

On Institutional Discrimination in the Implementation of Israeli Supreme Court Decisions

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The duty to comply with judgments issued by the judiciary is based on the principle of the rule of law and is obligatory. The basic rationale behind the application of this principle of the rule of law is that all are equal before the law. In Israel, however, this is not the case. To the extent that court judgments concern the rights of Arab citizens of the state, implementation is scarcely, if ever achieved. In these cases, the State uses various excuses, citing mainly administrative and budgetary difficulties, necessitating a delay in implementing the judgments. However, a review of the State's reasons shows that its failure to implement these judgments constitutes a further instance of institutional discrimination against Arab citizens, thus reinforcing their already inferior status in the judicial, political, civil, social and economic systems.

In this brief essay, I will first examine two judgments delivered by the Supreme Court on constitutional issues in the field of education concerning Arab citizens of Israel. These two cases were pending for many years before the Supreme Court before judgments were eventually delivered. These decisions both demanded that the State eliminate the severe and illegitimate discrimination against its Arab citizens, each in its respective field by 1 September 2009. These judgments, however, join the many preceding favorable decisions that appear on paper but have not been implemented by the State.

The judgment in the case of the **High Follow-up Committee for the Arab Citizens in Israel v. the Prime Minister of Israel** was issued in February 2006, after it had been pending before the Supreme Court for about eight years.² The petition challenged the constitutionality of specific government decision (No. 2288), which classified certain towns and villages as areas of 'national priority'. Towns and villages classified as such were entitled to receive enormous financial benefits for education, however, among the 553 towns, only 4 were Arab. The judgment, issued unanimously by seven justices, stipulated that the government decision is unlawful and should be voided, for two reasons. Firstly, the decision severely discriminates against Arab towns and villages, containing constitutional flaws so serious that the court found no reason for the decision to remain in place and

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² HCJ 11163/03, **The High Follow-up Committee for Arab Citizens of Israel v. the Prime Minister of Israel** (decision delivered 27 February 2006).

called for its annulment. Secondly, the decision constitutes a deviation from the residual authority granted to the government: regulation of issues having such broad budgetary implications should have been formalized and established in law by legislation enacted by the Knesset. Despite the fact that the court declared the government's decision to be void, the court suspended the implementation of the judgment for a whole year, i.e. until 26 February 2007, thus giving the State reasonable and sufficient time to get organized and to put the judgment into effect. However, despite the court's judgment, no new list classifying towns and villages as areas of national priority was drawn up. The State's reasons for this inaction were based on budgetary difficulties and its refusal to cut the resources provided to Jewish towns based on the government's decision, and to transfer some of the benefits to Arab towns and villages. Doing so, the State argued, would create discrimination against those Jewish towns which would be forced to give up the budget allocations they had been receiving.

To date, about three and a half years after the judgment was delivered, not only has the state failed to implement the ruling, with no new list of towns and villages defined as "areas of national priority" issued, but also the Law of National Priority Areas recently enacted as part of the Economic Arrangements Law for 2009-2010³ does not apply to Government decisions passed prior to its enactment, including Government decision, No. 2288. According to this new law, Government decision No. 2288 will only expire two and a half years after the law takes effect, i.e. in January 2012. In addition, a perusal of the wording of the National Priority Areas Law reveals a vagueness, which is not characteristic of other laws: this law grants the Government sweeping discretion to classify towns and villages as national priority areas, thereby entitling them to benefits in various fields. The law does not provide a definition for "national priority area", and it lacks a list of towns and areas classified as "national priority". The law provides a list of vague "criteria" but does not obligate the Government to make use of it. The law does not stipulate clear, specific and unequivocal criteria for the exercise of the sweeping discretion granted to the Government and thus authorizes the Government to distribute benefits to towns and villages in a range of fields as it pleases. In effect, the law permits the Government to continue discriminating against Arab towns and villages with respect to budgets and the distribution of benefits and bypasses the Supreme Court's landmark decision in this case.

³ See Chapter 26 (paragraphs 150-162) of the Economic Arrangements Law (Legislative Amendments to Implement the Economic Plan for the years 2009 and 2010) 5769 - 2009, headed "National Priority Areas".

In another judgment, **Abu Sbeileh v. the Ministry of Education**,⁴ the Supreme Court considered a petition filed by Adalah on behalf of the parents of students and residents of the Arab Bedouin of the newly recognized village of Abu Tlul in the Naqab (Negev) to establish a high school. In the absence of a high school in the village, the students are forced to travel long distances in order to reach high schools in other villages, such as those operating in Segev Shalom and Ar'ara in the Naqab. The lack of a high school in the region of Abu Tlul contributes to extremely high drop-out rates, amounting to 77%. The majority of students who drop out are girls who, due to social constraints, are forbidden to travel in buses with boys outside the village and are thus forced to drop out without completing their high school studies.

The Supreme Court's judgment, delivered in January 2007, confirmed the state's commitment to open the school at the beginning of the 2009-2010 school year, i.e. 1 September 2009. To date, however, this commitment has not been fulfilled. The State's reason for the delay in opening the school is that the town planning process for the village of Abu Tlul, which was recognized by the State back in 2005, has not yet been completed. In reality, completion of the planning process for the village should not interfere with the opening of the school, since there are other alternatives enabling it to be opened. For instance, it is possible to rely on Regional Outline Plan 14/4 (Change No. 40), enabling the building of mobile and temporary structures for the provision of vital services, including in the field of education.

The above two cases can be added to a long list of judgments concerning socio-economic rights, rendered by the Supreme Court, that have never been implemented by the State. Just a few examples of such Supreme Court decisions concern: the allocation of budgets for Christian and Muslim cemeteries based on a percentage-of-the-population criterion, where the judgment was never implemented;⁵ the gradual allocation from the education budget for the purpose of implementing the "Shahar" educational enrichment programs in the Arab towns and villages within five years, which has not yet been put into practice;⁶ the Ofek program to deal with high unemployment rates, which was actually cancelled by the government after the court ruled that it discriminated against Arab towns and villages;⁷ the urban neighborhood rehabilitation ("Shikum Shkhonot") program that resulted in a significant reduction of number of localities where the program operates rather than it

⁴ HCJ 2848/05, **Abu Sbeileh v. the Ministry of Education** (decision issued on 23 January 2007).

⁵ HCJ 1113/99, **Adalah v. Minister for Religious Affairs**, PD 54(2) 164 (2000).

⁶ HCJ 2814/97, **The Follow-up Committee for Arab Education v. the Ministry of Education and Culture**, PD 54(3) 233 (2000).

⁷ HCJ 6488/02, **The National Committee of Arab Mayors v. the Committee of Directors General for Specific Handling of Settlements** (decision delivered 2 June 2004).

being expanded to Arab towns;⁸ the need to allocate additional positions to meet quotas for the employment of drop-out counselors for schools in the Arab Bedouin villages in the Naqab, which never actually happened;⁹ the employment of educational psychologists for schools in the recognized villages in the Naqab, which also never occurred;¹⁰ and the State's promise to provide an access road to the elementary school in the Arab Bedouin village Alfor'aa in the Naqab, which never resulted in a paved road to the school,¹¹ etc.

Failure to implement judgments concerning the social and economic rights of Arab citizens of Israel has nothing to do with administrative and budgetary difficulties. There are many judgments concerning the rights of individuals in which implementation requires no renewed budgetary distribution whatsoever, such as the judgment concerning the case of **Adel Ka'adan**.¹² In this case, the Jewish Agency, which controlled the land and established the Jewish town of Katzir, refused to allocate a plot of land to the Ka'adan family, who are Arab citizens of Israel. The court accepted the petition and ruled that a plot of land must be allocated the Ka'adan family in the town of Katzir. Despite this, it took the State ten years to implement this judgment, and only after the Ka'adan family had filed a number of applications in the Supreme Court to obligate the State to implement it.

Failure to comply with Supreme Court judgments concerning the rights of Arab citizens is deliberate and systematic. The message to be ascertained from these deliberate state actions is that the principle of the rule of law is suspended whenever the area under discussion in the judgment pertains to Arab citizens of Israel, since according to the State's approach Arab citizens are not equal before the law. Indeed, the above-mentioned judgments are in the field of civil equality of Arab citizens and have nothing to do with ideological matters that might raise controversy regarding the definition of Israel as a Jewish State. However, in the present reality, it is not possible to separate the issue of civil equality of Arab citizens from their national equality, nor is it possible to separate the failure to implement judgments from the State's viewpoint which is that Arab citizens constitute a threat to national security. This perception is strongly supported in a judgment recently handed down by the Supreme Court concerning the constitutionality of the Citizenship and Entry into Israel Law (Temporary Order) - 2003. The law forbids family unification between Palestinian Arab citizens [of the State of Israel] and Palestinians living in the Occupied Palestinian Territory (OPT), due to their

⁸ HCJ 727/00, **The National Committee of Arab Mayors v. The Minister of Housing and Construction**, PD 55(2) 79 (2001).

⁹ HCJ 6671/03, **Abu Ganem v. the Ministry of Education**, PD 59(5) 577 (2005).

¹⁰ HCJ 4177/04, **Abu Obeid v. the Ministry of Education** (decision delivered 21 June 2005).

¹¹ HCJ 6773/05, **Gevou'a v. the Ministry of Education** (decision delivered 3 January 2006).

¹² HCJ 6698/95, **Ka'adan v. the Israel Land Administration**, PD 54(1) 258 (2000).

being a threat to the existence of the State. The rationale underlying this judgment relates to the assertion that family unification constitutes a “demographic threat”. This statement also reflects the viewpoint of the various governmental authorities vis-à-vis Arab citizens. Just as the State legitimizes discrimination against Arab citizens on the national level, such as the inferior status afforded to the Arabic language, the failure to recognize the Palestinian culture and history, attempting to forbid all mention of the Nakba, as well as discrimination with respect to the allocation of land based on national affiliation, it also justifies discrimination at the civil level.