians are transferred to the NII “certified physician”, who determines the weighted disability rate.

During the medical committee session, the claimant is required to specify his diseases, all of his complaints, his difficulties performing at work, and his reliance on the help of others in order to carry out everyday activities. The claimant’s complaints are recorded in the committee session minutes, and the claimant is asked to sign to certify that these were the complaints he made. The significance of this is that what the claimant says, the difficulties he has, his need for assistance are critical for diagnosing his condition and determining the medical disability. Without proper communication, the information provided by the claimant may be deficient, which could affect the process, the final diagnosis and the disability rate awarded by the NII. It should be recalled that many of the individuals from minority groups who appear before the committees are in fact elderly persons or women who are minimally assimilated into Israeli society, and therefore their ability to express themselves in Hebrew fluently and understand the procedures involved in being awarded disability benefits, is quite limited, and detrimental to their right to equal access to this service.

39. Therefore, Dr. Schuster concludes her opinion with the following recommendation:

Therefore, in light of the above, my opinion is that using professional interpreters during sessions held by the NII's medical committees is an essential measure for ensuring accurate diagnosis, reliable determination of disability rates and equal access to the service for claimants who are not native Hebrew speakers.

The interpreters who work in the committees will be required to prove proficiency in both Hebrew and Arabic. Preference will be given to candidates who studied translation in one of the programs offered in Israel and who actively work as interpreters. The interpreters must have training in the following areas: oral interpretation skills, translators' ethics, relevant medical and administrative terminology in Hebrew and Arabic and specific training regarding the NII in general and the medical committees in particular.

This is the only guarantee that the linguistic mediators will in fact increase the efficiency of the sessions and enable equal access to the services provided by the committees.

40. **The expert opinion of Dr. Michal Schuster from Bar Ilan University is attached to this petition as an integral part thereof and marked P/2.**

Exhaustion of Remedies

41. On March 29, 2012, HaMoked: Center for the Defence of the Individual contacted Ms. Ilana Schreiberman, NII Deputy Director of Benefits regarding Arabic translation in the medical and incapacity committees held by the NII as part of general disability benefit claims filed by residents of East Jerusalem.

A copy of HaMoked's letter to the NII dated March 29, 2012 is attached hereto and marked **P/3**.

42. On May 16, 2012, a reminder letter was sent to the NII.

A copy of the reminder letter dated May 16, 2012 is attached hereto and marked **P/4**.

43. On July 12, 2012, a second reminder letter on this issue was sent to the NII.

A copy of the reminder letter dated July 12, 2012 is attached hereto and marked **P/5**.

44. On July 18, 2012, the response of the NII was received, which read as follows:

I agree that as part of the measures taken in order to improve services to the public, interpretation services should be made available to the Arabic speaking population during medical committee sessions. Therefore, and since this service is not currently available and requires budgetary allocations and interpreter-hiring protocols, the NII's executive director has requested the relevant officials to assess the needs so that we are able to make the necessary preparations.

A copy of the letter of the NII Deputy Director General for Benefits is attached hereto and marked **P/6**.

45. On September 6, 2012, HaMoked contacted the Deputy Director General for Benefits with a request for an update.

A copy of the letter is attached hereto and marked **P/7**.

46. No response has been received. Thus, the Petitioners had no recourse but to seek remedy from this Honorable Court.

The Legal Argument

Arabic as an official language and the obligations of administrative authorities toward Arabic speakers

47. Section 82 of the King's Order-in-Council, 1922, entitled, "official languages", which is still valid in the State of Israel stipulates as follows:

All Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. The three languages may be used in debates and discussions in the Legislative Council, and, subject to any regulations to be made from time to time, in the Government offices and the Law Courts.

48. In their book, **The Constitutional Law of the State of Israel** (Schoken, 5th Edition, Vol. A, p. 101), Amnon Rubinstein and Barak Medina write that this section stipulates the full official status of the Arabic language and it was not revoked by any later statute, unlike the English language whose official status was revoked in Section 15(b) of the Government and Law Order 5708-1948. Therefore, Arabic is a second official language, along with Hebrew, both in terms of the State's obligation to use it in official publications and in terms of every person's right to use it in government ministries and in the courts.
49. In their article, "The Status of the Arabic Language in Israel" (**State and Society** 4, 2004, pp. 885-909), Ilan Saban and Muhammad Amara also note that Section 82 "Does not refer only to how the regime 'speaks' to the public, but also to how the public 'speaks' to the regime. It gives individuals the right to approach the institutions of the central government orally and in writing "in either of the two official languages". They stress that Section 82 imposes extensive positive obligations on the government – "the government has an obligation to use Arabic **and an obligation to allow broad access to it in Arabic**" (emphasis added by the undersigned).
50. The official status of the Arabic language which was established in the King's Order-in-Council was supported and expanded in a long list of judgments in which it was determined that this status entitles individuals to rights and imposes obligations on state authorities. For example, in HCJ 4112/99 **Adalah v. City of Tel Aviv Yaffo et al.** (IsrSC 56(5) 393 (hereinafter: **Adalah**), in §13 of his opinion, President (emeritus) Aharon Barak wrote the following with respect to Section 82 of the King's Order-in-Council:

This Section sets forth a highly significant provision pursuant to which the Arabic language is an official language. As such, it was given "... a particularly lofty status..." (Justice M. Cheshin in CLA 12/99 **Mar'I v. Sabek** [2], p. 142). It is unlike other languages spoken by citizens and residents of the country. This special status creates direct rights and obligations on the part of the central government. However, this special status amounts to more than just the rights and obligations that directly derive thereof. The official status of the language reflects on the body of Israeli justice and influences its actions. This influence is expressed, *inter alia*, in the weight that must be given to the language in the overall

considerations weighed by a competent authority when exercising governmental powers.

51. Therefore, the NII, as a governmental arm that exercises governmental powers, must use the Arabic language when required to do so. This is the manner in which President Barak interpreted the issue in CivA 105/92 **Raam Engineers and Contractors LTD. v. City of Natzrat Illit et al.**, IsrSC 47(5) 189, §22 (hereinafter: **Raam Engineers**).
52. However, the obligation imposed on the authorities with respect to the Arabic language does not derive solely from Section 82 of the King's Order-in-Council. This obligation derives also from the principles of administrative law, which apply to the NII, to act properly, fairly and reasonably toward any person served by the authority and to use discretion in a manner that conforms to the basic values of the state and the fundamental principles of the legal system.
53. The remarks made by Honorable Justice Barak are relevant to the matter at hand:

Language is the tool that gives expression to freedom of speech. Language is the tool with which we communicate with others. Yet language is much more than a tool for communication. It is a tool for thinking. We use it to think and create concepts and convey them to others... This is the reason language is central to human existence, human development and human dignity... First, there is an Arab minority in Israel, whose language is Arabic. It is its language for speech. It is the language of its religion and culture. The State of Israel respects the use of the Arabic language... Arabic speakers must be allowed to express themselves in their own language as they wish... Second, tolerance is a fundamental value in our legal system. This is the "mutual tolerance that is required in a pluralistic society." (§§13 and 23 of the opinion of Honorable Justice Barak, **Raam Engineers**).

And the remarks of Honorable Justice Cheshin:

It is a fact that Arabic is the language of approximately one fifth of the population of the country – the language of speech, the language of culture, the language of religion. This size of population is a significant minority which we ought to respect, both the population and its language. The State of Israel is a "Jewish and democratic" country and being so, it has an obligation to respect the minority within it: the individual, the individual's culture, the individual's language. (CLA 12/99 **Mar'I Jamal Farid Sabek et al.**, IsrSC 53(2), 128, §18 of the opinion of Cheshin).

54. The examinations conducted by the NII medical committees are an inseparable part of the service the administration provides and it must do so in the most reasonable, appropriate, considerate and mitigating manner possible within the rules of good governance.
55. As described in the factual section, an authority that forces a large group of people who require its essential services to appear before it, express themselves and explain why their medical situation entitles them to disability benefits to institution officials who do not speak their language is not acting fairly, properly or reasonably.

56. The Respondents are in breach of their administrative duties by failing to use the services of professional interpreters in the committees that conduct examinations as part of disability benefit claims filed by residents of East Jerusalem.
57. The Respondents might ask why their obligations toward Arabic speakers in East Jerusalem are different from their obligations toward Israelis who speak other languages – Russian, Amharic etc. Would speakers of other languages now appear and demand to have the NII medical committees conducted in their particular language? This question was answered by Honorable Justice Barak in the judgment given in **Adalah**:

In this context, a question might arise: What makes the Arabic language special and why is it different from other languages spoken by Israelis (in addition to Hebrew)? Does our approach not mean that residents of various cities which have minority groups who speak various languages might demand... My answer is negative, as none of those languages are like Arabic. Arabic is unique in two respects: First, Arabic is the language of the largest minority in Israel, a minority that has lived in Israel for many generations. It is a language that is connected to the cultural, historic and religious characteristics of the Arab minority in Israel... Second, Arabic is an official language in Israel... Israelis speak many languages, but only Arabic – along with Hebrew – is an official language in Israel. Arabic, therefore, has a special status in Israel.
(§25 of his opinion)

58. In his article about **Adalah**, I. Saban supports and strengthens the uniqueness of the Arabic language when he singles it out as the language of the native minority, unlike the languages spoken by various groups of immigrants such as Russian and Amharic. See: Ilan Saban, “A Lone (bi-lingual) Voice in the Darkness? After HCJ 4112/99 Adalah v. City of Tel Aviv Yaffo, **Iyunei Mishpat**, 27(5763) 109-138).

http://law.haifa.ac.il/faculty/lec_papers/saban/Bi-lingual_Call_final.pdf (Hebrew)

Violation of the Right to Social Security

59. According to the NII’s website, “In the framework of the general disability insurance, a monthly pension is paid out to individuals whose ability to engage in gainful employment has decreased as a result of a disability.” Disability insurance is valid for any person who is a resident of Israel from age 18 until the age of retirement. Thus, disability benefits are a substitute for wages and are intended to guarantee minimum conditions for living in dignity to people who are unable to earn a living and provide for themselves and their families as a result of a disability.
60. Disability insurance and disability benefits are part of the right to social security, which has been recognized in case law as part of the right to the minimum level of human dignity. This latter right derives from human dignity which has been entrenched in Basic Law: Human Dignity and Liberty.
61. The ruling of this Honorable Court stipulates the following with respect to a person’s right to live with a minimum level of human dignity, which is included in the constitutional right to human dignity:

In a number of judgments it has been held that human dignity, in the constitutional sense, encompasses and includes the right to a minimum dignified standard of living. This court has observed that human dignity includes the right to a dignified standard of living both in cases that evoked

the negative aspects of this right and in ones that evoked the positive aspects thereof... Indeed, it is now understood that human dignity encompasses the right to have a basic dignified standard of living and this position has become accepted in our case law... The right to a minimum dignified standard of living is located at the core, at the epicenter of human dignity. Living in hunger, without a roof over one's head, constantly wondering where one might find assistance is not a life of dignity. A minimum dignified standard of living is a condition not just for upholding and protecting human dignity but also for exercising all other human rights. There is no poetics in a life of poverty and want. Without minimal material necessities, a person cannot create, aspire, make choices and exercise freedoms... In my view, the right to a minimum dignified standard of living should not be considered as deriving from the right to human dignity, but as a right that constitutes a substantive expression of human dignity. The right to a dignified standard of living, is not, as the Respondents claim, a right that expands the content and scope of the constitutional right to dignity, but is rather deeply rooted in the nucleus of the constitutional right to dignity (HCJ 10662/04 **Salah Hassan et al. v. National Insurance Institute et al.** (not yet reported, hereinafter: **Hassan**)).
The remarks of Honorable President (as was her title then) Beinisch, §§34-36 of her opinion).

62. The right to social security, particularly as it pertains to benefits that substitute for wages, such as income support and disability benefits, is meant to guarantee basic living conditions and it is therefore part of the right to a minimal dignified standard of living and of the constitutional right to dignity:

In the case at bar, the Petitioners are arguing for a constitutional right to social security, the content of which is reduced to guaranteeing minimal living conditions only, as part of the constitutional protection of human dignity. Recognizing the constitutional right to social security in this scope raises no difficulties. It is identical to the constitutional right to a minimal dignified standard of living that has been recognized in the rulings of this court..." (HCJ 5578/02 **Manor et al. v. Minister of Finance et al.**, IsrSC 59(1) 729, §10 of the remarks of Honorable President (as was his title then) Barak).

63. The NII is the institution that is responsible for providing the right to social security pursuant to the National Insurance Law:

In Israel, the responsibility for ensuring social security for residents of the country has been entrusted to the NII, which is designed, first and foremost, to provide an economic basis and minimal resources for disempowered populations and those who have fallen on hard times, whether temporarily or for a lengthy period of time ... The purpose of the [National Insurance Law] is clear and simple. The purpose is to guarantee appropriate living conditions for insured individuals, their dependents and their heirs when their income is reduced or is no more for one of the reasons cited in the Law, such as the case of a work related injury, unemployment, birth, death etc.
(From HCJ 6304/09 **The Association of Self-Employed and Businesses in**

Israel v. Attorney General et al., §45 of the opinion of Honorable Justice Procaccia).

It has further been said of the nature of the National Insurance Law:

The National Insurance Law is a social law. It is primarily meant to protect the quality of life of residents of the country and ensure their social future, so that no one among us is destitute, a burden on society and a stain on the character and image of the country as an enlightened governing entity that ordinarily cares for the welfare of its residents... The insurance law is clearly a social law which, on one hand, provides benefits, subject to the conditions listed in the law, to all entitled individuals and attempts to provide social security, at least at a minimal level, to the public at large, all according to widely acceptable rules and tests which are clearly outlined in the law. This is the advantage of this social law.
(CivA 516/86 “**Ararat**” **Insurance Company Inc. v. Azoulay**, IsrSC 40(4) 690, 704 (1986)).

64. The right to social security is internationally recognized as well. In 1948, the right was recognized in the UN Universal Declaration of Human Rights. Article 22 stipulates that every person is entitled to social security and may demand that the economic, social and cultural rights that are essential for his human dignity and for the free development of his personality be guaranteed through national effort.
65. Article 52 of that Declaration stipulates that every person is entitled to a quality of life that is suitable for his own and his family’s health and well-being, including food, clothing, housing, medical care, adequate social services and a right to security in case of unemployment, illness, inability to earn a living, widowhood, old age or any other want caused by circumstances over which the individual has no control.
66. The right to social security and to national insurance is entrenched in Article 9 of the International Covenant on Economic Social and Cultural Rights of 1966, which stipulates that states parties recognize the right of every person to social security, including social insurance.
67. Disability benefits are part of the right to social security as is the right to a minimal dignified standard of living. Making the appropriate adjustments to the remarks of Honorable President Beinisch in **Hassan**, made with respect to income support pensions, disability benefits are designed to guarantee Israeli residents the minimum resources required for providing their essential needs when they cannot do so on their own. As wage-replacing benefits, there is no alternative for disability benefits and “**They are so essential and critical that I doubt that they have no impact on respect for and protection of other human rights such as the right to life**” (*Ibid.*, §38 of her opinion).
68. The NII puts a significant obstacle, in the form of language, in the path of those who need disability benefits and seek to exercise their entitlement thereto. The language barrier reduces accessibility to a large group that requires the social safety net meant to guarantee a minimum dignified standard of living. Thus, the fact that the medical and incapacity committee proceedings are held in Hebrew may lead to the non-exercise of East Jerusalem residents’ entitlement to assistance and the violation of their right to a minimal dignified standard of living.

For more on lack of knowledge of language as a barrier to justice:

Amir Paz Fouchs, “Why Rights remain on Paper”, **Access to Social Justice in Israel**, Eds. Yoni

Gal and Mimi Eisensdadt, p. 30 (2009);

See also: Lia Levine, "Coalition of Exclusion – Non-exercise of entitlement to assistance from the social security system among individuals living in severe poverty. *Ibid.*, p. 225.

69. The right to equality of access to social security is an inseparable part of the right to social security. Without equal access to social security, the exercise of the right to social security is not guaranteed, as stated by Honorable Justice Procaccia with respect to the East Jerusalem children's right to education:

The principle of equality has crucial significance in the context of the exercise of the right to education. Without equality in education, the right to education is not guaranteed. Discrimination in education means preferring one group or one individual over others of equal status and denying the disfavored group or individual equal opportunity for fulfilling their potential and maximizing their chances.
(HCJ 5373/08 **Abu Libda v. Minister of Education**, §30 of the opinion of Justice Procaccia).

70. A Palestinian resident who seeks disability benefits is entitled to have the committee that determines his eligibility hear his arguments in his own language and address him in a language he understands. His inability to use his language, which, in many cases, is the only language in which he is fluent, prevents him from receiving welfare services on an equal footing. His right to social security is impinged because of his language.

Violation of the right to dignity and equality

71. A person's constitutional right to dignity and equality imposes obligations on the authorities. In our context, language is part of human dignity and the authority must allow the individual to express himself in his own language in a manner that protects his dignity and ensures his equality:

The Declaration of Independence determined that the State of Israel would "...guarantee freedom of religion, conscience, language, education and culture..." The Individual has therefore been given freedom to express himself in the language of his preference... He has the right to express his thoughts... in the language of his choosing... This freedom is derived both from the constitutional right to freedom of speech and the constitutional right to human dignity... This individual liberty is matched by the obligation of governmental authorities to protect it.... The second general purpose which must be considered in our matter is the guarantee of equality. It is well known that equality is one of the country's fundamental values. It is the foundation of social existence. It is one of the pillars of a democratic regime... Impinging on equality may lead to humiliation and to a violation of human dignity.... This is certainly the case when discrimination is based on a person's religion or race... The principle of equality applies to all governmental actions and to the actions of all governments... In our case, this means that the (local) authority **must ensure equal use of its services...** Indeed, since language is of great importance to the individual and his development, **one must ensure that the possibilities open to him as an individual are not limited by his language...** (*Adalah*, §§18-19 of the opinion of President Barak, emphases added by the undersigned).

72. A person who is in need of disability benefits because of a medical impairment which prevents him from earning his living and providing for his family, and must make his arguments and support his claim using a language that is not his own, before committee members who do not understand him and whom he does not understand, is a person whose dignity and right to equality are violated.

Protecting human dignity is not done simply by outlawing defamation, but rather by ensuring equality of rights and opportunities and preventing any sort of discrimination based on gender, religion, race, language, opinion, political or social affiliations, descent, ethnic origin, property or education” (H. Cohen, *The Values of a Jewish Democratic State – Review of Basic Law: Human Dignity and Liberty*, **HaPraklit, Sefer HaYovel** (5754), p. 32).

73. Even if the NII has no intention of discriminating against residents of East Jerusalem who seek to exercise their right to social security, the very result – the fact that medical committees examine Arabic speakers in a language foreign to them when they examine Hebrew speakers in their own language – constitutes prohibited discrimination:

Indeed, prohibited discrimination may also occur without any discriminatory intention or motive on the part of the persons creating the discriminatory norm. Where discrimination is concerned, the discriminatory outcome is sufficient. When the implementation of the norm created by the authority, which may have been formulated without any discriminatory intent, leads to a result that is unequal and discriminatory, the norm is likely to be set aside because of the discrimination that taints it... The question is not whether there is an intention to discriminate against one group or another. The question is what is the final outcome that is created in the social context. ([HCJ 11163/03 Supreme Monitoring Committee for Arab Affairs in Israel v. Prime Minister of Israel](#), [2006] (1) IsrLR 105; §18 of the opinion of President Barak).

74. The NII, which is subject to the principle of dignity and equality in every single one of its actions, must ensure that its procedure for reviewing applications for disability benefits is equitable and does not discriminate against applicants for any reason. It must implement the National Insurance Law, with which it has been entrusted, including the right to disability insurance, equitably.

Budgetary concerns and human rights

75. The Respondent has already agreed that the Arabic-speaking population must be provided with interpretation services during the examinations held by the medical committees (see letter attached as Exhibit **P/6**). However, despite its duty, it refrains from doing so.
76. Indeed, employing professional interpreters who would become a permanent and mandatory presence in the NII committees held for East Jerusalem residents in the course of processing disability benefit claims requires adequate preparations and resource allocation.
77. Indeed, “protecting human rights costs money and a society that respects human rights must be prepared to bear the financial burden” (Aharon Barak, **Interpretation in Law**, Vol. III, Constitutional Interpretation, 1994, p. 528). As Honorable Justice Zamir remarked” **“Protecting human rights often comes at a price. Society must be prepared to pay a reasonable price for protecting human rights”** (HCJ 6055/95 **Tzemah v. Minister of Defense**, IsrSC 53(5) 241, 281).

78. In the case at bar, budgetary concerns are pitted against the human rights to dignity and equality and social economic human rights of the highest order. There is no doubt that in view of the fundamental rights that are at stake, budgetary concerns do not carry much weight (see Justice Mazza's remarks in HCJ 4541/94 **Miller v. Minister of Defense**, IsrSC 49(4) 94, 113).
79. The affidavit of Ms. Souad Jamal, an employee of HaMoked: Center for the Defence of the Individual is attached to this petition.
80. In light of all the foregoing, the Honorable Court is requested to issue an *Order Nisi* as sought and render it absolute upon hearing the Respondents' response. The Court is also requested to issue a costs order against the Respondent for Petitioners' expenses and legal fees.

6 October 2012

Sigi Ben-Ari, Adv.
Counsel for the Petitioners

[File 72335].