



STATE OF ISRAEL

Ministry of Justice

Annex No. III - Judicial Decisions

Attached to the Fourth Periodic Report by the State of Israel

Concerning the

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
(ICESCR)**

Compiled by the Office of the Deputy Attorney General (International Law),

Ministry of Justice

2018

Judicial Decisions Relating to Article 2.1

1. On March 31, 2016, the Tel Aviv-Jaffa District Labour Court ruled on a lawsuit filed by an Israeli-Arab who was employed as a driver by "Albar", a car rental company, and who was then fired. The plaintiff claimed that "Albar" fired him on a discriminatory basis due to his ethnic origin and place of residence. The company claimed that the justification for the plaintiff's dismissal was workforce reduction. The plaintiff claimed that due to the behavior of the respondent towards him, he is entitled to compensations based on unjustified dismissal for racial reasons, intentional publication of slander, privacy violation, and on the failure to conduct a hearing in accordance with the law. The Court ruled that the company did not reach the necessary burden of proof in order to prove that the plaintiff's dismissal did not involve any prohibited discrimination. When considering the compensation, the Court noted, *inter alia*, that the level of humiliation experienced by the plaintiff was high, although he was considered by the respondent's representatives to have been an excellent employee. The Court also noted that according to Section 10(a)(1) of the *Equal Employment Opportunities Law* 5748-1988, compensation may be awarded even if no damage was proven. In this case, the Court ruled compensations of 80,000 NIS (21,000 USD) and 16,000 NIS (4,200 USD) legal expenses ((Tel Aviv-Jaffa District Labour Court 40543-03-14 *Ihab Nofel v. Albar Car Fleet Ltd.* (31.03.2016))).
2. On March 20, 2016, The Nazareth Labour Court ruled in favor of a Druze plaintiff who was employed as sales and marketing representative at the "Shekem Electric" company, owned by the defendant. The plaintiff, who was fired by the defendant, claimed that his dismissal was based on racial discrimination. The plaintiff noted, *inter alia*, that he suffered from racial remarks from the customers and from his manager. The company claimed the plaintiff was dismissed due to a grave disciplinary offense, and that the company was not aware of his ethnic origin. The company further denied the plaintiff's allegations regarding the nationalistic remarks and claimed that he never complained about this issue. The Court determined that the plaintiff was fired for racial reasons, contrary to Section 2 of *Equal Employment Opportunities Law*. The Court awarded the plaintiff compensation in the amount of 54,804 NIS (14,442 USD), and lawyer fees in the

amount of 10,800 NIS (2,850 USD). (La.D. 16211-11-14, (*Nazareth Labour Court*) *Mansur Mansur v. Electra Consumer Products Ltd.* (20.03.2016)).

3. On January 24, 2016, the Haifa Regional Labour Court ruled in favor of an Israeli woman of Ethiopian origin who claimed that she was discriminated for her ethnic origin in violation of the *Equal Employment Opportunities Law*. The plaintiff worked at a company that provides human resources for cleaning services, and which provided such services to the respondent company. According to the suit, in June 2013, both the plaintiff and her manager arrived at the respondent company's premises in order to show the plaintiff her new workplace. During the tour, they met with the wife of one of the respondent company's owners, who upon seeing the plaintiff, immediately and unequivocally noted out loud to the plaintiff's manager that she is unwilling to receive an Ethiopian employee. The owner's wife repeated this reluctance in two (2) phone calls with the plaintiff's director general, in which she noted that "these persons" are not clean. These calls were recorded and presented to the Court. After hearing both sides, the Court noted that Section 2 to the *Equal Employment Opportunities Law* prohibits discrimination on the basis of ethnic origin when hiring an employee. The Court noted that in this case it was proven that the refusal to hire the plaintiff was due to her ethnic origin, without examination of her working skills, which amounts to discrimination on the basis of her ethnic origin. Due to the severity of this case, the Court granted compensation in the amount of 50,000 NIS (12,800 USD) in favor of the plaintiff (Em.D. 37213-08-13 *Ta'aya Trapyia v. Deree Air-Conditioning LTD* (24.1.16)).
4. On December 30, 2014, the Jerusalem Regional Labour Court ruled in favour of a plaintiff who began working at a store at the age of 62, and resigned from her job at the age of 67, only to find that her employer refused to pay her severance compensation payment contrary to Section 11(e) to the *Severance Pay Law* 5723-1963 (hereinafter: "the Law"). The Law establishes that resignation due to retirement age (age of 67) would be considered as termination of employment. The employer argued that since the plaintiff began working at the age of 62 (which is the age in which women are entitled to retire in Israel according to the *Retirement Age Law* 5764-2004) she is not entitled to severance payment. The plaintiff claimed that there is a discriminatory aspect to the Law, as the age of

retirement for men is 67 years old only, and so if a man would have been in a similar situation, he would have been entitled to severance payments. The Court determined that the interpretation given to the Law by the employer is a prohibited discrimination contrary to the principle of equality and stated that the fact that the Law entitles women to retire at the age of 62 was not meant to harm women and the Law should not be interpreted in such a way. The Court ruled that the fact that the woman began working at the age of 62 has no significance and cannot be seen as if she had started working after the retirement age, as the only obligating retirement age is 67. The Court ruled that it cannot allow a situation in which a man that began working at the age of 62 and resigns his job at the age of 67 would receive severance payments, but a woman in a similar situation would be denied such payments. The Court noted that interpretation of Section 11(e) that entitles the plaintiff to severance payments is compatible with this Section's purpose – affirmative action for elderly persons, as well as the principle of gender equality and the prohibition of discrimination based on gender (La.D 4450-01-12 *June Yaffe v. Raz Matmon Customers Relations LTD.* (30.12.2014)).

5. In 2012, the Jerusalem Magistrate Court ruled in favor of a lesbian couple, which sued the Yad HaShmona Guest House for its refusal to provide a venue for the couple's nuptial party. The guest house stated the couple's sexual orientation as grounds for its refusal and claimed that Yad HaShmona, the owner of the guest house, is a locality of Messianic Jews, which regard homosexual relationships as contradicting their religious beliefs. The Court held that the guest house meets the definition of "public place" under the *Prohibition of Discrimination in Products, Services and Entry to Public Places Law*. Therefore, the owners are prohibited from refusing to hold an event on grounds of sexual orientation. The Court addressed the balance between religious freedom and the prohibition of discrimination and rejected the respondents' claim that this instance may be construed as an exception under Section 3(d)1 to the Law, which states that religious discrimination is permissible "where it is required by the character or nature of the... public place". The Court ruled that this exception should be interpreted carefully so as to allow discrimination only in limited situations, such as in public places of worship. The Court ruled that the plaintiffs will be compensated with 30,000 NIS each (7,500 USD) that will serve both for

restitution and for education and awareness raising to human dignity and equality (C.C. 5901-09, *Yaacobovitch et. al. v. Yad Hashmona Guest House and Banquet Garden et. al.* (3.9.12)). On June 17, 2014 the Jerusalem District Court rejected an appeal filed by Yad HaShmona. The Court stressed that the principle of equality is a fundamental principle of Israel's legal system and that the fact that the appellants did not allow a gay couple to get married in their facility is discriminatory, as it could lead to humiliation and can undermine human dignity (C.A 5116-11-12 *Yad HaShmona Guest House and Banquet Garden v. Yaacobovitch et. al.* (17.6. 14)).

6. On June 12, 2013, the Haifa Magistrate Court validated an agreement between the plaintiffs and respondents and awarded each of the plaintiffs 25,000 NIS (6,561 USD) as they were refused by a contractor to purchase an apartment in Acre, allegedly due to the fact they were Arab-Israelis. The suit was filed in accordance to the *Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law*. Israel Land Authority was also one of the respondents and as part of the agreement stated that it would, within 90 days, add to its contracts with the entrepreneurs of building projects a sanction of agreed compensations whenever it would find that the entrepreneurs have violated the obligation not to wrongfully discriminate in the process of marketing the apartments to the public (C.M. 1749-12-12 *Sami Huari et. al. v. Moshe Hadif Building and Investments LTD* (12.6.13)).
7. On October 23, 2012, the Tel Aviv-Jaffa Regional Labour Court ruled on a claim of a young Israeli citizen of Ethiopian origin alleging that he was discriminated against due to his ethnic origin in violation of the *Equal Employment Opportunities Law*. The plaintiff sought work at a private firm (A.A. Moked 101 LTD), however, when he arrived to the job interview, the manager did not interview him, and explained that there was no current need for additional employees. The plaintiff asked his friends to apply for the same job, all of whom were summoned for interviews, and after several days, one of his friends was hired. The Court ruled that the plaintiff experienced discriminatory behavior due to the facts that he had the relevant qualifications for the position, he came to the job interview which was arranged in advance by a phone call in which he was not rejected by the manager, the other applicants who were not of Ethiopian origin

received different and preferential treatment, and due to the changes in the respondent's versions regarding the reason that the plaintiff was not interviewed. The Court decided that the respondent demonstrated an attitude of indifference and contempt in regards to the feeling of discrimination that could have also been experienced by any other reasonable candidate of the plaintiff's origin, a feeling that might have been prevented if the respondent had acted differently (such as scheduling another interview, or interviewing the plaintiff in order to enroll him into its database for other relevant positions, etc.). The Court stated that this conduct by the respondent gave rise to the existence of discriminatory behavior. The Court added that the respondent's indifference not only demonstrated the existence of discrimination, but also indicated aggravated circumstances in bringing about the discriminating result. The Court noted that discrimination against the Ethiopian population required utilizing a strong policy against such employers, thus providing recognition to their aspiration for equality and to counter such discrimination. The Court awarded compensation in the sum of 95,000 NIS (25,000 USD) (Em.C. 9690/09 *Abebe Itzhak v. A.A. Moked 101 LTD* (23.10.12)).

8. On May 22, 2012, the High Court of Justice accepted petitions filed against the Government of Israel by residents of the Arab and Druze localities of Mazra'a, Kisra-Smia and Beit-Jann. These petitioners challenged the fact that they had not been included among localities eligible for tax benefits, and that the criteria for such eligibility was not defined. The Court ruled that the lack of criteria for determining the tax benefits discriminated the residents of Mazra'a, Kisra-Smia and Beit-Jann, since they were not eligible for tax benefits while adjacent Jewish localities were eligible. This arbitrary distribution of public resources contradicted the *Basic Law: Human Dignity and Liberty* and infringed upon their basic right to equality. Subsequently the Court granted them tax benefits. However, the Court suspended its Judgment for one (1) year in order to allow the Government and the Knesset to establish clear criteria for eligibility for tax benefits until May 23, 2013. In the absence of new legislation, the three (3) Druze localities: Mazra'a, Kisra-Smia and Beit-Jann have since been receiving tax benefits (H.C.J. 8300/02 *Gadban Nasser et. al. v. The Government of Israel et. al.* (22.5.12)).

Judicial Decisions Relating to Article 3

9. Within the framework of a civil suit which was conducted against the burial associations in Rehovot and Jerusalem with respect to the posting of gender separation signs during funerals, the Attorney General was asked to express his position on the matter. The Attorney General held that such signs constitute a direct violation of the provisions of the Ministry of Religious Services' Director General's Circular binding the burial society, a breach of the *Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law 5761-2000* and are contrary to the concluding report of the Attorney General's inter-ministerial team which examined the issue of gender segregation in the public sphere. During the hearing, the parties reached a compromise, in which they agreed on the removal of the existing signs and placing electronic screens in their place, which would generally be unlit, save for the request of a grieving family interested in doing so. Furthermore, in the funeral order form, it will be explained to the grieving family that separation will only be carried out according to their wish (and effectively the default is no separation). This outline obtained the support of the Attorney General in his position submitted to the Supreme Court (C.S. 38824-07-14 *The Reform Centre for Religion et. al. v. Jerusalem Community Burial Association (Chevra Kadisha Kehilat Yerushalayim)* (25.12.14)).

Judicial Decisions Relating to Article 6

10. On September 28, 2017, the Tel Aviv Labour Court ruled in favor of a female plaintiff who claimed she was fired from her workplace due to age discrimination. The Court noted that the fact that the plaintiff was eligible for pension payments at the time of her dismissal was the main basis for the decision on this dismissal, without taking into consideration her personal circumstances. The Court ruled that the plaintiff was also discriminated for her gender since the decision to go on early retirement prior to the age of 67 is solely hers and the respondent was not entitled to decide on this matter on her behalf. The Court took further note of the fact that the plaintiff lost several percentages of pension entitlement due to her early retirement, that the hearing procedure was flawed and that none of her personal

circumstances were taken into consideration in the decision. The Court awarded the plaintiff with 146,150 NIS (41,800 USD) for the remaining 14 months she was entitled to continue working if she had not been fired, 50,000 NIS (14,300 USD) for non-pecuniary damages, 52,500 NIS (15,000 USD) for lack of holding a hearing prior to her dismissal and 27,500 NIS (7,850 USD) as legal fees (Tel Aviv Labour Court La.D. 36973-11-13 *Rivka Rosenbaum v. Dubek Ltd.* (28.9.17)).

11. On March 21, 2016, the Tel Aviv-Jaffa District Labour Court accepted a lawsuit filed by a person with disabilities who faced discrimination in the employment application process by two (2) different companies. The plaintiff was not hired as a pollster (a position that requires the use of computer software and a telephone) at two (2) research and survey companies due to his disability (blindness); although he claimed that special computer programs designed for the blind could have assisted him in performing the job successfully. At one company (respondent No. 2) his interview was cancelled and at the second company he was rejected after it refused his request to install the software on its computers. Prior to the lawsuit, the company expressed concerns that security issues may result from the installation of such software. However, a professional expert opinion confirmed that the computer program is safe, secure, and operational at the Israel Defense Forces and Government Ministries. With regard to respondent No. 2, the Court ruled that it made no effort to examine necessary adjustments in order to hire the plaintiff, did not prove that such adjustments would pose an "undue burden" and was not able to refute that it discriminated against the plaintiff. In regard to respondent No. 1, the Court ruled that it did not make a sufficient effort to examine the possibility of hiring the plaintiff by carrying out necessary adjustments and that it illegally refused to continue the recruitment process. The Court awarded the plaintiff 35,000 NIS (9,186 USD) in compensation and 10,000 NIS (2,624 USD) legal fees (La.Ct. 46240-06-13 *Hisham Chushan et. al. v. Midgam Yiutz Umechkar Ltd. And Shiluv Israel Olinik Ltd.* (21.3.2016)).

Judicial Decisions Relating to Article 7(a)

12. On May 3, 2017, the Nazareth Regional Labour Court ruled in favor of three (3) plaintiffs, foreign employees from China, who worked for the respondents as cooks for nine (9) months, and claimed that the respondents refused to provide them with rights and payments as required by law, such as payment for extra working hours, compensation for holding back wages, compensation for illegal dismissal and without a hearing process, lack of pay slip etc. The Court accepted the suit against the restaurant (Respondent no. 1) however reject it in regard to its owners and managers (Respondents 2 and 3). The Court noted that the plaintiffs managed to prove that they received a lower salary than what was agreed upon and contrary to the Population and Immigration Authority's employment permit and also contrary to their pay slips. The Court further noted that the plaintiffs proved that they worked extra hours beyond the working hours they were committed to, and therefore are entitled to additional payments and benefits. The Court further found that the plaintiffs did not receive early notice regarding their dismissal. The Court ordered that each of the plaintiffs shall be compensated in the total sum of 286,176 NIS (81,750 USD) and 10,000 NIS (2,850 USD) as legal fees (a total sum of 888,528 NIS (245,250 USD)) (La.D. 6178-11-14 *Shen Fhuqing et. al. v. Lido Kinneret Ltd. et. al.* (3.5.17)).
13. On March 29, 2017, the Be'er-Sheva Regional Labour Court of Ruled in favor of two (2) plaintiffs who filed a suit against their employer, the governmental company which operates the Ashdod Port, for paying them a lower salary than that of a male associate employee in a parallel status and position whilst working in the same team. After reviewing all the evidence before it, the Court determined that the work carried out by the two (2) female employees were of the same equal value to the work carried out by the male employee, in accordance with the terms set by Section 3 to the *Male and Female Workers (Equal Pay) Law* 5756-1996 and relevant case law on this matter. The Court further determined that the status of the three (3) positions is equal and that the status of the male employee is not senior to that of the plaintiffs. The Court rejected claims made by the respondent in order to prove that the gaps were made pursuant to relevant reasons, *inter alia*, regarding the male employee seniority and management experience, academic

education etc. The Court accepted the plaintiffs' suit, in accordance to the *Male and Female Workers (Equal Pay) Law*, however it rejected their suits pursuant to the *Equal Employment Opportunities Law*, since the respondent proved that the determination of the salary for these positions was made before the identity and therefore gender of the employees that would fill these two (2) positions was known. The Court ordered the respondent to equalize the positions of the plaintiffs to the relevant position of a department manager commencing of the day they were chosen in the relevant tender, and to match their salary to that of the male employee, including all salary supplements, regardless of whether these supplements are considered personal or not, monetary or not, and without consideration to seniority, overtime etc. The Court further ordered compensation in the amount of 15,000 NIS (4,050 USD) as non-pecuniary damage for each of the plaintiffs (A.La.D. 12554-06-14 *Eti Aleshvili et. al. v. Ashdod Harbor Company LTD.* (29.3.2017)).

14. On December 28, 2016, the National Labour Court ruled on two (2) counter appeals in regard to a decision of the Jerusalem District Labour Court that partially accepted the lawsuit of two (2) female employees of the Jerusalem Municipality, over gender-based salary gaps contrary to the *Male and Female Workers (Equal Pay) Law* and *Equal Employment Opportunities Law*. In the lower court, the plaintiffs claimed that their work is almost identical to the work of the two (2) male employees that serve the same position as them, and their range of responsibilities is even wider than that of the male workers, however their salaries and position were lower than that of the male employees. The Equal Employment Opportunities Commission also filed a suit against the Municipality claiming that all of the women working as human resources managers at that department were discriminated against compared to the two (2) male employees. The Court stated that the principle of equality is fundamental in the legal system of Israel, and according to *Equal Employment Opportunities Law*, gender-based discrimination in work conditions (including wages) is prohibited. The Court ruled that the plaintiffs proved that they carried out exactly the same work as their male co-workers, but received different salaries. The Court rejected the appeal filed by the Municipality and noted that it did not present any grounds that could justify these wage gaps. The Court further accepted the plaintiff's appeal and ruled

that the plaintiffs were discriminated for their gender and therefore each is entitled to compensation in the sum of 75,000 NIS (20,270 USD) in addition to 25,000 NIS (6,750 USD) each as legal expenses (La.Ap. 1842-05-14 *The Jerusalem Municipality v. Galit Keidar* (28.12.2016)).

15. On July 12, 2016, the Jerusalem Regional Labour Court accepted the claim of two (2) women working as investigators in the Fraud Investigations Unit in the Israeli National Insurance Institute (NII), and ordered the NII (Respondent No .1) to compensate them due to severe gender discrimination they faced at their workplace. The Plaintiffs claimed that they had suffered gender-based discrimination that was expressed by various statements made towards them by their male co-workers in the unit, and refusal of the male investigators to work and conduct field investigations with them. They claimed that the NII did not act in order to prevent or stop said discrimination, and even published a guidance enabling the male investigators not to work with women. The Court held that Section 2 of the *Equal Employment Opportunities Law* bans employers from discriminating their employees on the basis of gender. The Court stated the plaintiffs encountered discriminatory treatment and the refusal to work with them was because of their gender, since most of the investigators were male. The Court noted that the plaintiffs proved their case, and that the respondents did not make a sincere effort to examine the plaintiff's complaint or take any action to stop the discrimination. The Court rejected the respondents' claim that the investigators did not refuse to work with the plaintiffs, but asked to consider their request when possible. The Court stated that partial refusal to work with women also accounts to gender-based discrimination. Furthermore, the Court stated that the respondent No. 1, as a public institute, was obliged to represent women equally in the employment market, especially in professions that are recognized as "manly". It was further stated that the NII chose to ignore all of the plaintiffs' claims and did not find it appropriate at any stage to explain to the male workers that the female investigators are their equal. The Court awarded Plaintiff No. 1 with compensation in the sum of 80,000 NIS (21,600 USD) and Plaintiff No. 2 with compensation in the sum of 90,000 (24,300 USD) (La.D. 49329-03-14 *Alexandra Gandel et. al. v. National Insurance Institute et. al.* (12.07.2016)).

16. On January 18, 2016, the Tel Aviv-Jaffa Regional Labour Court ruled in favor of a plaintiff who claimed she was discriminated and not hired to work as a cashier due to her pregnancy. The Court rejected the counter-suit of the employer for slander. The Court ruled that the plaintiff was illegally discriminated against due to her pregnancy, in violation of the *Equal Employment Opportunities Law*. Moreover, the Court stipulated that the defender's behavior and its counter-claim were found to be in lack of good faith and served as evidence in support of the plaintiff's claim. The Court ordered compensation in the total sum of 70,000 NIS (18,900 USD) (A.La.D. 40058-09-13 *Linoy Dabach v. Poultry and Turkey Bareket LTD.* (18.1.2016)).

An appeal that was filed by the respondent regarding procedural aspects in the main trial was partially accepted by the Court, which ruled that the total compensation will be reduced to 35,000 NIS (9,450 USD) (La.Ap 36496-02-16 *Poultry and Turkey Bareket LTD. v. Linoy Dabach* (4.6.17)).

17. On April 1, 2015, the Haifa Regional Labour Court ruled in favor of a plaintiff who was discriminated against in the process of applying for a position at the respondent. The plaintiff applied for a position of a lawyer at the respondent, and claimed that she was asked in the interview about her family status, including the number and ages of her children, and plans for future children, while implying stereotypic remarks, such as how would she manage to work "like a man", "in a man's world there are no reliefs". The plaintiff further claimed that she was told she held the relevant qualifications, however her family status may harm her acceptance. When she was not hired for the job, the plaintiff filed a suit for compensation under the *Equal Employment Opportunities Law*. The respondent rejected these claims and noted that the position was never filled due to financial cutbacks. The Court noted that the plaintiff proved she was suitable for the position and that the respondent did not manage to refute that claim and that it did not discriminate against her for due to her gender and for being a religious mother (*inter alia*, due to the stereotypical remarks, the invasion of her privacy regarding family planning etc.) and by that violated the *Equal Employment Opportunities Law*. The Court ordered compensation in the total sum of 58,000 NIS (15,675

USD) (La.D. 1867-06-11 *Neomi Moskowitz v. M Dizengoff and Partners LTD.* (1.4.2015)).

Judicial Decisions Relating to Article 7(b)

18. On October 16, 2016, The Tel Aviv-Jaffa District Labour Court accepted the request of several McDonald's franchise employees for a class action against the defendant, the holder and owner of the McDonald's restaurant chain in Israel in the total sum of 36.192 Million NIS (10,340,570 USD). The Court was requested to authorize the class action in regard to two (2) legal questions: whether the *Import, Export and Retail Commerce (Services) Extension Order*, which entitled the plaintiffs with working and salary benefits, applied to the parties and whether the respondent violated the plaintiffs' right to work while sitting contrary to *The Right to Work while Sitting Down and in Suitable Conditions Law* 5767-2007. The Court accepted the request for the class action and determined that the above-mentioned order applied to the parties of the present dispute, and in regard to all the respondent's employees, and that the respondent did not pay all its workers with all of their rights according to this order. The Court further ruled that the respondent violated the above mentioned Law and noted that the plaintiffs managed to prove that they had a reasonable chance to win the class action. The Court awarded each of the plaintiffs with compensation of 10,000 NIS (3,000 USD) (C.A. 69277-03-16 *Ido Shimron et. al. v. Aloniel Ltd.* (16.10.17)).

Judicial Decisions Relating to Article 7(c)

19. On May 5, 2014, the High Court of Justice ruled in favor of an Israel Prison Service officer, ruling that due to his disabilities he had been wrongfully discriminated against regarding his promotion. Accordingly, the Court ruled that he would earn an immediate promotion to Chief Superintendent. The Court elaborated at length on the employment-related obligations, both negative and positive, in the *Equal Rights for Persons with Disabilities Law* 5758-1998 (Hereinafter: "the *Equal Rights Law*"). These include the duty to create working conditions suitable for persons with disabilities, the obligation of employers to promote proper opportunities for persons with disabilities and the need for

relevant adjustments. The Court emphasized that discriminating against persons with disabilities undermines their personal autonomy and dignity, since the workplace is not solely a source of livelihood, but is also a means for self-realization and self-respect. The Court noted that the initial burden of proof rested on the claimant, who was obligated to demonstrate discrimination due to disabilities. To this end, the Court relied on Article 2 of the Convention. The Court ruled that once such discrimination had been *prima facie* demonstrated, the burden shifted to the employer to show that all efforts had been exhausted to find a suitable position for the disabled employee, that making the necessary adjustments to the workplace would impose an undue burden, and that the distinction had been based on the substantial requirements of the workplace and position. In the case at hand, no effort had been made to promote the petitioner and accordingly, the promotion was ordered to be effective retroactively, since the date of the Court's initial interim order. In addition to dealing with the case at hand, the High Court of the Justice turned to the broad picture of disability rights. Pointing to the world-wide wave of disability rights legislation the Court noted that "In our age, the legal world has placed on a pedestal the rights of those who were pushed to the edge of society in a previous era, namely persons with disabilities". The Court stated further that the "importance of this judgment, beyond the specific case at hand, is thus the need to give expression to society's new approach to persons with disabilities as determined by the legislature, by way of generous interpretation of the *Equal Rights Law* which is at the same time fair to all" (H.C.J. 6069/10 *Rami Machmali v. The Israel Prison Service* (5.5.2014)).

Judicial Decisions Relating to Article 7(d)

20. On July 7, 2016, The National Labour Court ruled over the issue of the rights of caregivers who reside with their patients regarding their weekly day of rest. The Court ruled that that the weekly day of rest of a care giver that lives in the house of the patient, begins from the moment when he/she has finished his/her last assignment of care and it should last for at least 25 hours continuously, until he returns to take care of the patient, according to the regular work scheme. The respondent, a foreign citizen of Moldova, was employed as a care giver of the appellant for a period of three (3) years and resided in his house, before she had

terminated her employment. The Court stated that the *Work and Rest Hours Law* 5711-1951 in its current format is not suitable to be applied to the circumstances of employment of caregivers who reside in the houses of their employers, therefore, the Court ruled that the employer shall clearly notify, both in writing and orally, to the caregiver residing with him/her their right for a 25 hours day of rest, in which he/she may stay inside or outside the house as he/she desires. Regarding the reward a caregiver should receive if he/she had worked during the day of rest, the Court ruled that the caregiver shall be seen as a full-time employee, and therefore, the reward for such working hour or working day shall be derived from his/her regular salary, in the sum of 150% of a regular working hour/day (La.A. 47576-10-12 *Arie Zatelman (deceased) et. al. v. Valentina Patrov* (7.7.2016)).

Judicial Decisions Relating to Article 8

21. On March 4th, 2018, the NGO *Center for the Defense of the Individual*, along with other petitioners, submitted a petition to the High Court of Justice, requesting to instruct the State of Israel to equalize the employment conditions of Palestinians that are residing in Israel with their families pursuant to temporary stay permits or B/1 visas, to those of permanent residents of the state of Israel, as their center of life is in Israel. The petition described the difficult employment situation of the Palestinians who reside in Israel pursuant to the *Citizenship and Entry into Israel (Temporary Provision) Law* 5763-2003, and noted that their classification as foreign workers severely harms their ability to find employment and earn a salary. Due to such classification, their employers are required to pay a foreign worker tax, making their employment more expensive and subsequently, many employers refrain from hiring them. The petitioners further claimed that these Palestinians are living in Israel with their families for many years, do not meet the definition of a foreign worker, since they are not here for a limited employment period only. On May 27th, 2018, the State responded to the petition, establishing that an employer of those on whom the *citizenship and entry into Israel (Temporary Provision) Law* 5763-2003 applies, will be exempt from paying the foreign worker tax, in analogy to the statute regarding other Palestinian workers, who reside in the Palestinian Territories. In addition, the State pointed out that in

accordance to the relevant legislation, these workers will be entitled from now on for equal tax credits like permanent residents in Israel. Thus, the State provided a practical solution to the difficulties pointed out by the petitioners, making a significant improvement in their employment conditions that opens additional employment opportunities in the Israeli labour market for them. The State response to the remaining issues will be submitted in August 2018 and the petition is still pending (H.C.J. 1889/18 *Tab'ouni et. al. v. The Minister of Interior et. al.* (27.05.2018)).

22. The National Labour Court was requested by the Tel Aviv and Central Chamber of Commerce to issue an injunction against a strike at the ports in Ashdod and Haifa, which was declared against the government's decision to publish tenders for the construction of new ports alongside the Haifa and Ashdod ports. The Court examined whether the Government's port reform has a bearing on the conditions of the ports workers' employment and their employment security and noted that insofar as the answer to this is in the affirmative, it is necessary to examine the legal significance of the same implication regarding the right to strike of port workers. According to the Court the new port reform is likely to have a direct impact on the working conditions of the existing 2,400 port workers and on their occupational security. Thus, in such circumstances the State would have to negotiate with the General Federation of Workers (Histadrut) in order to minimize the expected harm. However, the Court noted that the State categorically refused and therefore, the workers' organization had a cause of action. According to the Court, the right to strike is a constitutional right anchored in Israeli legislation and case law since the early days of the State, and like any other constitutional right, the right to strike must be examined by the tests of proportionality and purpose. A quasi-political strike against the sovereign is legitimate and permissible, albeit with limitations compared to an economic strike. The Court noted that the fact that the Histadrut has established a cause of action does not mean that an unrestricted strike should be allowed. The permitted strike must be proportionate and reserved. In these circumstances, the Court ordered that the workers will continue to work regularly and ordered the parties to immediately enter into negotiations regarding the implications of the government decision to establish private ports on the rights, employment conditions and employment security of the port workers

(Co.La.D 40815-07-13 *The Tel Aviv and Central Chamber of Commerce - Federation of Israeli Chambers of Commerce v. The New General Federation of Workers (Histadrut)* (29.7.13)).

23. On January 2, 2013, The National Labour Court accepted the appeal of the General Federation of Labourers in Israel, against a lower court decision and ruled that the right to organize in a workers' union is the concern of the workers themselves and the employer should distance himself/herself from it and shall not intervene in the attempts of workers to establish a labour union until a representative organization is established.

The respondent is a communication company which employs 4,000 employees without a representative organization. In this case the employees held secret meetings over a long period of time in order to establish a workers organization. The employer attempted to terminate these attempts, and the employees petitioned against such attempts. The lower Court, *inter alia*, issued a temporary order for a period of 72 hours prohibiting the public organization of the workers.

The National Labour Court further noted that due to the power gaps between the employees and the employers, in the circumstances of initial organization and until the establishment of a representative union, the employees' right to organize overcomes the employer's freedom of expression due to the presumption that any objection by the employers carries with it pressure and threat on the workers not to organize. The Court therefore established guiding rules that set the standard to the examination of the realization of the right to organize, or its violation. These rules include: certain limitations will be set over employers and labour unions which would prohibit the use of threat, pressure and provision of benefits based on the decision to organize or not, limitations regarding the violation of freedom of expression and the freedom of assembly, and more. The National Labour Court canceled the lower court's temporary order, stating that this order is neither proportionate nor is it reasonable since it entails an unfair influence and cancellation of the workers attempts to organize. The Court ruled that the respondent should avoid any action that may foil the workers' organization and influence its employees and shall not take any action that may prevent its employees from implementing their right to organize, including disciplinary

means, suspension, dismissal etc. (Co.La.D. 25476-09-12 *The New General Federation of Workers (Histadrut) v. Pelephone Telecommunications*, (2.1.2013)).

Judicial Decisions Relating to Article 9

24. On 21 April, 2015, the High Court of Justice rejected a petition filed by three (3) University Professors, claiming that article 4 of the *Retirement Age Law* 5763-2004 (hereinafter: "the law") is void and unconstitutional. The petitioners worked at the Technicon- Israel's Institute of Technology. The Technicon has signed a collective agreement, according to which employees are required to retire at the age of 68 (one (1) year after the retirement age set by Section 4 of the Law). The Court stated that although the compulsory retirement due to age violates the right for equality, which is derived from the constitutional right for human dignity, it still passes the tests of the limitation clause, which include the proportionality test, as the purposes of the Law are to protect the interests of workers and promoting their social security, while also taking into consideration the interests of the employer, the market and the rights of new employees entering the labour market etc. The Court also noted that the Law aims to balance between the various groups of employees and the needs of the economy. Further, the Law does not force employees to retire when they reach a certain age, but rather allows the employers and employees to agree that the employee will retire at a later stage and the employee is even obligated to consider the continuation of employment of the employee beyond the retirement age, if the employee has requested to do so. Therefore, the violation of the constitutional right passes the requirements of the limitation clause, and Section 4 is therefore constitutionally valid. (H.C.J. 9134/12 *Prof. Gavish vs The Knesset* (21.05.2017)).

25. In another case, an appellant's claim to receive income support benefit was rejected by the Haifa District Labour Court on the basis of his declaration that he refused to receive "treatment" in the unit for the treatment of homeless persons and since the "treatment" receipt was a condition for entitlement to this benefit. This, without any factual findings being determined by the District Court regarding the

appellant's version, despite that fact that no evidence were presented to counter it, and without examining the legal aspects of this version.

On September 10, 2017, The National Labour Court ruled that there is no choice but to return the Appellant's case to the Regional Court in order to review all the factual and legal aspects of the claim and then decide on the Appellant's entitlement to the Income Support Benefit as a "Street Shield" in the relevant period. The Court further noted that the examination of entitlement to income support benefit, and certainly its denial from a homeless person, may require examination of complex factual and legal questions, including questions regarding the reasonableness of the guidelines or parts thereof; questions regarding the propriety and reasonableness of exercising the discretion of a welfare worker; questions regarding the authority of the unit's employee to remove the insured person from being included in the legal definition, temporarily or permanently, and the manner in which it is used or the authority to exclude or suspend someone from receiving treatment by the unit. All of the above should be taken into account while examining the implications of these decisions on the eligibility of a person for the income support benefit as a homeless person (Na.In.Ap. 34772-02-14 *Anonyms v. National Insurance Institute* (10.9.17)).

26. On February 15, 2017, the High Court of Justice rejected a petition to cancel Sections 378(c)(1) and 378A(c)(2) to the *National Insurance Law* which allow the National Insurance Institute (NII) to reject a claim made by residents of the West Bank who worked in Israel and were injured under the circumstances described in Section 80(1) to the Law, which the petitioner claimed affect the equality between a foreign worker and a Palestinian worker and between him/her and an Israeli citizen. The Court determined in its ruling that the issue of the rights of Palestinian workers employed in Israel was a part of the negotiations that took place between Israel and the Palestinian Authority, which concluded with an arrangement that determines, among other things, that Palestinian workers will be insured in Israel, in the national insurance system, "for working accidents that occurred in Israel". The Court noted that according to this arrangement, which entails political aspects, these workers are not covered by the Israeli national

insurance system for accidents that occurred in the West Bank. According to the Court, since the main issue of this petition involves political aspects which are under the purview of another authority, and especially when the political consideration was one of the considerations that brought the State of Israel to reach the arrangement with the Palestinian Authority, it will not intervene in such a petition. The Court accepted the respondent's response that the State's duty, in respect of social security, is to care, first and foremost, for its citizens and permanent residents, as social insurance is of a territorial nature (H.C.J. 1331/16 *Iyad Batat v. The Minister of Labour and Social Affairs et. al.* (15.2.17)).

27. On April 16, 2014, the Tel Aviv-Jaffa Labour Court ruled in favor of a plaintiff, a widower with mental disabilities, who was denied a pension by the insurance company that had insured her deceased husband, since she lived separately from him. The Court ruled that the insurance company is obligated to take into its consideration the special needs and the disabilities of the plaintiff, who is mentally disabled, and to provide her the legal benefits that go along with her status as a widower (P.F. 39041-01-12 *D.Y. v. Pension and Insurance Company for Dan Associates Ltd.* (16.4.2014)).
28. On December 12, 2013, the Court for Administrative Affairs held that the Minister of Interior should differentiate between the criteria for the expiration of permanent residency and the criteria for regaining permanent residency. While it is within the authority of the Minister to revoke a permanent residency once a foreign citizenship has been acquired, when a person files a request for recovering a permanent residency, different criteria should be considered - for example: the reason that this person acquired a new foreign citizenship, whether that person has an affinity to Israel, how long he/she has been out of the country, etc. The Court held that the mere fact that a person holds a foreign citizenship does not automatically negate his/her right to reacquire the permanent residency. In this case, though the petitioner had been living in Belgium for almost nine (9) years and holds a Belgian passport, in light of his affinity to Israel and the special circumstances of the case, the Court decided to return his residency (AD.P 19473-10-13 *Nabulsi v. The State of Israel* (12.12.2013)).

29. On July 30, 2013, the Court for Administrative Affairs ruled that the Ministry of Interior should resume the permanent residency status, which entails various social benefits, to the petitioner, since there was no substantive ground before the Minister to revoke the residency. The Court stressed that if a permanent residency had been given after a careful examination by the Authority in the past, then in order to revoke it later, a higher threshold should be met (AD.P 6146-03-13 *Abu-Koba et. al. v. The Minister of Interior* (30.7.2013)).

Judicial Decisions Relating to Article 10

30. On June 4, 2013, the High Court of Justice rejected three (3) petitions against the constitutionality of Amendment No. 113 to *the National Insurance (Consolidated Version) Law* 5755–1995 (in the frame of Section 61(2)(d) to the *Economic Efficiency Law (Legislation Amendments for the Implementation of the Economic Plan for 2009-2010)* 5769-2009. According to this amendment, the child's allowance of parents who decide not to vaccinate their children as required by the vaccination plan as ordered by the Ministry of Health's Director General, will be reduced. The majority opinion found that the amendment did not violate the right for dignified living nor did it violate the right for autonomy or parental autonomy, but did violate the right for equality between parents insured by the *National Insurance Law*. Nevertheless, the Court found that this infringement meets all the conditions set by the *Basic Law: Human Dignity and Liberty's* limitation clause, and therefore found no reason to intervene (H.J.C. 7245/10 *Adalah – The Legal Center for Arab Minority Rights in Israel et. al. v. The Ministry of Social Affairs and Social Services et. al.* (4.6.2013)).
31. In 2013, a same-sex female couple filed a request to be registered as parents and to recognize their joint parenting over their son - not by way of adoption, but rather through a judicial parenthood order, without the need of a social services review. The State objected to the expansion of the use of parenting orders to same-sex couples and stated that these orders are to be used solely in adoption procedures. During the trial, the State retracted its objection but still demanded the involvement of social services in this process as a condition for the issuance of a parenthood order. In the scope of this procedure, an opinion of the Attorney

General was presented, in which he stated, *inter alia*, that although the preferred way or means in such cases is the use of an adoption order, the State does not object to the use of a judicial parenthood order. After deliberations, the Court issued the judicial parenthood order and noted that there is no need for a social services review (*Tel Aviv-Jaffa Family Matters Court, F.C. 57740/12/13 Anonymous et. al. v. The Attorney General et. al. (1.3.15)*).

Judicial Decisions Relating to Article 10.1

32. On July 19, 2017, the Supreme Court ruled that in the case of parents with equal joint custody and similar incomes, the father will not have to pay the mother child support for his children over the age of six (6). Rather, each parent will be responsible for supporting the children when they stay with them. It was further determined that the Court would determine a central mechanism for the payment of expenses that are not regular living expenses, so that the woman will not be forced to bear them alone.

As for the joint custody, the court ruled that the father's honest intention in the joint custody request should be examined, and whether the best interest of the child in the given case is that the custody would be shared. Among other things, the Court ruled that the parents' ability to cooperate should be examined, as well as their ability to bear the economic cost of two (2) full house holds. The restrictions established by the Supreme Court in its ruling may reduce situations in which the joint custody request is not honest or if the joint custody does not fit the particular family unit (*Re.Ad.Ap. 919/15 Anonymous v Anonymous (19.7.17)*).

33. On November 15, 2015, the Haifa Family Matters Court ruled in favor of a minor plaintiff's mother and the minor's adult partner who requested a permit for the minor's marriage. The plaintiff's noted that the minor, a young woman at the age of 17.5, is at early stages of pregnancy, and that a marriage date has already been set, following the approval of the minor's parents and the consent of the couple themselves. The permit was required in order to open a marriage file. The Court noted that it asked for and received a social worker's assessment concerning the minor. Both the social worker and the representative of the Attorney General

noted that there were no special circumstances which relates to the minor's best interests that justifies issuing the permit. The Court noted, *inter alia*, that minimal age for marriage is regulated in the *Marital Age Law* 5710-1950.

However, the Court decided that there are special circumstances in this case relating to the minor's best interests that justifies issuing a marriage permit. The Court stated that the couple's decision to marry was made after thoughtful consideration, freely, without pressure, their relationship has been stable for two (2) years, and the two (2) have support from both families, including financial support, and in light of the fact that the minor was to be 18 in six (6) months. The Court also noted that the minor's partner repeatedly noted that he will support the minor in completing her studies (M.R. 58940-10-15 *Anonymous et. al. v. The Haifa District State Attorney's Office* (15.11.2016)).

34. On February 23, 2015, the Haifa Family Matters Court rejected a request filed by two (2) minors to permit them to marry each other. The two (2) minors requested to be married due to the girl's pregnancy and claimed that the girl's religious family will not accept her unless she is married. A social worker's assessment that was rendered to the Court found the couple not ready for marriage and life as well as the responsibility of raising a baby. The Court noted, *inter alia*, that the CEDAW provides equal right for men and women in relation to marriage and determines that engagement and marriage of minors shall have no legal effect. The Court further noted that in Israel, according to the *Marital Age Law*, marriage of minors under the age of 18 is prohibited, however the law further prescribes that a Family Matters Court is authorized to permit a marriage of a male or female minor if they are above the age of 16 and the Court is of the opinion that there are special circumstances linked to the minors best interest. The Court also noted that according to the Law, a decision will only take place after hearing the minor and that a Court shall not rule on the issue of a marriage of a minor between the ages of 16-17 without a social worker assessment.

In the circumstances of this case, the Court determined that the reason for requesting an authorization for marriage is the shame of out-of-wedlock pregnancy which led to the families' pressure on the minors to get married. The Court rejected the request and noted that the minors will be able to marry in due

time, in accordance with their emotional and mental maturity after the age of 18 (M.Rq. 22973-01-15 *Anonymous et. al. v. The Attorney General* (23.2. 2015)).

Judicial Decisions Relating to Article 10.2

35. On March 16, 2017, the Tel Aviv-Jaffa Regional Labour Court ruled in favor of a plaintiff, a pregnant woman, who applied for a job at the respondent's company but when reaching the final stages in the application process, just before a contract was signed between the parties and after revealing her pregnancy, she was eventually rejected. After hearing both sides and reviewing the evidence, the Court determined that the plaintiff was well-matched to the relevant position and had the relevant qualifications for the job. The Court determined that the negotiations between the parties reached an advanced stage in which the respondent decided that the plaintiff is suitable to fill the position and wanted to hire her, however no contract was signed. The Court rejected the respondent claims that the plaintiff will not be able to work additional hours, that the plaintiff's absence during her maternity leave will cause an exceptional damage or regarding her lack of good-faith. The Court determined that the respondent violated the *Equal Employment Opportunities Law* and awarded the plaintiff compensation for non-pecuniary damage in the total sum of 85,000 NIS (22,980 USD). The Court did not award compensation for pecuniary damage since it was not proven that the plaintiff was accepted to the position (A.La.D. 14082-08-14 *Zipor v. Ail Maikiage Cosmetics Ltd* (16.3.2017)). On this matter also see above: A.La.D. 40058-09-13 *Linoy Dabach v. Poultry and Turkey Bareket Ltd.* (18.1.2016)).

36. On July 27, 2016, the Jerusalem Regional Labour Court ruled in favor of a plaintiff who was fired illegally during her pregnancy. In this case, the plaintiff was employed by the respondent for two (2) terms as an instructor and received positive feedback regarding her employment. The employment method was established on an annual contract which was renewed at the beginning of each school year. During the second employment term, the plaintiff gave birth to her first child. When the plaintiff asked to renew her contract at the beginning of the third year, the respondent refused to do so. The plaintiff claimed that this refusal

was due to her motherhood and is in violation of the *Equal Employment Opportunities Law*. The Court accepted the suit and noted that if the respondent decided not to renew the plaintiff's contract, it was obligated to summon her to a hearing according to the *Women Employment Law 5714-1954*, which the respondent did not do, and also ruled that in accordance with the *Equal Employment Opportunities Law*, the respondent was prohibited from firing or not renewing the plaintiff's contract. The Court therefore determined that the plaintiff was discriminated against due to her pregnancy and for being a parent and ordered compensation in the total sum of 41,750 NIS (11,280 USD) (A.La.D. 31777-05-13 *Ortal Peretz Yogev v. Lights, Values, Torah and Tradition Association* (27.7.2016)).

37. On February 8, 2016, the Be'er-Sheva Regional Labour Court ruled in favor of a plaintiff who claimed that the scope of her work was reduced during her pregnancy contrary to Section 9A of the *Women's Employment Law*. The Court ruled that according to the *Women's Employment Law*, there is an absolute prohibition to reduce the employment scope of an employee during her pregnancy regardless of the employer's good faith or if the deduction is related to the pregnancy. If such reduction is made without receiving a permit to do so by the Supervisor of Enforcement and Licensing Administration, regardless of the reasoning, the act will be illegal. The Court determined however, that the reduction of the employment scope of the plaintiff was not made because of her pregnancy, but only at the pregnancy period and noted that no causative link was proved between the pregnancy and that reduction, therefore the provisions of the *Equal Employment Opportunities Law* were not violated. The Court granted the plaintiff compensation in the sum of 25,683 NIS (6,950 USD).
38. On February 8, 2016, the Tel Aviv-Jaffa Regional Labour Court ruled in favor of a plaintiff who claimed that she was fired due to her pregnancy. The plaintiff worked at a company that imports and distributes medical supplies and provides technical support for pacemakers. The plaintiff, who had the relevant academic knowledge, worked in the marketing and technical support department. Part of her job was to be present at operation rooms. A few weeks after she started working she notified her supervisors of her pregnancy and thereafter she was prevented

from attending operation rooms. At a certain point the respondents demanded that she quit her job and eventually she was fired. The plaintiff requested to annul her dismissal which was conducted without a permit from the Supervisor of Enforcement and Licensing Administration. The respondents requested a permit for dismissal, and notified her that her dismissal is conditioned on the outcome of the request. However, the Supervisor denied the request since she was of the opinion that the pregnancy was the reason for the plaintiff's dismissal. The Court ruled that the application to the Administration was in violation to Section 9(a) to the *Women's Employment Law* since the respondents tried to fire the plaintiff prior to seeking authorization. The Court further ruled that there is no dispute that the respondents, who were aware of the plaintiff's pregnancy, were obligated to receive a permit for her dismissal, but did so without receiving such a permit in violation of the *Women's Employment Law*. The Court noted that the respondents refused to post the plaintiff, who was prevented from performing certain actions due to her pregnancy, in a position that suited her qualifications, and by such refusal discriminated her due to her pregnancy and demanded that she quit and after she refused, fired her for a general reason. According to the Court, these actions violated the provisions of the *Equal Employment Opportunities Law*. The Court further noted that the hearing held for the plaintiff, which included substantial flaws, was not made in good faith, while the decision on her dismissal was taken prior to the hearing. The Court granted the plaintiff with compensation in the sum of 153,132 NIS (41,400 USD) (La.D. 4815-12-13 *Limor Bar v. MedLab Medical and Scientific Equipment LTD. et. al.* (8.2.16)).

39. On January 13, 2016, the Jerusalem Regional Labour Court ruled in favor of an employee who claimed for discrimination in working conditions due to her pregnancy and upon her return to work following her maternity leave. The plaintiff managed a gas station, from which she was reassigned to a much smaller and remote station due to her pregnancy, and following her return from her maternity leave, without her consent. The Court ruled that reassigning the plaintiff to a different workplace and position than the one she worked in prior to her maternity leave, without providing her with an opportunity to voice her opinion regarding these changes, and assigning another employee to her previous position, constitute illegal termination, contrary to the *Women's Employment Law*. The

Court further noted that the respondent also violated the *Equal Employment Opportunities Law*, both before and after the employee gave birth, while the plaintiff managed to prove that she was a good and valued employee. The Court granted her compensation in the sum of 187,423 NIS (50,650 USD) (La.D. 13844-12-12 *Hadasa Rahme v. Gas Menta Road Retail LTD.* (13.1.16)).

40. On February 23, 2016, the Be'er-Sheva Regional Labour Court ruled in favor of a plaintiff who claimed that the scope of her work was reduced during the protected period following her return from maternity leave. The plaintiff claimed that her employment was illegally reduced during the protected period and claimed she was discriminated against for being a mother to four (4) children. The Court noted that in the case's circumstances, as presented to the Court, the reduction in the plaintiff's position without a permit is a violation of the *Women's Employment Law*. The Court further noted however, that due to the plaintiff's request and flaws in her actions, 50% of this reduction can be attributed to the plaintiff herself. In addition, the Court ruled that the reduction of the plaintiff's employment was conducted, *inter alia*, upon the consideration that she is a mother of four (4) children, a consideration that is contrary to the provision of the *Equal Employment Opportunities Law*. The Court granted the plaintiff with compensation in the sum of 58,861 NIS (15,900 USD) (La.D. 11288-06-13, *Reut Abramovits v. The State of Israel – Ministry of Education* (23.2.16)).

41. On November 25, 2015 the Haifa Regional Labour Court ruled in favor of a plaintiff who was fired only two (2) weeks after the beginning of her employment and as soon as her employer was notified of her pregnancy. The plaintiff was pregnant when she was hired by the respondent and did not reveal the fact that she was pregnant. After she had to miss a few work days she was asked whether she was pregnant and at first she did not disclose her pregnancy, but two (2) days later she approached the manager of the store and revealed that she was pregnant. The manager claimed that she found her behavior as untrustworthy and soon after she was called for a hearing. The Court ruled that both the hearing and the dismissal were carried out due to the employee's pregnancy. Since at the time of her dismissal she worked less than six (6) months, the employee was not entitled for compensation in accordance with the *Women's Employment Law*, but rather in

accordance to the *Equal Employment Opportunities Law*. The Court ruled that the hearing procedure was meaningless and the dismissal was therefore illegal, since the decision of dismissal was taken prior to the hearing that was conducted for the plaintiff. The Court ruled that the employee's pregnancy was a consideration in the dismissal decision and therefore the plaintiff was entitled to compensation in accordance to the *Equal Employment Opportunities Law*. The Court awarded the plaintiff with compensation of 17,500 NIS (4,730 USD) due to the balance made between the plaintiff's behavior in concealing the pregnancy after she was asked about it and since she refused the respondent's offers to rehire her, and the respondent's behavior (La.D. 13459-06-14 *Odelya Maoz v. Beauticare E.G. LTD.* (25.11.15)).

42. On September 6, 2015, the Tel Aviv-Jaffa Regional Labour Court ruled in favor of a plaintiff who claimed her dismissal was done so the employer could evade the protection given under the *Women's Employment Law* and since she was pregnant. The Court noted that there is no doubt that the dismissal was conducted due to the employee's pregnancy, in breach of the law and the basic principle of equality. The Court noted that at the time of her dismissal, the employee was employed by the employer for less than six (6) months and therefore the *Women's Employment Law* was not applicable to her. Nevertheless, the *Equal Employment Opportunities Law* was applicable in the sense that the dismissal was based upon a wrongful and discriminatory consideration, and in order to avoid the protections provided to women and working mothers by the Law. The Court thus granted the plaintiff compensation in the sum of 94,710 NIS (25,600 USD) in accordance with the provisions of the *Women's Employment Law*, as it concluded that even if this law does not apply to the case, it can be used to calculate the compensation (L.A. 19943-10-11 *Hadas Silvering-Shemesh v. G Helga LTD. et. al.* (6.9.15)).
43. On September 1, 2015, the Be'er-Sheva Regional Labour Court ruled in favor of a plaintiff who claimed she was illegally discriminated due to her pregnancy. The plaintiff worked as a salesperson in one of the respondent's stores for three (3) years. Following a change of employers within the company, the respondent initiated an application process for all former employees; all former workers were hired again, apart from the plaintiff. Subsequently, the plaintiff filed a claim

stating that her candidacy was rejected due to her pregnancy, in violation of the *Equal Employment Opportunities Law*. The Court noted that the plaintiff proved that she was qualified for the position, and that the respondent failed to prove that the plaintiff was rejected for other relevant reasons but rather, it was persuaded that the plaintiff was not hired due to her pregnancy in violation of *Equal Employment Opportunities Law*. The Court ordered that the plaintiff will be compensated in a total sum of 75,894 NIS (20,500 USD) (A.La.D. 48309-09-13 *Natalia Slomonov v. Electrolucs (1998) LTD.* (1.9.2015)).

Judicial Decisions Relating to Article 10.3

44. On July 29, 2012, the Be'er-Sheva Regional Labour Court ruled in the case of two (2) plaintiffs, minors who were employed by the respondent, who claimed that the respondent employed them for many hours without paying them the minimum wage. The plaintiffs argued that the respondent did not grant them paid vacation days in accordance with the Law and did not even grant them their redemption upon the termination of their employment. It was further contended that the respondent did not pay Plaintiff No. 1 for the recovery of convalescence pay despite the fact that he completed one (1) year of work. It was further claimed that the respondent did not even pay the plaintiffs reimbursement of travel expenses. The respondent did not deny the plaintiffs' entitlement to the payment of annual leave redemption but rejected the other claims. The Court rejected the plaintiffs' claim for reimbursement of travel expenses and ruled that it was not proven that the respondent violated its obligation to provide pay slips to the plaintiffs. At the same time, the Court held that Plaintiff No. 1 had worked continuously with the respondent for over a year and therefore was entitled to payment of convalescence pay. It was further determined that the plaintiffs were entitled to wage delay compensation, as required by law, and that they have not received vacation pay. The Court held that the respondent would compensate the plaintiffs as follows: Plaintiff No. 1 – 3,979 NIS (1,137 USD), and Plaintiff No. 2 – 2,642 NIS (755 USD) (La.D. 39649-09-10 *Lior Moyal et. al. v. Zino Halls Ltd.* (29.7.12)).

Judicial Decisions Relating to Article 11

45. On May 17, 2018 the National Labour Court issued its ruling on five (5) joint appeals concerning the legality of the regulation of the NII to deny income support benefit from a person who receives permanent family support from her/his family or from non-profit organizations. The Court accepted the Association for Civil Rights' argument that joined the procedure as *amicus curiae*, and ruled that this regulation should be cancelled. The Court stated that there is a real doubt as to whether in current reality, the income support benefit is in itself sufficient for the basic dignified existence of a person. Therefore, many of the recipients of the benefit are forced to receive additional assistance, from every possible source, in order to meet the most basic needs, such as food, clothing, medicine and housing. The Court rejected the NII's argument regarding the fact that the definition of the term "income" under Section 9 of the *Income Support Law* 5741-1980 includes any source of income, and ruled that since "family support" is not explicitly included under the definition in the Law, this interpretation is incorrect, and the correct interpretation of the term is the one which fulfills the basic rights of a person, over an interpretation which negates these rights. The Court ruled that financial support by families or communities as an act of generosity is not considered an income regardless of the way it is provided, until the legislator explicitly states otherwise. The Court did not set a limit of such a support, considering the possibility that a higher support may be required for a health payment, or is provided for a period of several months in advance etc. Also, the Court stated that the intervention of the NII in financial support of provided by family members is inappropriate and constitutes an intervention in family affairs, which could lead to termination of family support in a way which will harm those in need. (NII.AP. 17457-08-14 *Sima Carol v. The National Insurance Institute*, (17.05.2018)). Note that in this case the Court adopted the ruling in the *Ehud Yair* case (see details below: Na.In.C. 20952-04-11 (20.11.15)) and expanded it.
46. On June 13, 2017, the Israeli Supreme Court ruled in favor of the Petitioners, several human rights NGOs, in a case concerning the living conditions of prisoners in Israel. The Court required the State to provide, within 18 months, a 4.5 square meter of living space for each prisoner or detainee, as required

according to Section 2(8) of the *Prisons Regulation (Imprisonment Conditions)* 5770-2010, instead of 3.16 square meters, as in most of prisons in Israel today.

The Court held that the notion of "*appropriate living conditions*" under the Amendment for the *Prisoners Ordinance* 5772-2012, includes the obligation to provide an appropriate living space for a prisoner or detainee. The Court further noted that human rights are reserved for every person, even if he or she are detained or imprisoned, and that imprisonment alone cannot prevent a person of any other rights, except for those which are necessary and stem from the prevention of freedom of movement under the imprisonment itself. Note that the State did not contest this issue, but only on the time frame that is required for making the necessary arrangements following this decision.

Moreover, the Court stressed that minimal living space is an essential condition for protecting the prisoner's right for human dignity and his or her right for dignified human existence.

In its decision, the Court included a detailed reference to the right for adequate living space of prisoners under International Human Rights Law, including Article 10(1) of the ICCPR, Article 16 of the CAT, and the Mandela Rules of 2015.

The Court further ordered that within nine (9) months, the State should make all necessary arrangements that no prisoner will have a living space that is less than three (3) square meter (not including the shower and toilet). Within 18 months, the living space of each prisoner or detainee should be at least 4.5 sq.m. (including the shower and toilet) or 4 sq.m. not including these areas (H.C.J. 1892/14 *The Association for Civil Rights in Israel et. al. v. The Minister of Public Security et. al.* (13.6.17)). A State request for an extension in the implementation of this decision, based on a Government Resolution on improvement of incarceration conditions and expansion of prisoners' living space was filed to the Court. The request is still pending before the Court.

47. On January 25, 2017, the Jerusalem Standard Contracts Court accepted a claim filed by the Attorney General and determined that the standard contract proposed by the respondents do not conform with the *Standard Contract Law* (5743-1982). The respondents are two (2) contracting firms that market apartments in different parts of Israel. As part of the acquisition process, customers are required to sign two (2) documents: a preliminary agreement and a detailed acquisition contract which includes a specification of the apartment sold. The plaintiff claimed, *inter alia*, that the respondents' contract included several depriving provisions that were already held as such by the Court in regard to other contracting firms, and further requested that the Court order the respondents to amend additional provisions in these contracts (*inter alia*, depriving provisions that narrow the responsibility of the respondents - thus constituting depriving conditions in a standard contract). The Court accepted all of the Attorney General's claims and ruled that these conditions create a wide conditioning that is not in favor of the customer and therefore are in fact depriving conditions in a standard contract. The Court ordered the respondents to remove and/or amend these conditions in the acquisition contracts. Among other things, it was agreed on the following changes: shortening the time period for receiving a refund in case of contract cancellation, removal of the provision which granted the respondent an exemption from responsibility in regard to a discrepancy that was not specified in the provision protocol, removal of a provision that negated the customer's right to present claims in regard to pre-contractual presentation by the firm etc. Please note that a similar suit was conducted against other contracting firms (S.C. 18647-03-15 *The Attorney General v. Dunich Brothers Ltd. et. al.* (25.1.2017)). (also see: S.C. 22119-03-15 *The Attorney General v. Ashdar Contracting Firm Ltd.*).

48. On May 4, 2016, the High Court of Justice ruled on a petition submitted by *Bizchut* association - the Israel Human Rights Center for People with Disabilities (Hereinafter: "*Bizchut* ") - and others on behalf of persons diagnosed with "dual disabilities", meaning persons with both mental and physical disabilities, requesting the establishment of protective out-of-home residential arrangements which would accommodate their needs, without being hospitalized. During the prolonged proceedings, the Ministry of Health informed the Court that it is in the process of establishing a facility aimed at treating persons with "dual disabilities"

by a "rehabilitative-ecological model". The rehabilitative-ecological model includes the establishment of treatment and rehabilitation programs fitted to the needs of each resident according to an intervention model based on ecological methods. The Ministry of Health declared that the establishment of the rehabilitative-ecological framework is appropriate for the integration of persons with a dual diagnosis of both mental and physical disabilities and that a procurement tender had been published and that the new treatment model had been set out in an internal procedure of the Ministry of Health.

The model presented by the Ministry of Health was based on the following principles: comprehensive residential services for persons diagnosed with "dual disabilities", a professional staff with expertise in serving this population, flexible and modular service fitted to the particular needs of each resident with the goal of improving her/his ability to function in her/his daily life as well as improving her/his quality of life, intervention methods based on the "ecological model" adapted for this population, and lastly a model that combines residential spaces accommodated to the population and content centres for community accessibility. The model was formulated for three (3) target groups: residents with complex physical disabilities, residents exhibiting with self-harmful behaviours, and residents with severe functioning difficulties regarding their ability to perform basic activities of daily living. According to the Ministry of Health's model, the aims of the service are to develop functional skills in various fields of life in order to achieve the highest degree of functioning and independence and a better quality of life, promotion of less intensive and more independent arrangements, while avoiding to the greatest extent possible the need for hospitalization in mental health facilities.

In light of this update presented to the Court by the State, the High Court of Justice struck out the petition and left to the petitioners' discretion, the option of filing a new petition in the future if in their opinion it is needed (H.C.J. 1596/12 *Bizchut Association v. The Ministry of Social Affairs and Social Services et. al.* (4.5.2016)).

49. On May 1, 2016, the Tel Aviv-Jaffa Rent Court accepted the lawsuit of an 80 year old man with disabilities who uses a wheelchair and lives on the third floor of a building with no elevator, and ordered the owner of the building to permit the installation of a wheelchair lift at the plaintiff's expense. The company which owned the building argued that a wheelchair lift would harm the aesthetic and appearance of the building. The Court ruled that despite the fact that the company owned the staircase of the building, the plaintiff has the right to access his apartment, and the wheelchair lift is an essential basic necessity for the plaintiff to live in his apartment. (R. 24557-11-14 *Polani v. Micha Trusts and Investments Co.* (1.5.2016)). Following this ruling, on June 23, 2016 the respondent appealed to the Tel Aviv-Jaffa District Court. However, on January 8, 2018 ,the appeal was rejected by the Tel Aviv Jaffa District Court (C.Ap. 49844-06-16 *Micha Trusts and Investments Co. Ltd. v. Polani* (8.1.18)).
50. In yet another case, the National Labour Court, determined that a residential apartment was excluded by the *Income Support Law* 5741-1980, from the assets of a person who requests income support when conducting an income support eligibility test, and therefore, a third party's (in this case the plaintiff's father's) assistance in paying rent shall not be considered as income or as property, and will not be taken into account when calculating his/her income in order to conduct an income support eligibility test. The Court also noted in this case, that the right to dignified human existence, which is recognized as a constitutional right and is held as part of human dignity, includes the right for housing, and further noted that its prevailing principle is that the income support will be allocated only to persons who cannot afford, temporary or permanently and for reasons not in their control, to provide for their basic needs. (Na.In.C. 20952-04-11 *Ehud Yair et. al. v. The National Insurance Institute* (20.11.15)).
51. On January 29, 2012, the Haifa Magistrate Court rejected a request for a temporary restraining order submitted by the potential neighbours of an apartment for persons with disabilities asking the Court not to permit its forthcoming opening in their neighbourhood. The petitioners expressed their concern regarding possible effects on real estate value in the neighbourhood. The Court stated that this is a common phenomenon called "NIMBY - Not In My

Back Yard" and that the petitioners did not present convincing evidence of the possible infringement upon their rights. The Court mentioned the importance of the inclusion of persons with disabilities within the community and rejected the request (C.C. 50900-01-12 *Dubinsky v. Shacham* (29.1.2012)).

52. On July 23, 2012, a petition to the High Court of Justice was filed by *Bizchut*, on behalf of two (2) individuals with mental disabilities and nursing needs, against the Ministries of Labour, Social Affairs and Social Services and of Health. The petition concerned persons with complex physical disabilities or dual disability who are currently placed in facilities that do not accommodate their needs. The Petitioners argued that in the absence of such appropriate frameworks, hundreds of persons with disabilities who require long term care are placed in geriatric hospitalization departments for the rest of their lives.

In 2013, the respondents appointed an Inter-ministerial Committee which included representatives of the Ministries of Labour, Social Affairs and Social Services, of Health and of Justice. The Committee held various meetings with representatives of *Bizchut*, "ALYN" Hospital for youth with disabilities, and persons with disabilities who require long term care and their families. In addition, a sub-committee was established by the Ministries that formulated the criteria to distinguish between persons with disabilities who require long term care and are suitable for living in care facilities in the community and those who need to be in hospitalization frameworks.

In 2015, the Committee issued its report, which included discussion of potential care facilities for persons with disabilities who require long term care, including pricing and budgeting questions. The Committee recommended a pilot program according to which two (2) additional care facilities designated for persons with disabilities who require long term care should be established:

- a. Residential facilities in the community;

- b. Hospitalization departments for those who have medical problems that require their extended hospitalization, and who cannot be integrated in other care facilities.

The implementation of these recommendations would commence with the establishment of two (2) pilot programs, and would include: nine (9) apartments within the community, each housing six (6) persons and two (2) additional residential facilities housing 14-18 persons, four (4) hospitalization departments for up to 24 persons in each department. The petition is still pending (H.C.J. 5723/12 *Anonymous v. The Ministry of Social Affairs and Social Services et. al.* (pending)).

- 53. On February 28, 2012, The High Court of Justice accepted a petition against the constitutionality of Section 9A(B) of the *Income Support Law* 5740-1980 and annulled it. This Section disqualified any person who holds or uses a car from being eligible for income support. According to the Court, this disqualification violates the minimum right for dignified human existence, which is in the core of the right for human dignity as defined in the *Basic Law: Human Dignity and Liberty*, and that this violation is not proportionate since it fails to meet the proportionality test in the *Basic Law's* limitation clause. The Court therefore declared this Section as unconstitutional and annulled it (H.J.C. 10662/04 *Salah Hasan et. al. v. The National Insurance Institute of Israel et. al.* (28.2.2012)).
- 54. On July 9, 2008, the NGO "Access Israel" petitioned the High Court of Justice against several Government Ministries and relevant Knesset Committees for their failure to submit and approve Accessibility Regulations required under Chapter 5 of the *Equal Rights Law* in order to establish accessibility adjustments parameters for public transportation, health, construction, education, communications, etc. The petitioners argued that according to the *Equal Rights Law*, the Regulations should have been submitted to the relevant Knesset Committees by November 2006. The Court noted the importance of the swift passage of the Regulations and requested that the relevant Government Ministries provide information as to when they expected the submission of the Regulations. In addition, the Court issued an *order nisi* in November 2010, requiring an explanation from the respondents as to why the Regulations had not been submitted and approved. The

Court noted, however, that an effort was being made to enact various accessibility regulations (between 2009 and 2011 regulations in the fields of telecommunications, existing public buildings, and educational institutions had been approved).

On February 2, 2012, the Court issued a partial judgment, ordering the respondents to submit the remaining regulations for approval of the relevant Knesset Committees. Subsequently, extensions were granted to the respondents to conclude the process. Since then, additional accessibility regulations have been enacted in such areas as public transportation, institutes of higher education, and health. During 2016 the State has submitted to the Knesset all the required regulations, and the vast majority of the regulations were finalized. The case is still pending as the Court continues to monitor the progress with regard to the Accessibility Regulations which have yet to be approved (H.C.J. 5833/08 *Access Israel v. The Minister of Transportation et. al.* (pending)).

55. On August 6th, 2017, the High Court of Justice accepted a petition filed by various citizens, owners of more two and a half apartments, who were required to pay taxes under the multi-apartment tax arrangement, which was established under the *Economic Efficiency Law* 2016-5777. This arrangement imposed an additional tax on owners of multiple apartments, whose rate of holding is 249% or more (ownership of at least two and a half apartments). The petitioners argued that there was a flaw in the legislation process, as it did not comply with the “principle of participation”, by which each and every Knesset Member has the right to participate in the process of legislation. The principle provides Knesset Members with the fair and honest opportunity to consider, question, comment and discuss the legislation of a bill, in order to formulate an informed position regarding the issue in question. The Court ruled that during the legislation process of this arrangement and tax, the discussions were held at 4am, after a long and tedious day and night of discussions regarding other bills, while the Government and coalition representatives were pressuring the Knesset Members not to ask questions and enquire in order to rapidly pass the bill. The petitioners argued that the Government representatives ignored questions that were raised and rushed to finish the vote as it was very late. Due to the importance of this bill and the

complexity of the issue in question, it was further argued that the bill was not supposed to be raised for a casual rushed discussion in the middle of the night and that Knesset Members should have had the opportunity to receive and process the necessary information regarding the bill, and the opportunity to enquire and understand all its implications. Therefore, the Court ruled that the flaw fell to the root of the legislative process, and yet, this does not require the annulment of the entire law, but a relative nullity of the multi-apartment tax arrangement. The Court noted that the arrangement may be brought for a new legislative process from the stage in which the flaw occurred. (H.C.J. 10042/16 *Zachi Kontinsky v. The Israeli Knesset* (06.08.2017)).

Judicial Decisions Relating to Article 12

56. In 2017, several parents and the Association for Food Allergies petitioned the High Court of Justice against the State's intention to demand that parents to children with food allergies who attend kindergartens, after-school nurseries and first and second grades school pupils, will fund a special assistant that will accompany the child and safeguard that the he/she is not eating food that is harmful to him/her, or else their child will not be able to attend the relevant educational framework. However, following the issuance of a Ministry of Education's Director General's Circular, which clearly stated rules for adaptation of the relevant education framework to children with allergies, the Court rejected the Petition without prejudice. The Court noted however, that operators of after-school frameworks will not be able to condition the child acceptance on a special assistant, and that they will have to accommodate the framework to the presence of children with allergies, as noted in the Director General's Circular (H.C.J. 6771/17 *Shay Karin et. al. v. The Ministry of Economy and Industry et. al.* (13.2.18)).

57. On August 13, 2015, a petition was filed to the Lod District Court (as a Court for Administrative Affairs) by a convicted prisoner claiming that his right for health was violated by the Israeli Prisons Service (IPS). The plaintiff who suffers from hepatitis C claimed that he was examined by a physician which recommended a medical treatment that is a part of the basic health basket, but that he did not

receive such a treatment. The respondent noted that the petitioner's condition is monitored by a physician and he receives a pharmaceutical and medical treatment which suits his condition. The Court accepted this petition and ruled that since the petitioner is a prisoner under the responsibility of the IPS, he is entitled to receive medical care identical to that given to any other citizen according to the basic health basket, regardless of the severity of his condition. The Court rejected claims regarding bureaucratic difficulties and high costs of the treatment and ruled that the IPS shall supply the treatment within 30 days (Pr.P. 28629-08-15, *Danielli Rozliyn v. Israeli Prisons Service* (15.5.16)).

58. In yet another case, in the frame of a labour case, the Tel Aviv-Jaffa Regional Labour Court was requested to decide on a case brought by a plaintiff against his medical health fund (HMO). The plaintiff was diagnosed with a rare genetic illness and his physicians applied to the HMO's exceptional cases committee, with a request to authorize the use of a medicine that is not included in the medical health basket. However, despite the fact that the medicine is registered for that illness in Israel and the fact that there is no other registered medicine for his illness and that the plaintiff was the only patient with that illness in that HMO, the request was denied. The Court accepted the suit, and determined that the HMOs are authorized to provide services that are not part of the regular medical health basket and that they are in fact obligated to do so in severe cases. The Court noted that the requested medicine is registered in Israel and intended for the plaintiff's illness. In addition, the Court determined that the Committee did not prove the inefficiency of the medicine for the requested illness, contrary to recommendation of senior experts that supported treating the plaintiff with this medicine. Therefore, the Court ordered that the respondent will finance the requested medicine to the plaintiff, until the verdict in the main suit (H.L. 20211/03/16 *Anonymous v. Leumit HMO- Modi'in* (22.3.16)).

59. In another case, the High Court of Justice was asked to oblige the Ministers of Health and of Social Affairs and Social Services to set regulation that will grant foreign workers with a strong affinity to Israel rights under the *National Health Insurance Law* (this petition focused on foreign workers in the nursing care field, due to their lengthy term of employment). It was determined that the State must formulate health arrangements applying to nursing-care workers with a strong affinity to Israel. The Court determined that nursing-care workers meet many of

the criteria set in case law for the examination of residency and when the State grants stay and employment permits for foreign workers for a long period of time, it must also grant them at the same time the basic rights that they are entitled to. The Court determined that health arrangements that apply to foreign workers with a strong affinity to Israel should be brought closer to those that apply to Israeli residents. The Court noted that a period of up to ten (10) years of continuous stay in Israel is appropriate for the purpose of granting expanded medical rights to foreign workers in Israel. The Court ordered that the regulation be set, whether by applying the *National Health Insurance Law* to them or by amending the *Foreign Workers Order (Worker's Health Basket)* (5761-2001) within a year (a period which was later extended by an additional year). The Court left wide discretion to the respondent regarding the manner of doing so (H.C.J. 1105/06 *Kav La'Oved Association v. The Minister of Social Affairs and Social Services et. al.* (18.11.13)).

Judicial Decisions Relating to Article 13.1

60. Hereinafter is the most recent judgment with respect to the scope of the right to education. The petition revolved around the constitutionality of the *Culturally Unique Education Institutions Law* 5768-2008, which grants an exemption from core studies for ultra-Orthodox schools for pupils in 9th-12th Grade ("Small Yeshivas"). The Court, in a majority opinion, dismissed the petition and did not set an order for legal expenses. The Justices were divided on the question of the scope of the right to education as a constitutional right: The majority of the Justices on the panel concurred with the majority position and determined that the right to receive education is indeed a constitutional right as it is closely related in a material manner to human dignity. Nevertheless, the Court ruled that no appropriate factual basis had been presented to prove a violation of the constitutional right to education.

The Court concluded that at the present time, it may be stated that at the very least, certain aspects of the right to education do indeed fall under the definition of human dignity and are entitled to constitutional protection (H.C.J. 3752/10 *Amnon Rubinstein et. al. v. The Knesset et. al.* (17.9.14)).

61. On May 3, 2013, the Be'er-Sheva District Court of ruled in favor of a plaintiff and determined that he is entitled to compensation for the damage he suffered while being bullied during school hours which led to his illness. The plaintiff, a former school pupil, filed the suit after he allegedly experienced on-going bullying by his class mates. He claimed that these experiences played a major role in the eruption of his schizophrenia illness. The plaintiff sued the School Education Network claiming that its staff should be held responsible for the damages due to their failure to monitor the other school pupils, and therefore they were negligent. The respondent, however, claimed that a school staff is entitled to latitude of discretion regarding how to implement their responsibility to supervise the pupils. They further claimed that they were not aware of the on-going bullying as the plaintiff did not bring it to their attention.

The Court accepted the plaintiff's suit and determined that according to the evidence, the school staff was not negligent while supervising the pupils during breaks. However, it was determined that the school staff could have perceived that bullying may occur between pupils and should have taken measures to protect its pupils from such behavior beforehand. The Court also ruled that the lack of concern for the provision of social information about the plaintiff to the social services of the school and the absence of personal conversations with the plaintiff, which could have exposed his needs, constituted a failure to fulfill a proactive outreach in the field of monitoring the safety of pupils in general and pupils presenting signs such as loneliness and problematic family background in particular. The Court ruled that the respondents shall compensate the plaintiff in the total sum of one Million NIS (286,000 USD) (C.C. 3001-09 A. *et. al. v. The Ministry of Education et. al.* (3.5.2013)).

62. On December 19, 2013, the High Court of Justice approved the agreement between *Bizchut* association and the Ministry of Education, to make textbooks used by pupils in the school system more accessible for blind and visually impaired pupils. The Court determined that the Ministry of Education should commit to making the textbooks more accessible, as follows: offer four (4) formats of the textbooks (braille, enlarged font, voice recordings, and digital files) prior to the beginning of the school year, provide accommodated internal learning materials, reference the

obligation and commitment to make schools more accessible to blind and visually impaired pupils in the forthcoming Circular of the Ministry of Education's Director General, and make the matriculation examination accessible in braille (H.C.J. 8536/11 *Bizchut Association v. The Ministry of Education* (19.12.2013)).

63. On August 2, 2012, the Be'er-Sheva Administrative Court ruled in favor of several children of asylum seekers and their parents residing in the city of Eilat. The Eilat municipality placed the children in a separate education establishment in Kibbutz Eilat. The petitioners claimed, among others, that there is no prevention in integrating their children into regular schools since they all speak Hebrew. It was further claimed that the educational establishment in Eilat does not meet the requirements of the Ministry of Education, nor does it provide basic knowledge and the placement of the children there constitutes clear discrimination.

The Court noted that the Ministry of Education acknowledged that the *Compulsory Education Law* applies to every child in Israel, without any connection to his/her parents' status. However, the Court noted that the Ministry claimed that this policy is a legal distinction specific and unique to the city of Eilat, and contrary to the policy conducted all through Israel. The Court noted that an educational authority is entitled to determine that for educational considerations or for educational policy, a specific pupil will attend a specific school in his/her enrollment area, in contrast to a group of pupils with certain common criteria.

The Court ruled that the distinction made by the respondents in regard to the plaintiffs is forbidden, particularly since the case involves children's rights. The Court also noted Article 2(a) of the *International Convention on the Rights of the Child (CRC)* which states that a State Party to the Convention shall ensure the rights of a child within its jurisdiction without discrimination of any kind [...] race, color, sex, [...] birth or other status.

The Court further noted that the refusal of the respondents to allow the plaintiffs to be integrated in the regular educational establishments in Eilat is unreasonable and not proportional. The Court noted that the existence of a separate education framework for children of asylum seekers in Eilat is illegal unless it is carried out

with the consent and free will of the children, while allowing every child the opportunity to integrate in the regular education system if he/she wants to. The Court ordered the respondents to integrate the plaintiffs into Eilat's educational system in the following year.

The Ministry of Education and the Eilat Municipality appealed to the Supreme Court regarding this decision. However in a hearing that was held on August 23, 2012, the Court criticized the appeal and ruled that the two (2) parties will enter into deliberations in order to reach an acceptable solution which would be presented to the Court by August 26, 2012. The parties reached an agreement, according to which during the 2012-2013 school year, the respondents' children will be integrated in regular classrooms according to the discretion of the Eilat municipality and the Ministry of Education. It was further agreed that considering the existing gaps in the subjects taught, special classrooms will be opened for these children in the schools in which they will be integrated. The purpose of these classrooms will be to provide an educational response for pupils with learning gaps – according to pedagogical evaluations of each child. These classrooms are aimed at reducing these gaps and to allow these pupils to then integrate into regular classrooms. It was further agreed that in practical subject and in theoretical subjects regarding which a pedagogical evaluation will show that there is no prevention for integration – these children will be integrated and study in regular classrooms. In addition, in the middle of the school year and at its conclusion, a pedagogical evaluation will be made for each pupil in order to evaluate his/her progress and the assistance provided by these special classes, following which, it will be decided regarding each pupil if he/she is ready to be integrated in a regular classroom according to his/her age. The integration of these children in the Eilat schools is subject to full registration. It was also agreed that such pedagogical evaluation for children who have not been evaluated yet, would be conducted within one (1) month from the child's registration in Eilat. The agreement was approved by the Court on August 27, 2012 (Ad.P. 29883-07-11 *Atosh Majed Manjan v. The Municipality of Eilat* (2.8.12)).

Judicial Decisions Relating to Article 13.2

64. On January 18, 2009, the Nazareth Magistrate Court ruled on a civil suit filed by a person with disabilities (cerebral palsy) whose registration to Tel-Hai Academic College was cancelled due to the institution's determination that she would not be able to complete her academic assignments. The Court ruled that the College cannot deny the student her rights and take such pre-emptive action before providing her with equal opportunity and before proving that she will not be able to complete her assignments. The Court determined that by doing so, the College had violated the plaintiff's right to make decisions relating to her life in accordance with her own desires and preferences, as guaranteed by Section 4 of the *Equal Rights Law*. The Court subsequently awarded the plaintiff 45,000 NIS (11,811 USD) (C.C. 3939/06 *Aelia Abu Al-Huf v. Tel-Hai Academic College* (18.1.2009)).

Judicial Decisions Relating to Article 13.3

65. Please see above: H.C.J 3752/10 *Amnon Rubinstein et al. v. The Knesset et. al.* (17.9.14).