



22 April 2008

To:

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Re: The use of military service as a condition for acceptance to work at the National Insurance Institute

I am writing to demand that the criterion of military service as a prerequisite for acceptance to jobs at the National Insurance Institute (NII) be cancelled, as explained below:

1. Adalah has recently learned that the NII publishes notices of job vacancies that cite military or national service as one of the prerequisites the candidate must meet in order to be accepted for a job. For example, in a notice about job vacancies for collection clerks and customer service representatives at the Tel Aviv branch of the NII, military or national service was cited as one of the requirements for applying for these positions. Attached is a copy of the notice for these job vacancies.)
2. Imposing military or national service as a prerequisite for application and acceptance to jobs at the NII constitutes discrimination against Arab candidates who seek to submit their candidacy for such job openings because the Arab population is exempt from the obligation of military or national service. Therefore, making this a prerequisite means automatically disqualifying Arab candidates and barring their acceptance to job vacancies. The precondition of military or national service constitutes a barrier for the employment of Arab citizens of Israel in the NII.
3. Recently, the Haifa District Court ruled that setting the criterion of military service for the purpose of allocating dormitories [by Haifa University] is discriminatory against Arab students since they are exempt from military or national service and therefore they do not participate in it. This ruling stated:

“It seems to me that there is also substance in the arguments of the plaintiffs that the addition of the aforementioned criterion creates discrimination between Jewish students and students from the Arab sector. Military service is not open to all of the Arab citizens of the State of Israel, although some minorities do serve in the IDF ... It is known that most of the Arabs of Israel do not participate in military service. While quite a few Arabs of Israel can be found in national service, it seems the lion’s share of the Arab public does not participate in military service or in national service ...

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The practical result of adding the criterion of military service as a criterion for allocating dormitories is discrimination against the Arabs of Israel. The ‘effect’ of the criterion is a discriminatory effect (in the words of the Supreme Court in the *Qa’dan* case in H.C. 6698/95, *Qa’dan v. The Israel Land Administration*, PD 54(1) 258, 279).”

Civil Lawsuit (District Court – Haifa) 217/05, *Naamnih et al. v. University of Haifa*, PD 64(2), 652. See also H.C. 6698/95, *Qa’dan v. The Israel Land Administration*, PD 54(1) 258, 265.

4. This discrimination violates the Equal Opportunities in Employment Law (1988), which prohibits an employer – and the state is considered the same as any other employer for the purposes of this law (Article 17 of the law) – from discriminating between job seekers on the basis of their nationality, especially when there is no connection between the prerequisite of military service and the nature of the job. Article 2 of the law stipulates that:

“An employer will not discriminate between his employees or between job seekers on the basis of their gender, sexual preference, personal status, pregnancy, fertility treatments, in vitro fertilization treatments, parenthood, age, race, religion, nationality, country of origin, worldview, political party or reserve military service, their mobilization to reserve military service or anticipated reserve duty ... in each of the following:

- (1) **Acceptance to work**
- (2) Working conditions
- (3) Promotion at work
- (4) Training or professional education
- (5) Dismissal or severance pay
- (6) Benefits and payments given to an employee related to his retirement from a job.” [Emphasis added]

5. Moreover, the Equal Opportunities in Employment Law prohibits the publication of a job notice that contains discriminatory text as defined in the above-cited directives of Article 2. Article 8 of the law states:

“(A) An employer or someone in need of an employee will not publish a notice of a job offer or professional training unless the job offer is expressed in both feminine and masculine language, whether singular or plural, **and no such notice will be published if it contains discrimination according to the directives of Article 2.**” [Emphasis added]

6. It should be emphasized that it is not only prohibited for the NII to discriminate between job seekers on the basis of nationality by virtue of the directives of the Equal Opportunities in Employment Law; rather, the NII is also obligated to operate according to the directives of administrative law. Administrative law requires the state authorities to act, *inter alia*, in accordance with the principle of equality, which prohibits discrimination, including on the basis of nationality. (For the prohibition on violating the principle of equality, see: H.C. 6698/95, *Qa’dan v. The Israel Land Administration*, PD 54(1) 258, 265; H.C. 392/72, *Berger v. Regional Planning and Construction Board*, Haifa District PD 27(2) 764, 770; H.C. 953/87, *Poraz v. The Mayor of Tel Aviv-Jaffa*, PD 42(2) 309, 334; H.C. 104/87, *Nevo v. The National Labor*

Court, 44(4) 749, 760; H.C. 11163/03, *The High Follow-Up Committee for Arab Citizens in Israel v. The Prime Minister of Israel, et al.*, Takdin-Elyon 2006(1), 2562).

7. The state itself also regards the use of the criterion of military service as the clear and blatant use of illegal discrimination. Thus, for instance, the state (the Ministry of Social Affairs) filed an indictment against a company that published a job advertisement that included military services as a precondition for acceptance to the advertised job. The Tel Aviv Regional Labor Court convicted the advertising firm, Tafkid Plus Ltd., of violating articles 2, 8, 15 and 16 of the Equal Opportunities in Employment Law. In this case, Judge Virth-Livne ruled as follows:

“... [I]n and of itself, the demand for military or national service constitutes indirect discrimination in the sense that it discriminates on the basis of nationality and religion, which is a violation of Article 2(A). Thus, the inclusion of this demand is an extraneous condition. In addition, the implementation of this condition would have the consequence of harming equality between Jews and Arabs and between secular and ultra-Orthodox Jews in the employment market.”

See Criminal Case 1038/2003, (Tel Aviv-Jaffa Regional Labor Court) *The State of Israel – The Ministry of Labor and Social Welfare v. Tafkid Plus Ltd.* (ruling delivered 12 June 2003, not yet published).

8. Moreover, barring those who did not serve in the army from job openings at the NII constitutes a violation of the constitutional right to freedom of occupation, which is anchored in the Basic Law: Freedom of Occupation – 1994, of suitable candidates who did not serve in the army. It also restricts their freedom to choose an occupation that appeals to them. In the *Clal* ruling, the Supreme Court addressed the violation of the freedom of occupation that occurs when a person’s freedom to choose the occupation that appeals to him is limited. The court stated that:

“The right to freedom of occupation is based on a person’s right to choose for himself the occupation that appeals to him, and this is his free choice. This freedom is founded upon the principle of equality between him and his peers; he should not be deprived of what another person is granted and he should not be restricted where another person is unrestricted.”

See H.C. 726/94, *Clal Insurance Company Ltd. v. The Minister of Finance*, PD 48(5) 441, 471.

9. In light of the above, we ask you to instruct the NII to cancel the use of the criterion of military or national service as a precondition for accepting candidates to vacant jobs and positions. We also ask you to issue directives to governmental authorities in general to refrain from using the criterion of military or national service as a precondition for accepting candidates for vacant jobs and positions.

I would appreciate your substantive response.

Respectfully,

Sawsan Zaher, Advocate