

Comments on the Unreasonableness of the Attorney General's "Reasonable Discrimination Policy"

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In this short article, I will discuss the legal culture of the state's agents, who represent the official positions of Israel in cases regarding discrimination against the Arab national minority. This legal culture is manifested in the rhetoric and the legal arguments advanced by the Attorney General and the state's lawyers, as his agents, before many different judicial fora, first and foremost the Supreme Court. This extremely influential rhetoric may be characterized as thorough in its attempts to be consistent with the internal and external discourse of the authorities. Therefore, an examination of the Attorney General's legal positions is essential to any analysis of the authorities' official positions regarding discrimination against the national minority. This article does not discuss judicial policy. This subject requires a separate discussion.

The literature discussing non-dominant groups and minorities indicates that state policy regarding equality and discrimination can be divided into three different categories: (1) "Direct and legitimate discrimination", in which discrimination is legitimized and even required by the structure of the constitutional or legal regime. Examples include the official policy of segregation in the United States, the seizure of land belonging to indigenous peoples, and the apartheid regime in South Africa; (2) "Anti-discrimination", in which discrimination on the basis of race, ethnicity, religion or national origin is prohibited. Here, examples include the famous US Supreme Court case of *Brown v. Board of Education*,² as well as the Civil Rights Acts passed by the US Congress in the 1960s; and (3) "Collective equality", in which states grant special rights to non-dominant groups due to their race, ethnicity, religion or national origin. Examples include legislation that affords official status to the native languages of ethnic minorities, or cultural or territorial autonomy (see Canada, Belgium, and South Africa).

Two notes must be raised in this regard. First, the categories delineated above are not clear-cut. For example, some states simultaneously pursue "anti-discrimination" policies in certain areas and "collective equality" policies in others. Therefore, one can find interaction between the categories within the same state. Second, in some states where "anti-discrimination" rights are constitutionally protected, there is often discrimination in practice. A good example of this is the lack of implementation of the principles set forth in *Brown*.³

In order to examine the official state position regarding discrimination based on national belonging, I chose to analyze the legal rhetoric and positions put forward by the Attorney General before the Supreme Court in cases challenging discriminatory legislation. I focus on these kinds of cases because, in administrative cases, the three parties – the petitioners, the Attorney General, and the Supreme Court – have more legal space to resolve, settle or change a governmental decision via the Court's intervention. This space is not available in cases involving legislation, where the petitioners and the Attorney General expect the Supreme Court to deliver a final decision on the merits of the case. Two petitions brought before the Supreme

¹ The General Director of Adalah: The Legal Center for Arab Minority Rights in Israel.

² *Brown v. Board of Education*, 347 U.S. 483 (1954).

³ Eric Foner and Randall Kennedy, "Brown at 50," *The Nation*, 15 April 2004.

Court in this regard were legal challenges to: (1) a recent amendment to the citizenship law,⁴ which prohibited family unification; and (2) a new amendment to the national insurance law,⁵ which concerned the subject of state-sponsored child allowances.

The Nationality and Entry to Israel Law (Temporary Order) - 2003 prevents Palestinian residents of the Occupied Territories from marrying Israeli citizens or securing any residency or citizenship status in Israel. This law prohibits the possibility of family unification between spouses, which in the vast majority of cases involve the union of a Palestinian Arab citizen of Israel and a resident of the Occupied Territories. According to this law, such families will not be able to exist in Israel. It should be noted that this law does not apply to Jewish settlers in the Occupied Territories. The petitioners argued that this law is unconstitutional because it denies the right to family life in Israel and severely violates the personal liberty and privacy of citizens. The petitioners also argued that the law is racist and discriminatory because it denies constitutional rights on the basis of ethnicity.

In response to the petition, the Attorney General argued that the purpose of the legislation is to prevent the entry of all Palestinians into Israel because Palestinian society, as such, supports the attacks against Israeli civilians.⁶ The opening statements in the Attorney General's response note that, "the evaluation of the security authorities is that there is an essential security need to prevent, for the time being, the entry of any Palestinians into Israel **whoever they are**" [emphasis added].⁷ The Attorney General further stated that the prior arrangement, whereby the Interior Ministry would perform a case-by-case, in-depth inquiry into each Palestinian spouse seeking family unification, was not effective, since it failed to account for the risk that every Palestinian spouse may join the "cycle of terror" at any given moment because of his/her belonging to Palestinian society:

The involvement of the civilian population in the armed conflict, whether by taking an active role in the conflict or by substantially supporting it, creates the need to put limits on the entry (especially entry and settling)... the risk to the security of the state of Israel would be present and could escalate at any point without prior notice, since those who seek family unification in Israel are living in areas where the terrorist organizations are active, without any interference from the state, as do the relatives of the applicants... the past does not point to the future – the fact that a person was permitted to enter Israel in the past and/or there is no current concrete security information about him, cannot in itself predict that there shall be no **future risk** arising from him to the security of the state. This could be because of his support for the armed struggle, that is run today by the Palestinian side, or because he himself is a part of it, or because he cannot stand before the terror organizations' threat against him or his family who live in the territories.⁸

⁴ (High Court) H.C. 7052/03, *Adalah, et. al. v. The Minister of Interior, et. al.* (pending). The petition was submitted on 3 August 2003 and was heard by a panel of 13 Supreme Court justices. The petition challenged the "Nationality and Entry into Israel Law (Temporary Order)" – 2003, which was passed by the Knesset on 31 July 2003. All petitions, state responses and Supreme Court decisions noted throughout this text are in Hebrew.

⁵ H.C. 4822/02, *The National Committee of Arab Mayors in Israel v. National Insurance Institute* (unpublished decision). The petition was submitted on 6 June 2002 and was heard by a panel of 13 Supreme Court justices. The petition challenged Article 7(4) of the Emergency Economic Plan Law - 2002, which was passed by the Knesset on 5 June 2002.

⁶ See the final arguments submitted by the Attorney General to the Supreme Court, December 2003.

⁷ Id. at paragraph 4.

⁸ Id. at paragraphs 9-16.

The Attorney General did not submit any evidence before the Court to support his argument such as an indictment, a court decision, or reports of police investigations against any individuals who sought family unification. Nor did the Attorney General provide an affidavit of any official, academic research, or any statistics to support his argument. This failure was not an oversight; in fact, there is no evidence available to support the state's position. The Attorney General's response was based almost exclusively on the most extreme political rhetoric, both in its content as well as its style. According to this rhetoric, all of the Palestinian people, men and women alike, seek and support the killing of Israelis. Adalah's response submitted to the Supreme Court emphasized that:

The respondents are actually presenting the personality of the Palestinian, every Palestinian, as a potential terrorist. This generalization relates to an entire people – to a group which numbers more than two million, to a people, which like all people, has a culture, tradition, history, poor people, rich people, women, men, educated, ignorant, intellectuals, academics, social activists, institutions, politicians, human rights activists, and those who support violence. Therefore, adopting and legitimizing the narrative that is presented by the Respondents would threaten the most basic principles of democracy.⁹

The Attorney General's narrative is not far from the concepts previously used by regimes professing racial supremacy and contending that national or racial groups possessed certain genetic features. Therefore, it is not surprising that it was necessary to draw upon the legal history of such regimes in order to counter the Attorney General's arguments. Case law from both the apartheid years in South Africa and the official policy of segregation in the US provides clear legal examples.

In the *Komani* case (1980),¹⁰ one of the most important court rulings of the apartheid era, the arguments of the petitioner and of the state were incredibly similar to those argued in the family unification case. *Komani* related to the infamous "pass laws", which limited the right of black people to reside in urban areas. Mr. Komani possessed a permit allowing him to live in Cape Town, as he had worked there for many years. The case involved his request for a permit to allow his wife to reside with him. The Legal Resources Centre,¹¹ a legal organization which defended the rights of blacks, represented Mr. Komani and argued that he had a right to family life:

The implementation of the regulation interferes radically with the right of persons...to enjoy a normal married life and to live together with their dependents as a family.¹²

The petitioners in the family unification case raised a similar argument before the Supreme Court of Israel. In this case, the Attorney General responded that the amendment to the citizenship law does not violate family life, since the spouses can live together anywhere but in Israel, and, therefore, the limitation or the restriction on the right is proportionate and reasonable. This response was identical to the argument used by South Africa in *Komani*:

⁹ See closing arguments submitted by the petitioners to the Supreme Court, December 2003.

¹⁰ *Komani No v Bantu Affairs Administration Board*, Peninsula Area 1980 (4) SA 448 (A).

¹¹ See <http://www.lrc.org.za>.

¹² See Richard L. Abel, *Politics by Other Means: Law in the Struggle Against Apartheid, 1980-1994* (New York: Routledge, 1995) at 26-27.

Submitted that regulations restricting the right of residence at a particular place within a prescribed area cannot be construed as being unreasonable...¹³

The Appellate Court of South Africa unanimously accepted the Komani petition. The Court held that the restriction was unreasonable and that the government had exceeded its power. The Court recognized the right of Mrs. Komani to live with her husband.

The US Supreme Court case of *Loving v. Virginia*¹⁴, which was decided in the 1960s, related to the criminal law of the State of Virginia, which prohibited mixed marriages between blacks and whites within its territory. The Lovings, a mixed couple, had to move to Washington, D.C. in order to live together as a family. The state argued that the Lovings could live together – just not in Virginia – and that the law was not discriminatory because it affected equally both whites and blacks. This argument is similar to the position adopted by the Attorney General in the family unification case, in which he argued that the law does not only effect Arab citizens of Israel but also impacts Jewish citizens, and is therefore not discriminatory. In *Loving*, the US Supreme Court accepted the petition, invalidated the racist law, and exposed, among other things, the racial aspect of the equality arguments advanced by the state:

Thus, the State contends that, because its miscegenation statutes punish equally both the white and the Negro participants in an interracial marriage, these statutes, despite their reliance on racial classifications, do not constitute an invidious discrimination based upon race... There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race. The statutes proscribe generally accepted conduct if engaged in by members of different races.¹⁵

The last hearing of the family unification case was held before a panel of 13 Supreme Court Justices. The panel issued an *order nisi* (order to show cause), but has not yet delivered their final judgment.

As mentioned previously, the other case that reached the Supreme Court related to the constitutionality of Article 7(4) of the Emergency Economic Plan Law - 2002.¹⁶ This Article provided that families in which at least one member (be it a parent, son, or daughter) had performed military or national service, at any time, would receive a child allowance from the state that was 20% greater than families in which no members had completed military or national service. Adalah argued that this Article discriminated between children based on their national belonging, as Arab citizens of Israel are exempt from military or national service. In addition, the petitioners argued that the purpose of the child allowance is a social one, for the benefit of the child, which has nothing to do with military service. Therefore, any use of this criterion is illegal and against the purpose of affording this benefit. Adalah also argued that the Absorption of Discharged Soldiers Law - 1994 enumerates all the social and economic benefits to which former soldiers are entitled, and therefore that there is no justification to add to this list through the enactment of other laws. In this regard, the petitioners explained that until 1994, there was discrimination between Arab and Jewish children *vis-à-vis* this benefit because of the use of the military service criterion (this did not apply to *yeshiva* students). In 1994, the Knesset enacted the Absorption of Discharged Soldiers Law. Arab MKs also supported the enactment of

¹³ Id.

¹⁴ *Loving v. Virginia*, 388 US 1 (1967).

¹⁵ Id. at 3-5.

¹⁶ See *supra* note 5.

this law in order to limit the use of the military service criterion beyond what was explicitly enumerated in this legislation.¹⁷

The main argument of the Attorney General was that, even if this legislation violates the right of equality, the violation is not extremely unreasonable; rather, it is reasonable and proportionate because the 20% gap is not excessive and is supported by moral considerations favoring one group over the other. The Attorney General's response to the petition opens by stating that: "even if we assume for the sake of argument that there is a violation of the constitutional right to equality, these articles do not violate the limitation clause of the Basic Law: Human Dignity and Liberty".¹⁸ Later in the same document, the Attorney General argued that, "the position of the Respondent is that there is a place for doubt that the principle of equality was violated,"¹⁹ and therefore, "there is nothing wrong with this legislative decision which aims to encourage those that meet the "entitling service" criterion to be granted more rights than other groups. The Respondent will argue that the Emergency Economic Plan Law, which is the subject of this petition, is a reasonable preference for the group who satisfy the "entitling service" criterion, based on the fact that it is proportionate, since all the other groups will continue to receive the basic allowance, which is the substance of the benefit. Those who meet the criterion will be entitled to receive an additional amount, which is proportionate."²⁰

According to the Attorney General's position, discrimination between different groups is permitted when the discrimination is not extremely unreasonable and is supported by "moral considerations." The "moral considerations", as stated in the Attorney General's response, are "those which aim to express the state's appreciation to the parents for their services."²¹

However, when these "moral considerations" do not have any rational connection to the goal of the benefit and when they are indifferent to the result, the state can then justify any violation of human rights solely by relying on them. According to the Attorney General's argument, preference could be given to those who served in the military in the distant past, because they have contributed to the state's security. Under this logic, it does not matter if the same individual is later convicted for a security crime. Similarly, this rationale could easily justify discrimination against women. Such an argument might state that, since men are exposed to more life threatening situations during their military service than are women, men should receive greater economic benefits in all fields.

After the Supreme Court hearings ended but before a final ruling was given, the government cancelled and changed many provisions of the Emergency Economic Plan Law, *inter alia*, Article 7(4). As a result, the Supreme Court subsequently ruled that there was no longer a need to deliver a decision on the petition.²²

What, then, are the commonalities and differences in the Attorney General's position regarding the cases of family unification and child allowances? Is it possible to identify a common policy of the Attorney General in cases relating to discrimination on the basis of national belonging?

From the government's perspective as well as that of the Israeli-Zionist consensus, the family unification case relates to a Zionist national subject – "demography" – or in other words the

¹⁷ See Amnon Rubinstein, *The Constitutional Law of Israel* (Tel Aviv: Shoken, 1996) at 301-302 (Hebrew).

¹⁸ See paragraph 3 of the Attorney General's response dated 13 June 2002.

¹⁹ Id. at paragraph 32.

²⁰ Id. at paragraph 21.

²¹ Id. at paragraph 16.

²² The Supreme Court delivered a decision on 31 July 2003.

need to maintain a Jewish majority in Israel. In his response to the petition before the Supreme Court, the Attorney General did not explicitly mention this reason for the legislation's passage; however, this reason dominated the discussions in the Knesset as well as Israeli public debate. The child allowances case differs from the family unification case in that the former falls within the area of socio-economic legislation. In both of these cases, the Attorney General did not give any weight to the discriminatory effect of the legislation on the Arab national minority. The difference between the two cases relates to the rhetoric but not to the basic principle or concept. The rhetoric and the reasoning in the family unification case were more radical than in the child allowances case. In the former, the liberty of the Arab citizen as an Arab Palestinian was denied solely on the basis of his national belonging. However, in the child allowances case, the Attorney General's reasoning relied on giving "preferences" to the Jewish citizen solely on the basis of his national belonging. Thus, in his response the Attorney General focused exclusively on the benefits awarded to Jewish citizens, whereas the issues relating to Arab citizens of Israel were absent from his narrative. Therefore, in both cases, the Attorney General's rationale is based on the principle of supremacy of one ethnic group over another.

Both cases rely on a strange concept, a concept that I call the policy of "reasonable discrimination". This concept has no place in any state that respects the principle of equality. The origin of this concept is that discrimination on the basis of national belonging is legitimate, part of the government's policy, and part of the constitutional structure of the state. Based on this policy, in order to cancel discriminatory decisions, it is not enough to prove that the discrimination exists. **The petitioners must prove that this discrimination is "extremely unreasonable", based on the "moral considerations" of the Attorney General.** This explains the logic of the Attorney General's argument in the child allowances case:

The petitioners argue that the amendment violated their right to equality since it gives preference to those with "entitling service" over them. Even if we accept their arguments referring to a violation of equality, this is not a violation of equality that constitutes a violation of the petitioners' dignity in a humiliating way.²³

A review of the Attorney General's responses in such cases shows that the "reasonable discrimination" policy is the predominant policy of the Attorney General. As such, it directs and instructs the activities of the state's lawyers before governmental offices. The policy of "reasonable discrimination," as I will demonstrate, is deeply rooted in Israeli legal culture, and is the rationale that makes the rhetoric used in the family unification case possible. If this legal culture were not so entrenched, the Attorney General could not have set forth such an extremist narrative in this case, or in other cases relating to the national Zionist consensus in Israel. In those cases, the Attorney General relies on the political views of the consensus, allowing him to employ this rhetoric.

How, then, does the "reasonable discrimination" policy work? In some cases, the Attorney General tries to persuade government officials to make minimal changes to their decisions, which are consistent with this "reasonable discrimination" policy. For example, in a petition challenging an Israel Lands Administration decision to distribute land for housing by offering a 90% discount to former soldiers who wish to build a house in one of 298 named Jewish settlements in Israel, not a single Arab town or village was included in the list. When Adalah challenged this decision, the Attorney General justified the use of the military service criterion in affording this benefit, but was ready, as a voluntary gesture, to add the smallest 14 Arab

²³ See supra note 18.

villages in the country to the list.²⁴ In a petition regarding the lack of 46 counselors for students at risk of dropping out of school in the seven Arab Bedouin towns in the Naqab (Negev), the Attorney General informed the Supreme Court that, in order to close the gap, the Respondents would add four new counselors.²⁵ In another case, the Interior Ministry established committees to deal with a proposed merger of municipalities. While 37% of the proposed mergers involved Arab municipalities, only one Arab member out of 37 members was appointed to the committees. Here, the Attorney General informed the Supreme Court that the Ministry decided to add four Arab members to the committees; there should have been fourteen. The Supreme Court accepted the Attorney General's position.²⁶

The function of time is also an effective instrument for the Attorney General to implement the policy of "reasonable discrimination." In a petition regarding the government's failure to implement fair representation laws regarding "women" and "Arabs" on the board of directors of governmental companies, Adalah showed that only five Arab women as compared with 242 Jewish women held seats on these boards. It was enough for the Attorney General to argue that the government will seek to increase the number of Arab women board members in the future. Based on the Attorney General's representations, the Supreme Court dismissed the petition.²⁷ In another case regarding the implementation of Shahar programs (enrichment programs offered by the Education Ministry to socio-economically weak communities), which for more than 20 years only applied to Jewish schools, the Attorney General committed to gradually extend the program to Arab schools over a five-year period. Adalah asked for the immediate implementation of the Shahar programs in Arab schools because of the existence of historical discrimination. The Attorney General argued that, as the gaps were created over a period of more than 20 years, it would be impossible to immediately apply the program equally to all students. Here, based on the Attorney General's logic, historical discrimination justified its own continuity. The Supreme Court accepted the Attorney General's position.²⁸

Sometimes the policy of "reasonable discrimination" appears, as argued above, in a more extreme rhetoric in national cases supported by the Jewish-Zionist consensus. A pertinent example is the 2003 disqualification cases, which sought to prohibit the National Democratic Assembly (NDA)-Balad, MK Azmi Bishara, and MK Ahmad Tibi from running in the elections for the 16th Knesset.²⁹ A panel of 11 Supreme Court justices heard these cases. The Attorney General sought to disqualify the NDA party and MK Azmi Bishara, based on the following argument, as brought by his representative, Advocate Talia Sason. Advocate Sason opened her speech before the Supreme Court by explaining that the principle of "a state for all of its citizens" is a central and dominant part of the NDA's activities, and the party's main slogan, and that its leaders do not advocate mere equality, but rather absolute equality. According to Sason, this concept denies the existence of Israel as a Jewish and democratic state.³⁰ This signifies that,

²⁴ H.C. 9289/03, *Adalah, et. al. v. Israel Lands Administration, et. al.* (pending). The petition was submitted on 19 October 2003 and sought the cancellation of ILA Decision No. 952.

²⁵ H.C. 6671/03, *Munjid Abu Ghanem, et. al. v. Ministry of Education* (pending). The petition was submitted on 22 July 2003.

²⁶ H.C. 4110/03, *The National Committee of Arab Mayors in Israel v. Minister of Interior* (unpublished decision delivered on 25 May 2003).

²⁷ H.C. 10026/01, *Adalah v. The Prime Minister of Israel, et. al.*, P.D. 57 (3) 31 (decision delivered on 2 April 2003).

²⁸ H.C. 2814/97, *The Follow-up Committee for Arab Education in Israel, et. al. v. Ministry of Education, et. al.*, P.D. 54 (3) 233 (decision delivered on 20 July 2000).

²⁹ (Election Confirmation) E.C. 11280/02, *The Central Elections Committee for the 16th Knesset v. MK Ahmad Tibi, et. al.* P.D. 57 (4) 1 (decision delivered on 15 May 2003).

³⁰ A similar statement was made by then-Attorney General Elyakim Rubinstein regarding the equality of the Arabs in Israel. In his article, Rubinstein claims that, "the Israeli Arabs are full citizens of the state as a fundamental right

based on the Attorney General's concept, it is not enough that the official policy rejects the acceptance of the principle of absolute equality between Arab and Jewish citizens in Israel, but, for an Arab citizen to be legitimately elected, he has to accept "a little bit of discrimination". In fact, the Attorney General asked the Supreme Court to be the first Supreme Court in the world to agree to disqualify a political party which has a classical liberal platform. The Supreme Court, in a majority decision of 7-4, rejected the Attorney General's request.

In 1956, South Africa filed indictments against 156 leaders and activists, including Nelson Mandela of the African National Congress (ANC), for the offense of high treason, a capital crime.³¹ It was argued in the indictments, *inter alia*, that the activists were carrying out subversive acts against the legitimate existence of the state. One of the main subjects of the indictments was the Freedom Charter, adopted by a multi-racial "Congress of the People" in 1955, which supported the concept of "a state for all of its races and nationalities". After almost five years of continuous hearings, the court acquitted all of the accused and determined that, although the ANC and its partners seek to change the character of the state and reject the current regime, the Freedom Charter and the group's activities do not prove that they advocated the violent overthrow of the regime. It should be mentioned that, despite the racist, segregationist policy of the apartheid regime, the Freedom Charter was not outlawed. As is well known, the Freedom Charter became the foundation of the new South African Constitution.³²

The Attorney General represents and implements the official policy of the Israeli authorities. I believe that, whilst some of the state's lawyers do not always concur with this policy and may sometimes reject it personally, they nevertheless represent it before the Supreme Court, with full commitment. Through this policy, the Attorney General thus defends a law which grants 20% more benefits to Jewish than to Arab citizens, based on the argument that the gap is reasonable. He might, however, reject a gap of 40%. The Attorney General refused to allow family unification in Israel in cases where one of the spouses is a Palestinian from the Occupied Territories, contending that it is a reasonable limitation since the couple can live outside of Israel. The same policy justifies the refusal to allow Arab citizens of Israel to purchase land in Jewish communities, because it is a "reasonable" limitation, on the grounds that Israel is defined as a Jewish state, and that this decision is supported by the principle of "separate but equal".³³ If this is the case, the Attorney General might defend a future decision to prohibit Arab citizens of Israel from entering buses or restaurants in Jewish cities because it is a "reasonable" restriction; Arabs can use taxis and eat in restaurants owned by Arabs. This logic could also legitimize a decision prohibiting Arabs from living in Jewish cities based on the argument that Jewish citizens are the group facing discrimination, as Arab citizens can live in mixed-cities and in Arab villages. Therefore, this decision is not just reasonable, but the principle of equality between the two populations can be mobilized in its defense.

and not as a privilege. They are entitled to equality. We are obliged to work for it. However, at the same time we have to struggle against every attempt to remove from Israel its character as a Jewish and democratic state. Whoever calls to turn the character of the state into "the state for all its citizens" intends to remove the Jewish identity of the state. Our duty is to struggle strongly against that without compromise...we are continuing to cope with it day by day also when elected representatives like Azmi Bishara, who challenge the question of whether by his deed he does not remove the grounds of his party's validity." See Elyakim Rubinstein, "Government Advisory Opinion and the Rule of Law: Assignments and Complication in a Jewish, Democratic and Polarized State," 17 (1) *Mahkare Mishpat* 2002 at 7,14 (Hebrew).

³¹ "The Treason Trial", see <http://www.anc.org.za/ancdocs/history/trials>.

³² See R. Abel, *supra* note 12, at 3.

³³ See the Attorney General's response to the petition as cited by the Supreme Court in H.C.6698/95, *Qa'adan v. Israel Lands Administration, et. al*, P.D. 54 (1) 258 (decision delivered on 8 March 2000).

The Attorney General's attempt to classify discrimination as reasonable is immoral because it relies on the principle of the national supremacy of one group over another. This legal culture sends a clear immoral message to the Arab citizens of the state that their status is inferior. This explains the policy of the prosecutors who refuse to take legal action, or even to state their legal position against racist speech or racist governmental programs, despite the powers conferred them by criminal law. For instance, the Attorney General refused to intervene or take a position against ministers who advocate a "transfer policy", whereby Arab citizens of Israel would be transferred or encouraged to emigrate and give up their citizenship, or who advocate before public fora that Arab citizens of Israel are a "demographic time bomb". The Attorney General also refused to intervene against the establishment of a state-funded National Demography Council, which was created to examine ways in which to increase the number of Jews in the country. According to the perspective of the prosecutors' office, incitement against the Arab public does not relate to the core public interest, since it is reasonable speech.³⁴

Based on this legal culture, one can easily understand the heavy burden placed on the petitioners to prove discrimination based on national belonging. The petitioners are required to prove that this discrimination is extremely unreasonable in the eyes of the authorities, when the authorities treat such discrimination as legitimate. This is why most of the cases brought before the Supreme Court involve direct discrimination. In a liberal-democratic state, which officially adopts an "anti-discrimination" policy, the recognition of discrimination based on national belonging, as such, leads to the immediate cancellation of the decision. The Israeli authorities are clearly very far from adopting this "anti-discrimination" policy. The official policy of the authorities, represented by the state's legal agents, refuses, therefore, to accept the universal principle that discrimination based on national belonging, ethnicity, religion, race or sex is extremist, prohibited, and a violation of human dignity and international law.³⁵

³⁴ Correspondence in this regard is available in Adalah's office.

³⁵ See the Universal Declaration of Human Rights – 1948, The International Covenant on Economic, Social and Cultural Rights, The International Covenant on Civil and Political Rights, The International Convention on the Elimination of all Forms of Discrimination, and The Convention on the Elimination of all Forms of Discrimination Against Women.