

In groundbreaking ruling, Court establishes that there is no distinction between social and civil rights in terms of the state's obligation to realize the rights and allocate budgets to this end

The outgoing President of Israel's Supreme Court, Dorit Beinisch, commented in the summer that the social protest would also be manifested in the Supreme Court. Today (28 February 2012), on her last day in her position, she kept her word: **for the first time, the Supreme Court has established that there is no distinction between social rights and civil rights in terms of the state's obligation to realize the rights and to allocate budgets to this end.** The inclusion of these rights alongside classic political and civil rights is today accepted around the world and in the human rights community in Israel. However, until now, there has been no clear ruling by the Supreme Court on this matter. The new ruling is a significant step forward in terms of the protection of social rights. It will be interesting to see how the Treasury responds, and how this ruling impacts on future rulings by the Court on social matters.

The ruling was granted in response to three private petitions submitted by the organizations

1. **Sawt al-Amal – Protection of Rights of Workers and the Unemployed**, together with **Adalah – The Legal Center for Arab Minority Rights in Israel (Attorney Sausan Zahar)**;
2. **Commitment to Peace and Social Justice**, together with **Itach Maaki – Women Lawyers for Social Justice (Attorneys Dr. Neta Ziv and Keren Shemesh-Perlmutter for Itach)**; and
3. **Attorney Eduardo Wasser for State Legal Aid.**

The petitioners demanded the abolition of an article in a law establishing the supplementary income not be to paid to a person who owns or uses a vehicle. The Court accepted the petition, on the grounds that the law fails to meet the second test of proportionality, in that it establishes an absolute assumption that any person who has a vehicle is not eligible for the benefit. Instead, it would have been possible to use a less injurious means, such as a detailed examination of each person claiming the benefit, allowing them to prove that, despite the use of a vehicle, they did not have sufficient means for livelihood.

As noted, the main importance of the ruling lies in the fact that it establishes unequivocally that there is no distinction between social rights and civil rights in terms of the state's obligation to realize the rights and to allocate budgets to this end.

On the eve of her retirement, President Beinisch expressed this in the following terms:

*"... in light of the above, and in accordance with the prevailing approach today, **there is no basis for applying a sharp and clear distinction between social rights and political rights in terms of the positive or negative obligations incumbent on the state, or in terms of the question of the allocation of resources.** The ostensible gaps between the rights are primarily the product of historical evolution, rather than of substantive differences between the rights themselves. Indeed, 'thou shall' and 'thou shall not' jointly form an integral part of the protection of all human rights, whatever their character."*

Most of the justices on the panel concurred with this specific determination, including Justice Arbel, who noted the connection between the realization of civil rights and that of social rights:

"My colleague, the president, criticizes the sharp distinction between civil and political rights and social rights; between 'thou shall' and 'thou shall not.' I agree with her that the distinction if not dichotomic, and, in any case, both types are worthy of recognition as supraconstitutional rights in a democratic welfare state. It is true that, in contrast to civil and political rights, social rights relate primarily to the conditions of human existence on

the economic, social and cultural level. However, there is an unbreakable connection between the two, since without social rights, it will be difficult for a person to realize his civil rights. Without food, water, housing, health and education, it will be difficult for a person to imbue his civil rights with true content and meaning. It will be difficult for him to exhaust the right of choice, freedom of expression, freedom of vocation and right to property.”

Of course, we have been arguing this for many years, and this is the accepted position today around the world, but until now there was no such clear determination on the part of the Supreme Court. Accordingly, this is a significant step in terms of the protection of social rights, and it will be interesting to see the response of the Treasury and the impact of this determination on future rulings in the social sphere.

Turning now to the substance of the case: the abolition of the article in the law establishing that supplementary income is not to be paid to a person who owns or uses a car was made on the basis of the grounds that this provision does not meet the second test of proportionality, since the law establishes an absolute assumption that any person who has a vehicle is not entitled to the benefit. It would have been possible, instead, to use a means that is less injurious, such as a detailed examination of each claimant for the benefit, enabling them to prove that, despite the use of a vehicle, they do not have sufficient living means.

Here are some pearls of wisdom from Beinisch’s ruling relating to the right to a dignified existence, supplementary income, government policy and the role of the court:

“... The right to a minimum of dignified human existence lies at the heart and core of human dignity. Life in hunger, without shelter, and in a constant search for help, is not a dignified life. A minimum of dignified existence is a condition not only for maintaining and protecting human dignity, but also for the maximization of other human rights. There is nothing poetic about a life of poverty and want. Without minimum material conditions, a person does not have the capacity to create, to aspire, to make choices and to exercise liberties... Protection of the right is a leitmotiv in social legislation, including by means of providing national health insurance for all residents, free education, and the provision of public housing to the needy under certain conditions. The supplementary income benefit provided by law is only one of the mechanisms ensuring protection of the individual right to a dignified existence, to be sure, but it plays a central role in defending this right. As a benefit that replaces income, it is intended to enable those eligible to it to acquire what they need for the purpose of their basic and minimal livelihood. In the absence of other means, such as purchase vouchers or the direct supply of vital commodities, it has no replacement. Its vital and important character is so great that I am not sure that it does not also have a ramification on the protection and maintenance of other human rights, such as the right to life...”

The arrangement [denying the benefit to a person who has a vehicle] injures the right to dignified human existence, since it establishes a categorical rule that any person who owns or uses a vehicle shall not be eligible for supplementary income benefit; this regardless of the specific question as to whether that person has income in a scope ensuring the realization of his right to a minimum dignified human existence. Accordingly, it is clear that when supplementary income benefit is denied from a person who requires it for the purpose of minimum existence, the right to a dignified human existence is injured.

... It is important to clarify that in deciding that article 9A(B) of the law injures the right to a minimum dignified human existence, we were not required to define what constitutes that minimum dignified human existence; what it includes, or what it should include. The starting point of our discussion is that the state bears an obligation to determine the conditions for minimum existence, and to derive the welfare system accordingly... We therefore depart from the assumption that the totality of welfare arrangement provided in Israel provide the necessary 'basket' required for minimum dignified existence.

... The case before us would seem, too, to illustrate the inherent difficulty in applying sweeping arrangements in instances in which eligibility to any state assistance is denied. By their nature, sweeping arrangements fail to take into account the specific situation of each person. They are based on statistical tests and on an assumption applied on a uniform basis and without distinction. They entail an inherent problem due to their willingness to ignore the circumstances of concrete instances."

Another interesting comment was made by Justice Arbel, who noted that the Court is restricted to cases that are presented to it and, accordingly, judges only narrow aspects of social policy; yet this must be done in order to avoid leaving those who turn to the Court without a response:

The Court cannot retreat from a constitutional examination of injury to these rights in order to protect those who require it. The Court considers itself obliged to protect the rights of those who come within its gates, when they are injured by the existing legislation. The petitioners who joined together in the petition that is the subject of our discussion are impecunious individuals who face the burden of finding a livelihood and are situated on the lowest socioeconomic rung. They require the benefit as a last safety net against hunger and poverty. Because of some type of use they make of a vehicle, in most cases not their own, the benefit is denied to them. The outcome we have reached in our ruling is, first and foremost, a response to their cry and to others like them. We do not ignore the fact that there are other population sectors facing distress, apart from the petitioners before us, who are below the poverty line in an even lower position on the scale. However, it is the matter of the petitioners that came before us, and we must respond to it. The distress of one group cannot injure or overshadow the needs of another. The Court addresses only those matters that come before it; it does not choose or categorize them. For this reason, among others, the rule mentioned above regarding the restraint exercised by the Court in discussing the allocation of resources to the different strata in society was established. However, in cases in which it discovers a disproportionate injury to the social rights of a particular group, in a manner that undermines the minimal conditions of existence of that group, it must intervene, despite the restraint it generally imposes on itself. Such is the case before us.

Justice Hayout chose to include in her ruling a poem by Dahlia Rabikovitch:

A Declaration for the Future

When someone is hungry
Or unsafe,
He will make compromises,
He will do things

He never dreamt of in his life.

Suddenly, his back is bent
And what happened
That bent his back?
The loss of pride.
And his frozen smile
And his two filthy hands,
Or so they seem to him
From the touch of moist objects
From which he has no escape.

And he has no alternative,
Or so it seems to him,
And he will persevere for many years -
For an astonishing time.

And he will merely record his happenings,
Inside,
Year after year.