

Summary of Israeli Supreme Court Decision on the Revocation of Child Allowances Case

Released by the Court in Hebrew - English Translation by Adalah – The Legal Center for Arab Minority Rights in Israel

H CJ 3390/16 Adalah - The Legal Center for Arab Minority Rights in Israel et. al v. The Knesset

Date of Decision: 8 July 2021

Justices of the Panel: President Hayut, Vice President (Ret.) H. Melcer, and Justices Hendel, Vogelman, Amit, Sohlberg, Barak-Erez, Baron, and Mintz.

The Supreme Court ruled today in the majority opinion that the amendment to the National Insurance Law of 2015, which allows for a sweeping denial of certain allowances from the parents of a minor serving a prison sentence for committing security offenses, unconstitutionally violates the right to equality. However, and in the light of the State's clarification that further legislative amendment is currently being promoted within this context, and that in practice no authority has been used in recent years by virtue of the amendment, the Knesset is given a period of one year in order to address the flaws of the amendment, as specified in the judgment.

The petition was directed against an amendment [in 2015] to the National Insurance Law [consolidated version], 1995, which stipulated under section 325 (b) that in a case where a minor was convicted of a serious security offense, including an offense of stone-throwing, committed with a nationalist motivation or in connection with a terrorist activity, and sentenced to imprisonment – the minor's parents would be denied the benefits paid for the child for the entire period of the child's imprisonment.

The majority opinion (President Hayut, Vice President (Ret.) Melcer, and Justices Vogelman, Barak-Erez, and Baron) held that, while recognizing the importance of deterrence from committing security offenses and offenses related to terrorist activity, including stone-throwing, the amendment to the law disproportionately violates the right to equality. Justice Barak-Erez held that the use of the criterion of a criminal conviction in relation to social rights amounts to a violation of equality since it involves "labeling." Justice Vogelman (joined in this part by President Hayut and Justice Baron) held that the amendment to the law violates the right to equality and dignity of the parents of minors to whom the amendment applies (compared to parents of minors convicted of other offenses), who are denied benefits for offenses committed by their children without individual examinations of the actions taken by the parents in connection with the commission of these offenses and their prevention. The majority opinion emphasized that the amendment constitutes a sweeping arrangement, which does not include a right to appeal for parents denied of [such] benefits, and that there are alternative measures, less violative of the right to equality, that are sufficient to achieve the objectives of the law .

Despite this, the judgment stated that in order to allow for the examination of alternative legislative measures and in light of the fact that since the amendment first came into force in 2015, it has only been applied to ten minors; and that it is not currently being applied, partly due to difficulties

“relating to the mechanism for transferring information to the National Insurance Institute” – an order should be made to suspend the declaration invalidating section 325(b) of the National Insurance Law for a period of twelve months from the date of the judgment. This is to enable the Knesset to complete the procedures for amending the legislation, if it deems such process appropriate, while considering the comments of the court in the ruling.

The minority opinions (Justices Hendel, Amit, Sohlberg and Mintz) found that the petition should be rejected. Justice Sohlberg held that a distinction should be made between different types of violations of equality, and since the constitutional right to equality derives from the constitutional right to dignity, a violation of equality will be recognized only when it is proven that a distinction was made on the basis of 'suspicious' criteria. Based on this distinction, Justice Sohlberg came to the general conclusion that the law does not make a suspicious distinction between Jews and Arabs, not explicitly or implicitly, judging by the results. Thus, according to Justice Sohlberg's approach, no violation of a constitutional right has been proven, and in any case, there is no need to examine the constitutionality of the law in accordance with the limitation clause. Judge Hendel emphasized the fact that security offenses produce a relevant variance compared to ordinary criminal offences, and therefore the amendment does not infringe on equality. Justice Mintz also held that there was no violation of equality in this case, noting that even if necessary, and even assuming that the amendment of the law violates the constitutional right to equality, this violation is done for a proper purpose and is proportionate, and hence there is no justification for court intervention in this matter. Justice Amit noted that the financial savings for the minor's parents due to his imprisonment are higher than the amount of benefits denied to them, and therefore the harm caused to them is negligible and does not justify the revocation of a law.