**IN THE**

**SUPREME COURT OF THE STATE OF ISRAEL**

**SITTING AS THE**

**HIGH COURT OF JUSTICE**

**HCJ 4112/99**

**Before:** **Hon. President A. Barak**
**Hon. Justice M. Cheshin**
**Hon. Justice D. Dorner**

**Petitioners:** **1. Adalah – The Legal Center for Arab Minority Rights in Israel**

**2. The Association for Civil Rights in Israel**

**v.**

**Respondents:** **1.City of Tel Aviv-Jaffa**

**2. City of Ramle**

**3. City of Lod**

**4. City of Upper Nazareth**

**5. The Attorney General**

**Challenge to a Conditional Order dated February 24, 2000**

**Decided:** **16 Av 5762 (July 25, 2002)**

**On Behalf of the Petitioners: Jamil Dekoar (on behalf of Petitioner 1); Yosef Jabarin and Ouni Bana (on behalf of Petitioner 2)**

**On Behalf of the Respondents: Pil'it Orenstein (on behalf of Respondent 1); Doron Dvori (on behalf of Respondent 2); Arnona Ayyash (on behalf of Respondent 3); Ehud Gara (on behalf of Respondent 4); Osnat Mandel, Director of the Department Handling Petitioners to the High Court of Justice for the State's Attorney's Office (on behalf of Respondent 5)**

## JUDGMENT

**President A. Barak**

The question before us is whether municipalities with an Arab minority are required to use Arabic, alongside Hebrew, on all of their signs.

The Petition and the Responses

1. The petition involves the municipal signs in the Respondents' jurisdictions. The Respondent-cities all have an Arab minority residing within their jurisdiction (6% of Tel Aviv-Jaffa residents, 19% of Ramle residents, 22% of Lod residents, and 13% of the residents of Upper Nazareth). The Petitioners argue that most of the municipal signage found within the Respondents' jurisdictions are written in Hebrew and in English but not in Arabic. The Petitioners complained to the Respondents about this matter, stating that in their opinion all municipal signs must have an Arabic translation as well. Their complaint went unheeded; hence the petition. The petition requests that we require the Respondents to add Arabic

alongside Hebrew on all municipal traffic, warning, directional and informative signs posted in their jurisdiction. According to the Petitioners, this obligation primarily stems from the fact that Arabic is an official language in Israel, as stated in Section 82 of the 1922 King's Order in Council (over the Land of Israel) ("1922 King's Order in Council") to the Land of Israel, along with international law and the right to equality and human dignity. Furthermore, the Petitioners add that providing easy access to public services is part of the public interest, as understanding municipal signs is necessary for all city residents and helps maintain public order.

2. Prior to the hearing for a conditional order, we received the Respondents' response. The City of Tel Aviv-Jaffa (Respondent No. 1) stated that, without addressing the legal aspects of the case, in consideration of its Arab residents, the City is prepared to add Arabic to its municipal traffic, warning, directional and informative signs, but only in neighborhoods in which there is a considerable concentration of Arabs. It would take five years to complete the process. The City of Ramle (Respondent No. 2) said that it has no obligation to add Arabic to its municipal signage. However, it is prepared to add an Arabic translation to its signs posted in its main traffic arteries in addition to all municipal institutions serving all the residents of the city (like city hall and the public library); all signs posted in neighborhoods housing a large concentration of Arabs; and to the street signs in its

major roadways. The city noted that it will act to complete this process within five years. The city of Lod (Respondent No. 3) stated that it does not have Arabic signage and has no legal obligation to post it; however, they city will act to add Arabic to street signs in Arab and mixed neighborhoods, as well as on municipal buildings. It noted that, from now on, all city buildings and all main thoroughfares will have Arabic signage as well. Lastly, Arabic translation will be added to all street signs in Arab and mixed neighborhoods. The city will accept bids for this job, so long as it will not involve any added expenses. Finally, the City of Upper Nazareth (Respondent No. 4) argues that it has no obligation to add Arabic to its signage. The original petition also contained a claim against the City of Acre. In its response, Acre pointed out that Arabic is used in its municipal signage. As requested, at the conclusion of the hearing, a conditional order was issued, and both sides agreed to remove the City of Acre from the petition. It was also determined that the petition should be brought to the attention of the Attorney General for him to consider whether he wants to get involved in the proceedings.

3. The Attorney General informed the Court that he wants to involve himself in the proceedings. He stated that he is of the opinion that the Respondents do not have an obligation to add Arabic to their municipal signs. This obligation does not exist under Section 82 of the 1922 King's Order in Council. However, Arabic is an official language of a considerable minority in Israel. As such, government

agencies are obliged to consider posting signs in Arabic alongside Hebrew, which has a superior status. With regard to the Respondents, certain considerations should be taken into account when dealing with the discretion of cities that have a sizable Arab minority. First, a distinction can be made between main thoroughfares and side streets. The obligation to have signs in Arabic would mainly apply to signs placed on main thoroughfares. Second, the obligation to have Arabic signs mainly exists in neighborhoods with a large population of Arabic speakers. Third, signs directing people to municipal institutions, as well as the signs within these institutions, must also contain Arabic. Fourth, adding Arabic to signs in places where it is necessary should be done within a reasonable amount of time. The Attorney General added that it is in the public's best interest that everybody understands the signs. This interest is most important when it comes to understanding warning signs and those meant for public safety. Other types of signs (traffic signs, street signs and other public signs) are of less importance. The Attorney General also noted that portions of the Arab community are able to read and understand signs in Hebrew and English.

4. After receiving the opinion of the Attorney General, we asked for a response from the Respondents. They all stated that they accept the position of the Attorney General. The City of Tel Aviv-Jaffa informed us that it will add Arabic to signs posted on all main thoroughfares and on signs within public institutions serving the

Arabic-speaking community. In neighborhoods containing a sizable Arab population, it will add Arabic to street signs, squares, directional, safety and warning signs and public institutions. The Arabic writing will be added in the following five years. The City of Ramle said that it would add Arabic to all signs posted on main thoroughfares, to public institutions serving all city residents and on all street signs posted in areas with a large Arab concentration. It will complete this process within five years. The City of Lod said that it would add Arabic to street signs in neighborhoods containing a large population of Arabic speakers, on main thoroughfares and in all municipal institutions serving the Arabic-speaking population. The change will be done gradually as the signs are regularly replaced, but not solely for the purpose of adding Arabic, as doing so would require the city to spend money it does not have. The City of Upper Nazareth stated that it agrees with the findings of the Attorney General that the decision as to whether signs must contain Arabic should be left to its own discretion and, with regard to municipal signage, the Arabic language does not have the same status as the Hebrew language, which is given preference. As a matter of practicality, the City of Upper Nazareth is prepared to add Arabic signage to main thoroughfares, side streets in neighborhoods containing a large population of Arabic speakers and municipal offices serving Arabic speaking population. Because of budgetary

constraints, the city cannot act upon this immediately, but will do so over a period of a few years.

5. During oral arguments, the Respondents reiterated their stance and the Petitioners theirs. The Petitioners added that the considerations outlined by the Attorney General are unreasonable as they unnecessarily infringe upon the rights of Arab citizens. The Petitioners also noted that the Attorney General's position "disrespects the Arab minority and excludes Arabs from the greater community by requiring the cities which count them as residents to post Arabic signs only in their neighborhoods and in main thoroughfares. This position violates their sense of belonging and emphasizes a sense of alienation." Moreover, they argue, the standards prescribed by the Attorney General are hard to implement. In many cases it is hard to differentiate between main streets and side streets. The areas in which there are large populations of Arabic speakers are not a set constant, with respect to the transition between poor neighborhoods to other neighborhoods within the city. For example, in Upper Nazareth there are no "Arab neighborhoods", nor are there any neighborhoods with "a sizable concentration of Arabs". However, there are Arabs living throughout the city of Upper Nazareth, and they constitute over 13% of the city's residents. Furthermore, what about the Arabs living in areas of the city that do not have a large population of Arabic speakers? Are they not entitled to have their language respected and to have adequate access to all public services?

The Petitioners point to the City of Haifa, which agreed (as a result of HCJ 2435/95 The *Association for Civil Rights in Israel v. The City of Haifa* (unpublished)) to add Arabic to all of its municipal signage.

6. At the end of oral arguments, the Attorney General's representative requested permission to supplement her arguments in a written brief. The Petitioners and the other Respondents were given permission to respond. In his supplement, the Attorney General reiterated his main points and added, "When we are dealing with the Petitioners' request to post signs in Arabic in areas within the Respondent-cities in which there is a substantial Arab minority, it seems that practical considerations, as well as respect for the Arab language, justifies the placement of Arabic signage even beyond main thoroughfares and major streets, as well as beyond those areas in which the Arabic-speaking populace primarily resides." The Attorney General added that he "does not take a position regarding the exactness of the translation of the signs, for that is a matter for the local authorities who are familiar with the needs of their population to decide. Additionally, the Respondents should put in place a timetable for replacing the current signs."

7. In response to the Attorney General's supplemental brief, the Petitioners argued that the brief is not at all clear, and does not adequately address what is requested in the petition. According to the Petitioners, the Attorney General's

supplemental brief does not represent any real change in his position, and the general framework of the supplement is not realistic and will be too difficult for the Respondents to put in place. The City of Tel Aviv-Jaffa said that it accepts the position of the Attorney General, as explained by the two briefs filed on his behalf. The city notes that almost all the Arabs living in Tel Aviv-Jaffa are concentrated in the Jaffa area. It was also emphasized that the City of Tel Aviv-Jaffa is aware of its status as a metropolis "attracting Arabs who are not necessarily residents of the city, but rather those coming to work, conduct business, for tourism purposes and for family gatherings." The City of Tel Aviv-Jaffa added that following the Court hearing, it reassessed the issue with the two Arab members of the city council and, as a result, came up with the following policy: In the Jaffa area, Arabic will be added to all signs on the streets, plazas, main sites, public buildings, traffic signs and warning signs involving public safety. In the rest of the Tel Aviv area, signs featuring Arabic will be posted only on major thoroughfares, plazas, main sites, public institutions and traffic signs. This plan will be implemented with all new developments and with the replacement of old signs and will be completed over the course of seven years, due to budgetary constraints.

8. The City of Ramle provided a supplemental response, which stated that it will add Arabic to all of its traffic signs throughout the city (not only on the major thoroughfares). We were informed that this plan was already well underway and

that most traffic signs in the city contain Arabic instruction. The city will also add Arabic to all public institutions providing services to the general population of the city. With regard to street names, Arabic will be added to those signs in areas containing a concentration of Arabs and on the main streets of the city and that this comprehensive process will be completed within five years. The City of Upper Nazareth responded to the Attorney General's supplement by reiterating the position it took in response to the Attorney General's first brief (*see supra* para. 4). The City of Lod did not provide another response.

Summary of the Claims

9. Looking at the petition and the responses to it, what is the argument between the parties? In principle, the Petitioners contend that any city housing an Arab minority must have an Arabic translation on all its municipal signage. By contrast, the Respondents argue that no such obligation exists, and the question of whether to add Arabic to municipal signage is to be left to the discretion of each city. Practically speaking, both sides agree that areas in which Arabs reside will have all signs posted with an Arabic translation. The argument is with regard to areas in which Arabs do not reside, and even in those areas it is agreed that the signs posted in major thoroughfares will have an Arabic translation. It is also agreed that warning signs and those involving public safety will include Arabic. Finally, it is also agreed that directional signs pointing to public institutions and those within

these institutions will also include Arabic. The dispute between the parties involves all other municipal signs in areas in which Arabs do not reside, which are essentially the street name signs posted on side streets. Another dispute involves the timeframe for adding Arabic to the signs. Now that we have clarified the dispute between the parties, we will analyze the legal backdrop that will help us resolve the dispute.

Legal Backdrop

10. The authority to post traffic signs within a municipality's city limits is that of the municipality in question. This stems from a municipality's general authority to provide public services for the public benefit (*See* Section 249 of the Municipalities Ordinance (new version)). Cities have the specific authority to post street signs bearing street names. Under Section 235(4)(a) of the Municipalities Ordinance:

> Regarding streets, a city shall:
> 4(a) Provide names for all streets, paths, alleyways and plazas or change their names when necessary… and ensure that the signs bearing the names are prominently placed…

Furthermore, municipalities serve as the "authority for local signage." Under Regulation 18 of the 5721/1961 Traffic Regulations:

> (a) Unless instructed otherwise by a national authority, an authority for local signage may, upon consultation with… place, post or remove the following within its jurisdiction: :

(1) Warning signs…;
(1a) Instructional signs;
(2) Informational signs…;
(3) Signs along the road…;
(4) Signs providing assistance…
(b) …
(c) …
(d) The local authority for signage is responsible for posting, fixing, operating, marking, registering and maintaining order in all traffic arrangements within its jurisdiction.

These regulations authorize municipal authorities to post signs in their cities. The regulations make no explicit mention of the language the signs must be written in. There are two possible sources we could look towards to determine what languages must be used. The first source is external to the rules and regulations over local signage from which we can derive what languages are to be present upon traffic signs. The other source is internal and stems from the interpretation of these regulations based on their purpose. We now turn to these sources.

External Source: Section 82 of the 1922 King's Order in Council

11. Is there a normative source, outside of those granting authority to post municipal signage, which tells us which language to use on those signs? Such a (external) law does not exist in the Basic Laws. The Declaration of Independence does not inform us of the State's language and there is no statute to this effect. The only legal instruction regarding this issue is a law from the British Mandate, namely, Section 82 of the 1922 King's Order in Council. The 1922 King's Order in

Council served as the legal code in the Land of Israel during the time of the Mandate. Some referred to it as the "Mini Constitution." (*See* A. Malhi, "The History of Law in the Land of Israel," at 78 (2d 5712 – 13)). Portions of this code are still binding. One of these provisions, which was amended in 1939 (1922 King's Order in Council (as amended)) and is still binding today (*see* Globes, *The Status of the Arabic Language in the State of Israel*, 7 HAPRAKLIT 328 (5712)), deals with the official languages (Section 82) and states (in its original English):

> Official Languages
>
> 82. All Ordinances, official notices and official forms of the Government and all official notices by local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. The three languages may be used, subject to any regulations to be made by the High Commissioner, in the government offices and the Law Courts. In the case of any discrepancy between the English text of the Ordinance, official notice or official form and the Arabic or Hebrew text thereof, the English text shall prevail.
>
> (Hebrew Translation omitted.)

This provision was amended with regard to the English language (*see* Section 15(b) of the 5708/1948 Government and Legal System Organization Act, which stated, "Any law requiring the use of the English language is void"). The provision was also amended with regard to discrepancies between the English and Hebrew versions of legislation (*see* Section 24 of the 5741/1981 Interpretation Act). Aside from these two changes, the rest of Section 82 of the 1922 King's Order in Council

remains in effect. What is the ramification of this and does it answer our question regarding municipal signage?

12. Section 82 of the 1922 King's Order in Council, pursuant to Section 22 of the Mandate on the Land of Israel, establishes Hebrew and Arabic as official languages. Additionally, it states that it is obligatory to publish all official documents, orders and forms in Hebrew and Arabic. It states that everybody has the right to use one of these two languages in any government office or court (*See* A. RUBINSTEIN, THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL 5th ed. vol. 1 (1996), p. 98). This provision, however, deals with the national government and does not directly address the issue before us, which deals with local government. Regarding local government, Section 82 of the 1922 King's Order in Council states that "All Ordinances, official notices and official forms of the Government and all official notices by local authorities and municipalities in areas to be prescribed by order of the High Commissioner" shall be published in both Hebrew and Arabic. The Attorney General, in his brief, informs us that "after looking into the matter, it appears that no such orders were issued." In light of this, even if we are to assume, arguendo, that municipal signage falls into the category of "official notices," an assertion that is not without its doubts, and one that I would prefer to leave as one needing further review, Section 82 of the 1922 King's Order in Council does not

require municipal authorities to post local signs in all the official languages, so long as the areas in which such obligation would fall have not been designated.

13. Therefore, Section 82 of the 1922 King's Order in Council is not an external normative source from which we can derive an obligation to provide municipal signage in Arabic. However, this does not mean that Section 82 of the 1922 King's Order in Council is irrelevant as far as solving this issue. This section is very significant as it establishes Arabic as an official language, which gives it a "special elevated status." (CA 12/99 *Mar'i v. Sabak*, IsrSC 53(2) 128, 142 (M. Cheshin, J.)). Its status is unlike other languages spoken by citizens or residents of the State. This status directly obligates the central government to confer certain rights. However, this status is not limited to only those rights and obligations that flow directly from it. The status of an official language works its way into Israeli law and influences the way it must operate. This influence is expressed, among other ways, by the weight the authority must grant to the fact that it is an official language, among all considerations, when exercising its official duties. The "geometric" location of this influence lies within the framework of a purposive interpretation of the governmental authority. This brings us to the second (internal) legal source.

<u>Internal Source: The Interpretation of the Authority to Post Signs</u>

14. In the absence of an external source from which an obligation to post municipal signs in Arabic can be derived, we return to the law that authorizes municipalities to post local signage. This authority is one of discretion, and this discretion is never absolute (*See* HCJ 241/60 *Kardosh v. Corporate Registrar*, IsrSC 16 1151; HCJ Rehearing 16/61 *Corporate Registrar v. Kardosh*, IsrSC 16 1209; HCJ 6741/99 *Arnen Yekutiel v. Interior Minister*, IsrSC 55(3) 673, 682 – 83). The discretion is limited. It is limited by the unique purpose of the law that grants this authority, and it is limited by the values and basic principles of the legal system, which pervade the general purpose of all legislation (*See* HCJ 953/87 *Poraz v. City of Tel Aviv-Jaffa*, IsrSC 42(2) 309, 329). So what does this tell us about the issue of posting local signage in Arabic?

Specific Purposes

15. The main purpose of the authority to post municipal signs is the need to fulfill the public interest providing adequate and safe services. The municipal signs must be posted in a manner in which the city's residents can find their way around the city and its streets, remain informed of the services provided by the city and be warned of traffic and other hazards. From this we can conclude – as did the Attorney General and to which the Respondents agreed – that in neighborhoods in which there is a concentration of Arabs local signs must be posted in Arabic alongside the Hebrew text. The signs are meant to "speak" to them, and, thus, it

only natural that the signs be posted in a language they can understand. Furthermore, we can also conclude based on this purpose that even in areas outside the Arab neighborhoods, but used by all residents of the city, like major thoroughfares and main streets, signs should also contain Arabic. At the same time, the specific purpose of the law also requires that the signs be written clearly, and not contain endless confusing details in several languages. However, if these (specific) purposes were our only consideration, we would also need to deal with other questions such as what happens when there is a concentration of people who speak other languages? Do signs need to reflect the wide range of languages spoken by the residents of a particular city? The specific purposes of the law are not the only consideration we take into account. There are also other, more general, considerations that must be taken into account. Only the proper balance between all the purposes will lead us to the (true) purpose of the authorization to post municipal signs. From this purpose we will derive the solution to the issue of whether signs must also be posted in Arabic. We will now turn to these general purposes.

General Purposes

16. The *first* general purpose relevant to our discussion is the protection of one's right to one's own language. One's language is part of one's personality. It is the vessel through which a person thinks (*See* G. Williams, *Language and the Law*, 61

Law Q. Rev. 71 (1945)). It is the device through which one connects which others. "Language… is created by nature and man and is meant to build relationships between people." CrimA Rehearing 2316/95 *Ganimat v. State of Israel*, IsrSC 49(4) 589, 640 (Cheshin, J.). I have also addressed this in one of the cases, and stated:

> Language is the device by which we develop relationships with others. However, language is more than a method of communication. Language is a vessel for thought. Through language we create ideas and share them with others… But, language is not only a method of communication or means through which we think; language and expression are the same. Language is how we understand the thought process. From here we can see the centrality of language in the human existence, the development of man and human dignity. CA 105/92 *Re'em Engineering Contractors Ltd. v. The City of Upper Nazareth*, IsrSC 47(5) 189, 201.

Similarly, my colleague, *Justice M. Cheshin* has stated:

> The purpose of language is for people to communicate. However, language is also a representation of culture, history, a way of thinking and is the heart and soul of the man".

2316/95 Ganimat, at 640. Language performs a central function in human existence both on the individual level and for society as a whole. Through language we express ourselves, our individuality and our identity as a society. If one is deprived of his language, he will be essentially deprived of his own self (*See Reference re Language Rights under Manitoba Act* 1870 [1985] 17 D.L.R. 4th 1,

19 (Can.); *Mahe v. Alberta*, 68 D.L.R. 4th 69 (Can.); *Ford v. Quebec* [1988] 54 D.L.R. 4th 577 (Can.)).

17. Language receives special importance when it is the language of a minority population, as it reflects their culture and tradition and is an expression of social pluralism (*See* D.F. Marshall and R.D. Gonzales, *Why we should be Concerned about Language Rights*, LANGUAGE AND STATE: THE LAW POLITICS OF IDENTITY at 290 (1989)). From here we derive that minorities have the right to freedom of language *(See* Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities art. 1(1), Dec. 18, 1992, No. 47/135; Framework Convention for the Protection of National Minorities art. 14, Feb. 1, 1995, Council of Europe No. 157; European Charter for Regional or Minority Languages (1992); *see also*, M. Tabory, *Language Rights as Human Rights*, 10 I.Y.H.R. 167 (1980)).

18. The Declaration of Independence declares that the State of Israel "guarantees freedom of religion, conscience, language, education and culture." "The individual has the freedom to express himself in any language he desires. He has the freedom to express his thoughts (whether personal, societal or commercial) in any language he wishes" (CA 105/92 *Re'em Engineering*, at 202). This freedom stems from both the constitutional right to freedom of expression and the right to human dignity (*See* AA 294/91 *The Kehilat Yerushalayim Sacred Society v.*

*Kestenbaum*, IsrSC 46(2) 464, 520). Across from this personal right stands the government's obligation to safeguard this right. It should be noted that in a number of constitutions there are specific instructions to this effect (*see, e.g.*, Section 16 of the Canadian Charter of Human Rights; Section 30 of the Belgian Constitution; Section 2 of the French Constitution; Section 18 of the Swiss Constitution, *see also*, Section 27 of the 1966 International Convention on Civil and Political Rights, to which Israel is a party).

19. The *second* general purpose that needs to be taken into account is ensuring equality. It is well known that equality is a basic principle of the State. It is the foundation of our society's existence and is the central pillar of any democratic regime. It is the "first and foremost" (Justice M. Cheshin in HCJ 7111/95 *Center for Local Government v. The Knesset*, IsrSC 50(3) 485, 501). Violating one's right to equality can be humiliating and may violate one's right to human dignity (*See* HCJ 4541/94 *Miller v. Minister of Defense*, IsrSC 49(4) 94, 132 (D. Dorner, J.)). This is certainly the case when discrimination is based on one's religion or race. Such generic discrimination severely harms human dignity (HCJ 2671/98 *The Lobby for Women in Israel v. Minister of Labor and Welfare*, IsrSC 52(3) 630, 658 (M. Cheshin, J.); *see also*, Zamir and Soval, *Equality under Law*, 5 Law and Government 165 (1999)). The principle of equality applies to all government actions and, of course, to the actions of all forms of government, including local

government (*See* HCJ 262/62 *Peretz v. Kfar Shmaryahu*, IsrSC 16 2101) and to its decisions regarding municipal signs in particular (*See* HCJ 570/82 *Naama Signage Ltd. v. Mayor of Tel Aviv*, IsrSC 37(3) 772; HCJ 6396/96 *Zakin v. Mayor of Be'er Sheva*, IsrSC 53(3) 289). This means that, in our case, municipalities are obligated to guarantee equal services to its residents (*See* HCJ 7081/93 *Botzer v. Macabim-Reut Regional Council*, IsrSC 50(1) 19, 25). A place in which some of the residents cannot understand the municipal signs violates their right to equally enjoy municipal services. Once a language is deemed important to an individual and his development, [we] must guarantee that his opportunities are not limited because of his language (*See* Dunber, *Minority Language Rights in International Law*, 50 Int. & Comp. L. Q. 40, 93, 107 (2001); *see also*, *Lav v. Nicholas*, 414 U.S. 563, 567 (1974); *Sandoval v. Hagan*, 197 F. 3d 484 (1999)).

20. The *third* general purpose is the status of the Hebrew language. The State of Israel is a "Jewish and democratic" state (*See* Section 1A of Basic Law: Human Dignity and Liberty). One of the most important expressions of the character of the State of Israel is the fact that the main language in Israel is Hebrew (*See* HCJ 6698/95 *Qaden v. Israel Lands Authority*, IsrSC 54(1) 281; *see also*, DAVID KRETZMER, THE LEGAL STATUS OF ARABS IN ISRAEL at 165 (Westview, 1990)). Therefore, "the existence of the Hebrew language, its development and prosperity is a central value of the State of Israel" (CA 105/92 *Re'em Engineering* at 208).

Any action taken by a municipality that harms the Hebrew language violates one of the basic principles of the State of Israel, and is contrary to the (general) purpose of the law granting the (municipal) body the authority to take action.

21. The *fourth* general purpose that needs to be taken into account is the recognition of the importance of language as an ingredient in national unity and in the definition of a sovereign entity. Language is not only the expression of an individual; it is also a representation of the public's identity. It forms the basis of the connection among people who create a society. It is the key to unifying the society in Israel. The Hebrew language is what unites us as one state. The Hebrew language does not belong to one specific group in Israel, as "Hebrew is the property of the entire nation" (AA 294/91 *Kehilat Yerushalayim Sacred Society* at 518). Just as French is the language of Frenchmen and defines France as a sovereign entity, and just as English is the language of the English and defines England as a sovereign entity, Hebrew is the language of Israelis and defines Israel as a sovereign entity. Furthermore, a common and uniform language in a state is important, as language is the vehicle through which members of society can communicate with one another while developing the individual and society as a whole. Therefore, the general purpose of unity and cohesiveness also includes preventing situations that create a "Tower of Babel" among languages in which

people cannot understand one another (*See* CA Rehearing 7325/95 *Yediot Aharonoth Ltd. v. Krause*, IsrSC 52(3) 1, 97 – 98).

Balancing the Purposes

22. Interpretation is not difficult when all purposes (specific and general) point in the same direction. Difficulty arises, however, in a case such as ours when the various purposes conflict with one another. In this case, we must balance the conflicting purposes. This balance acknowledges that none of the various purposes are absolute. For example, the individual does not have the absolute right – which gives rise to the government's obligation – to use any language he wishes. Similarly, the State does not have the absolute power to obligate a person to use Hebrew exclusively in all matters, which gives rise to an obligation on the part of the individual. Our concern is balancing the conflicting values and principles. The term "balance" is a metaphor. Behind the metaphorical balance stands the idea that the decision must be reasonable, meaning that all relevant values and principles must be considered and each given its proper weight (*See* HCJ 935/89 *Genuer v. Attorney General*, IsrSC 44(2) 485, 513). The balance must take into account the relative importance each consideration has to society. The relative significance is determined by the importance placed upon the various values and interests in society. "The act of balancing is not a physical act, but a normative one which is intended to give the various considerations their proper place in the legal system

and their relative social value among society's values as a whole" (HCJ 6163/92 *Isenberg v. Minister of Housing*, IsrSC 47(2) 229, 264). Determining the "ranking" of a purpose, principle or value is not to be done abstractly. We do not merely ask, "What is the importance of equality in our legal system?" We ask, what is the importance of equality relative to the other competing values? Furthermore, the answer will be a function of the unique circumstances of the case. It will always be within the given context and on the basis of given facts. We do not merely ask, "What is the importance of equality relative to the value of the Hebrew language?" We ask the question with regard to the specific issue requiring a decision. The question in this case involves adding Arabic, in addition to Hebrew, to municipal signs in the Respondents' jurisdictions. We will now turn to this balance.

23. The question presented by this petition is whether Arabic must be added to municipal signs posted on the side streets of the portions of a city in which there is no concentration of Arabs. The specific purpose of the statute in question is to provide an adequate and safe service for all city residents, which leads to the conclusion that Arabic should be added even to these areas of the city. Within the framework of the services the city provides, an Arab resident should also be given the opportunity to find his way around areas of the city he does not live in. An Arab resident wanting to find his way around the city, to benefit from any service or participate in an event (private or public) taking place on a side street in a

neighborhood in which no Arabs reside, has the right to have the signs posted in a manner that will allow him to reach his destination. This is the result when taking the specific purpose of the statute into consideration. What about the general purposes? Purposes such as the protection of one's right to freedom of language (*see supra* para. 16) and the need to guarantee equality (*supra* para. 19) support this conclusion as well. A Jewish resident of the city can get around anywhere in the city by using his Hebrew language, but an Arab resident cannot get around everywhere in the city using Arabic. This deprives him of the ability to benefit, in an equal manner, from the municipal services, especially if Arabic is his only language. He will thereby be deprived of his ability to use his language to express himself. His overall ability to take action is limited because of his language. What about the other general considerations? The stature of Hebrew as the main language is not significantly harmed. It was not argued - and had it been argued, we would have swiftly dismissed such a request because of the value of the Hebrew language – that in areas which have a high concentration of Arabs, street signs should be written exclusively in Arabic. The only claim here is that Arabic should be added, alongside the Hebrew, on municipal signs located in neighborhoods that do not house a sizable Arab population. It is hard to see what harm is suffered by the Hebrew language. Even if there is some sort of harm, it is minimal in comparison to the violation of freedom of language and the need to

guarantee equality and tolerance. The only considerations left are the issues of national identity and sovereignty. These may be harmed if local government is compelled to post signs in the language of its residents. Many different languages are spoken in Israel. A small break in what defines us as a nation can lead us down a slippery slope. What is the proper balance between this consideration and values such as freedom of language, equality and tolerance?

24. Striking the proper balance between national cohesiveness and sovereignty on one side and freedom of language, equality and tolerance on the other, regarding the issue of using a language other than Hebrew on municipal signs on side streets in neighborhoods in which there is no concentration of people speaking that language, is not at all simple. Seemingly, everyone would agree that we cannot allow many various languages on municipal signs, even if there are large numbers of people speaking those languages. Israelis speak Hebrew, and those who speak other languages, while no one will stop them from doing so in their private matters, should learn Hebrew because it is the main language of Israel. Once they do this, they too will enjoy equality. We do not find that the signs posted in London, Paris or New York reflecting the multitudes of languages spoken by the residents of these cities. Nevertheless, it seems to me that by balancing the relevant considerations, we should require municipal signs to contain Arabic, alongside Hebrew. *On one hand,* we reach this conclusion because of the clear weight we

must give to one's right to freedom of language, equality and tolerance. *On the other hand*, we reach this conclusion because such a decision would not harm the Hebrew language in any way and any harm befalling national cohesiveness and sovereignty will be relatively light. Indeed, with regard to signs posted on major highways, which are subject to the authority of the national government, everyone agrees that they should contain Arabic as well. The argument here is limited to the municipal level, and on this level, requiring the use of Arabic on such signs only slightly infringes upon the national identity of the State of Israel.

25. This leads to another question: what makes the Arabic language so unique and why is its status different from other languages - other than Hebrew - which Israelis speak? Should we not be concerned that residents of other cities, among them minority groups who speak other languages, will demand that the signs posted in their cities contain their language? My answer would be no, due to the fact that other languages are not like Arabic. Arabic is unique for two reasons. *First*, Arabic is the language of the largest minority group in Israel which has dwelled here for a long time. This language characterizes the history, culture and religion of the Arab minority in Israel. This is the language of citizens, who, despite the Arab-Israeli conflict, wish to remain in Israel as loyal citizens with equal rights through respect of their language and culture. The desire to guarantee the peaceful coexistence of the children of Abraham, our father, through mutual

tolerance and equality justifies the recognition of the use of Arabic on municipal signs in cities containing a sizable Arab population (between 6% - 19% of the population) alongside the country's main language, Hebrew (*See* Landau, *Hebrew and Arabic in the State of Israel: Political Aspects of the Language Issue*, 67 Int. Soc. Lang. 117 (1987)). *Second*, Arabic is an official language of Israel (*see supra* para. 12). Israelis speak many languages, but only Arabic, alongside Hebrew, enjoys the status of an official language. Therefore, the Arabic language has a unique status in Israel. This status may not directly impact the issue at hand, but does so indirectly.

The fact that Arabic is an "official" language "gives it extra and unique value" (A. Saban, "*The Legal Status of Minorities in Democratic Countries Torn Apart: The Arab Minority in Israel and the French Speaking Minority in Canada*," at 246, (5760) (unpublished PhD thesis, Hebrew University)).

26. With regard to the dilemma before us, my conclusion is that the proper balance between the competing purposes leads to the conclusion that the municipal signs in the Respondent-cities must have Arabic added alongside the Hebrew. This is no great novelty. In our capital, Jerusalem, which has a significant Arab population, all city signs are posted in Arabic, as is the case in Haifa and Acre. What is appropriate for these three cities is appropriate for the Respondents as

well. Furthermore, this approach is compatible with the general approach of the Attorney General (*see supra* para. 6), as he stated in his supplemental brief:

> Yet, with regard to the Petitioners' request to add Arabic to the Respondents' municipal signs, which are municipalities housing a sizable Arab population, it seems that practical considerations such as respecting the language of the Arab community justifies adding Arabic to signs posted not only at major intersections and main thoroughfares, but also to those posted in areas that house a large population of Arabic speakers as well.

However, the Attorney General added that he does not see any reason to take a stance as to the exactness of the signs, saying that this should be left to the discretion of the municipality in question, which better understands the needs of its population. The Attorney General noted that the Respondents should provide appropriate timetables for changing the signs. We now turn to the issue of "appropriate timetables."

Timetable

27. We have reached the conclusion that the Respondents must add Arabic to all the municipal signs posted in their respective cities. How long should they have to make the required changes? The Respondents say that it will take them between five and seven years to complete the turnover, mainly for financial and logistical reasons. I accept the fact that making the necessary changes will take time, as they cannot be done in a day. There is no alternative, therefore, than to give time for this decision to be carried out (*See* HCJ 3267/97 *Rubinstein v. Defense Minister*, IsrSC

50(5) 481; HCJ 1715/97 *Association of Investment Managers v. Finance Minister*, IsrSC 51(4) 367; HCJ 6055/95 *Tzemah v. Defense Minister*, (unpublished)). How much time must be given? To me it seems that the timeframe provided by the Respondents is too long. We think there should be three separate timeframes. The *first* would be for posting new signs on new streets or buildings and for replacing signs that are worn out and are going to be replaced anyways. For these signs, the Respondents must immediately add Arabic to all new signs. The *second* timeframe applies to changing existing signage in areas already agreed upon by the Respondents, namely, main streets and public facilities (throughout the city) and on side streets in areas housing a sizable Arabic speaking population. This change – not including new signs or the regular replacement of worn out signs – must be completed within two years. The *third* timeframe for changing the rest of the municipal signs must be done at the end of an additional two years, in other words, four years from the date of this decision.

The result of this decision is that the Conditional Order is now permanent pursuant to our proclamation that the existing practice regarding the use of Arabic on the municipal signs of the Respondents is illegal and, thus, void. All new signs shall be in both Hebrew and Arabic. Regarding existing signs, we grant two years for Arabic to be added, alongside the Hebrew, to signs posted on major roadways, city facilities and neighborhoods housing a sizable Arabic speaking population. We

further grant an additional two years to allow the Respondents to add Arabic to the rest of the signs in their respective cities as has been stated in our decision.

**Justice M. Cheshin**

1. The following are the petitioners in this case: Petitioner No. 1 is Adalah, The Legal Center for Arab Minority Rights in Israel, representing itself as an organization whose main purpose is advancing the rights of the Arab minority in Israel within the legal framework; Petitioner No. 2 is the Association for Civil Rights in Israel, representing itself as an organization dealing with the rights of Israeli citizens and those living in areas under its rule. The original Respondents were the City of Tel Aviv-Jaffa, The City of Ramle, The City of Lod, The City of Acre and the City of Upper Nazareth. However, the Petitioners reached an agreement with the City of Acre and have agreed to remove Acre as a respondent in this case.

The issue presented by the petition regards the municipal signs found in the Respondent-cities, four cities in which both Jews and Arabs reside. The Arab residents constitute a minority of all four cities in question. Their respective percentages of the population are: 6% of Tel Aviv-Jaffa; 19% of Ramle; 22% of Lod; and 13% of Upper Nazareth. The Petitioners' complaint is that most of the signs posted in the Respondents' cities are written in Hebrew and English, but

none of the cities, despite their Arab population, post signs in Arabic as well. In their complaint, the Petitioners state:

> We submit this petition for a Conditional Order ordering the Respondents to provide a reason why they do not use Arabic in any of the traffic signs, informational signs, warning signs or any other sign posted in public areas within the Respondents' respective jurisdictions, in letters the same size as the Hebrew letters and properly written in accordance with the rules of the language.

From the language of the petition itself, it is not hard to see that the issue before us deals with all the municipal signs posted in the Respondent-cities.

2. In its response, the *City of Tel Aviv-Jaffa* argued that the issue of posting signs in Arabic is a national issue and, therefore, should be resolved at the national level and not in a petition directed against a few municipalities. Despite its position, it agreed to add Arabic to all signs posted in areas containing a sizable concentration of Arabs within five years. The *City of Ramle* argued that the issue of posting signs in Arabic should be dealt with through legislation; however, it also agreed to add Arabic to signs posted on major thoroughfares, public institutions, and in areas in which Arabs reside. The *City of Lod* rejected the existence of any obligation to add Arabic to any of its street signs and argued that there is no practical reason to do so either. However, it added that it intends to add Arabic to signs posted in Arab and mixed neighborhoods, major thoroughfares and public institutions. The *City of Upper Nazareth* claimed that it has no obligation to do

anything requested by the petition. The *City of Acre* noted in its response that its municipal signs include Arabic, and with the agreement of the Petitioners, its name was removed from the petition.

3. The Attorney General informed us that, pursuant to his authority under Section 1 of the Legal Procedure Ordinance (The Attorney General as a Party) [New Version], he has decided to become a party to this petition. His response is based on the distinction between Hebrew, which is the "primary official language" and Arabic, which is a "second official language." Through this distinction the Attorney General created guidelines for adding Arabic to the Respondent-cities' municipal signs. He states (Section 13 of his June 23, 2000 brief):

> *First*, we should distinguish between major thoroughfares and side streets. The obligation to post signs in Arabic primarily applies to the major roads and thoroughfares.
>
> *Second*, the obligation to post signs in Arabic mainly applies to neighborhoods housing a large population of Arabic speakers. One of the considerations that needs to be taken into account is that an Arab resident needs to feel that his culture, which includes his language, is being used in his immediate surroundings. Posting signs in Arabic in Arabic-speaking neighborhoods fills this need.
>
> *Third*, signs directing people towards public institutions as well as signs posted inside the public institutions themselves must also be written in Arabic.
>
> *Fourth*, adding Arabic to the signs in all the necessary places must be done within a reasonable amount of time. All new signs made for posting in these

> places must include Arabic. And, regarding replacing existing signs, a reasonable timetable should be provided for their replacement…

The fundamental position of the Attorney General was accepted by the Respondents. For example, the City of Tel Aviv-Jaffa responded with the following (taken from an affidavit submitted by Ariel Kaphon, General Manager of the City of Tel Aviv-Jaffa, August 7, 2000):

> Pursuant to a decision of the city council session on June 25, 2000 and in light of the reasons and recommendations of the Attorney General, the City of Tel Aviv-Jaffa agrees to add Arabic to signs posted in the following areas:
>
> (a) On signs posted on major thoroughfares, in order to make it easier for the Arabic speaking population to navigate the city and reach their destination.
> (b) On signs posted in public institutions that serve the Arabic speaking community.
> (c) In areas that house a sizable Arab population, Arabic will be added to street signs, plazas and to all traffic, safety and warning signs.
> (d) We agree to add Arabic to all signs listed in sections (a) – (c) within the next five years, starting form this year.
>
> During this time period, there are plans to conduct expansive development in the areas housing sizable Arab populations. This includes various development projects involving the local infrastructure, during which the local signs will be replaced with ones containing Arabic.
>
> Additionally, any signs replaced during this period (such as for wear and tear) or any new signs posted, will also contain an Arabic translation.

This is essentially the position of the other Respondents as well. The *City of Ramle* adopted the position of the Attorney General on the basis of its "arguments and reasoning," and added that within five years it will add Arabic to traffic signs

posted in its major thoroughfares; public facilities serving the city's general populace; and on the signs bearing street names in areas in which Arabs reside. It added that it is accepting this responsibility despite the fact that "doing so will be very expensive and outside the city's budget." The *City of Lod* wrote that it will add Arabic to signs posted in Arab neighborhoods, on major thoroughfares and in public institutions. It added, however, that because of its difficult financial situation, the signs will be replaced gradually, and only when the signs would anyways be replaced, in order to avoid an expense it cannot bear. Furthermore, it added that it is not doing so out of any legal obligation, but out of "consideration, beyond the letter of the law, and at our own discretion." The *City of Upper Nazareth* agreed to add Arabic pursuant to the Attorney General's guidelines (major thoroughfares, Arab neighborhoods and public institutions), stating that it intends to complete the project within a few years and emphasizing that its position stems from its "intent to reach a fair compromise in the case and that it does not admit to any legal obligation, including any obligation to post signs in Arabic or in any language other than Hebrew".

4. The Petitioners responded harshly to the Attorney General's position (taken from the Petitioners' claims in their November 16, 2000 filing):

> The Attorney General's position regarding the guidelines established for the Respondents as to how they should exercise their discretion in regards to municipal signs is an affront to the Arab minority. According to this

> position, Arabs are excluded from the general population such that, in cities in which they are residents, they can have signs posted in their language only in their neighborhoods and on major thoroughfares. This position harms their feeling of inclusion and personifies feelings of alienation. The position of the Attorney General sends a message of humiliation, exclusion and alienation towards the Arab residents and their status as equal citizens. Even if the Respondents have no intention to discriminate, the result of such a policy is discriminatory in nature and cannot be allowed.

Furthermore, the Petitioners argue that the guidelines set forth by the Attorney General are impractical. First, they claim, "it is impossible to properly distinguish between main streets and side streets." Second, the Petitioners argue that it is improper to distinguish between Arab neighborhoods and Jewish neighborhoods in mixed cities. They argue that many Arab residents are leaving Arab neighborhoods and moving to neighborhoods that in the past were exclusively Jewish. The Petitioners also ask incredulously "whether, for the purpose of determining the standards, tests will be instituted through which cities can classify a neighborhood as an 'Arab neighborhood' or a neighborhood housing a 'sizable Arab concentration' or a 'large population of Arabic speakers.'"

5. The Attorney General filed a supplemental brief in which he went over the main points of his position. First, that "the Arabic language must be respected along with the Israeli citizens for whom it is their language, and it must be given the appropriate attention." Second, that "Hebrew is the principle official language in the State and, therefore, contrary to what the Petitioners claim, the status of the

Arabic language is not equal to the status of the Hebrew language in this country, and there is no obligation to use Arabic in the same way there is to use Hebrew by all governmental authorities…." However, this time, the Attorney General adds that "practical considerations, including respect for the Arab community, justify the use of Arabic beyond the signs posted on main streets and in neighborhoods housing a large Arabic-speaking population." Nevertheless, the Attorney General refrained from taking an absolute position with regard to signs posted in places other than main streets, public facilities and Arab neighborhoods. With regard to signs posted beyond these places, the Attorney General prefers to leave the decision to local authorities to decide for themselves, because they "better understand the needs of their local communities."

6. This position was also rejected by the Petitioners, who voiced their displeasure by stating:

> The Petitioners repeat their claim that the reasons listed in the supplemental brief do not justify a policy that excludes the use of Arabic on all municipal signs posted within the Respondents' city limits. The official status of the Arabic language and the constitutional principle of equality require the Respondents to treat the Arabic language equally in all aspects of their public functions.
>
> The general and vague guidelines provided by the supplemental brief regarding the use of discretion by the Respondents when determining the exact scope of which signs require Arabic does not guarantee the equal treatment of the Arabic language on the Respondents' municipal signs. The

Petitioners claim that, realistically, it is very difficult to define the discretion that is given in such general terms.

7. The Cities of Tel Aviv-Jaffa, Ramle and Upper Nazareth also filed supplemental briefs and expressed their willingness to add Arabic to signs posted on main streets, public facilities and Arab neighborhoods. The cities added that their offer is an adequate solution in that it properly addresses the public interest and the needs of the cities' Arabic-speaking residents and guests. The general counsel for the City of Tel Aviv-Jaffa informed us that he asked the two Arab members of the city council what they thought about the city's plan. They responded that they believe that the plan meets the needs of the city's Arab residents and that it shows respect for the Arabic language and for its speakers. The City of Ramle and the City of Upper Nazareth opined that the issue of official languages in Israel is a national issue that should be determined by the Knesset. Therefore, so long as the Knesset has not acted and has refrained from ordering the various authorities in the State to be completely bilingual, discretion should be left to the local authorities to act in accordance with its own needs as it sees fit.

The Disagreement Among the Parties

8. What is the underlying dispute among the parties? The Petitioners claim that the Respondents have a legal *obligation* to post *all* signs in Arabic alongside the Hebrew text, and, therefore, the current situation, where most signs do not include

an Arabic translation, violates the law. By contrast, the Respondents argue that they have no legal obligation to add Arabic to the signs posted in their jurisdictions. However, the Respondents have agreed, out of recognition of the daily needs and feelings of their Arab residents, to add Arabic to signs posted on main streets, municipal facilities and on signs posted in Arab neighborhoods. Practically speaking, the main dispute between the parties is whether Arabic must be added to signs posted on side streets in areas in which Arabs do not reside, for example, on side streets in northern Tel Aviv-Jaffa. The question presented is whether there is an obligation to add Arabic to signs posted on side streets in areas in which there is no Arab community. Do the Respondents have such an obligation, as the Petitioners argue, or not, as the Respondents assert? I will now set out to investigate whether such an obligation exists – in statute or case law – and at the end we will see what we have come up with.

The Obligation Claim Based on the 1922 King's Order

9. The Petitioners point to Section 82 of the 1922 King's Order in Council (over the Land of Israel) ("King's Order") and argue that from the provision comes an obligation on the part of the Respondents. Let us examine this claim.

Section 82 of the King's Order, in its binding English version (*See* Section 24 of the 5741/1981 Law Interpretation Act) states:

Official Languages

> 82. All Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner shall be published in English, Arabic and Hebrew. The three languages may be used subject to any regulations to be made by the High Commissioner, in the Government offices and the Law Courts.
>
> In the case of any discrepancy between the English text of any Ordinance, official notice or official form and the Arabic or Hebrew text thereof, the English text shall prevail.

And in the non-biding Hebrew translation:

> [Hebrew Translation Omitted]

Section 82 of the King's Order establishes the Arabic language, as its title suggests, as an "official language." This status alone, the Petitioners argue, makes it an "obligation for government authorities to make equal use of the language without discrimination and without arbitrariness." The Respondents, needless to say, dismiss this argument, and because of the disagreement between the parties, we must come to a decision.

10. The term "official language" can have multiple meanings. It is a vague term whose scope can change over time and from one legal system to another. Seemingly, everyone can agree that saying that a particular language is an "official language" in "Ruritania" means that it has some kind of "special elevated status" in the country. *See* 12/99 *Mar'i v. Sabak*, IsrSC 53(2) 128, 142. However, it is difficult to reach a decisive and clear legal conclusion based on a language's

designation as an "official language." In some cases, the legislature explained in detail what it meant when designating a particular language as "official." For example, in Canada, which is bilingual, the legislature was not satisfied by ceremoniously declaring English and French as "official" languages, but explicitly legislated, in depth, what operative conclusions can be drawn from such a designation. *See infra* para. 65 – 67. In a place where the law does not explain what it means for a language to be "official," it might be for a reason, and we must be careful when drawing operative conclusions based on the mere fact a language is deemed "official." This issue is too sensitive for everyone to interpret it in his own way. These considerations led me to write the following in 12/99 *Mar'i* at 142, "In our country, the Arabic language enjoys a special elevated status, and some even say it is an 'official' language (whatever the word 'official' means)." In that case, I held that the "special elevated status" of the Arabic language should be significant with regard to an election-law issue, and in interpreting the relevant statute, I chose, from a number of possible interpretations, to give preference to "the interpretation that recognizes the status of the Arabic language and promotes the right to vote and be elected." *Id*.

11. As for the issue at hand, before we analyze Section 82 of the King's Order, we cannot avoid noting that when we refer to "official" languages in Israel we are dealing with the King's Order, which was enacted no less than 80 years ago. If that

were not enough, the binding language of the Order is English. Also note that while the King's Order was considered the "mini-constitution" of the Land of Israel during the period of the British Mandate, it was enacted in Britain as an "order", which is secondary legislation under the authority of the 1890 Foreign Jurisdiction Act.

12. As for the interpretation of Section 82, first, the term "official languages" only appears in the title of Section 82 of the King's Order, and in the text of the statute, the legislature explains what this means. The law distinguishes between the obligations of the central government and that of the local authorities. As to the central government: The King's Order obligates the central government to post "All ordinances, official notices and official forms of the government" in English, Arabic and Hebrew (after the establishment of the State, pursuant to Section 15(b) of the 5708/1948 Government and Legal System Organization Act, this no longer applies to English). However, the King's Order does not place any such obligation upon local authorities. All it says is "all official notices of local authorities and municipalities" are to be published in English, Arabic and Hebrew "in areas to be prescribed by order of the High Commissioner." Therefore, local authorities are not obligated to publish "official notices" unless ordered to do so by the High Commissioner and, even then, only in the areas in which he orders them to do so. As far as we know, no such orders were issued, and, therefore, it seems that the

King's Order cannot serve as a basis for requiring the Respondents to publish their notices in Arabic.

13. However, the analysis does not end here. Another question is whether the High Commissioner is authorized to order local authorities to use Arabic in their municipal signs. Section 82 refers to the High Commissioner's authority to obligate local authorities to publish their "official notices" in three languages. This begs the question of whether municipal signs are forms of "official notices." My colleague, *President Barak*, opted to leave this question as one needing further review; however, I think that it will soon be clear that we can give a definitive answer.

14. What is the explanation of the term "official notices?" The first answer that comes to the legal mind is that this term only refers to written or printed documents, and today, this definition could also extend to pictures, television and radio broadcasts, web postings and more. At first glance, a legal mind would not include street signs, but upon further review this changes.

*First of all*, there is no legal distinction between local government's authority to name streets and its authority to issue orders and regulations; they are one and the same. The same is true whether their authority stems directly from a statute (like naming streets) or whether it is granted to allow it to fulfill its statutory legal duties (with the knowledge that local governments only have the authority

granted to them by statute). Therefore, under the broad definition of the term "official notices," street names and the like can be included.

*Second*, because of the status of the King's Order as a "mini-constitution," it can be defined in a broader fashion in accordance with the accepted rule of exegesis that constitutions are to be defined broadly (*See* A. BARAK, INTERPRETATION IN LAW vol. 3, "Constitutional Interpretation," at 83-87 (5754/1994) and the accompanying references). Therefore, the term "official notices" should be given a broad definition.

The *third reason* to define the term broadly is the most substantive. Notifications are publicized in Arabic, like they are in Hebrew, to inform people of certain information. Arabic is used to notify Arabic readers and Hebrew for those who read Hebrew. The nature of a notification is to inform the public of what is written, which may be to provide information regarding direction, warning and general information. This understanding does not allow us to distinguish between informing the public of a street name and the like or other types of information provided by local authorities. Notification has a functional purpose and the functional purpose of posting street names is no less necessary, and sometimes even more so, than the functional purpose of any other notification.

15. To summarize, signs posted by local government fall within the scope of "official notices" under Section 82 of the King's Order; however, the High

Commissioner, pursuant to his authority under Section 82, has not issued any orders, and, therefore, the local authorities have no obligation to post signs, or any other "official notice" in Hebrew and in Arabic. Additionally, there are times at which a law may specifically obligate a notification to be issued in Arabic. For example, Section 46(b) of the 5740/1980 Associations Act requires a dissolving entity to issue notification of its dissolution "… in two daily Hebrew newspapers; however, if most members of the entity are Arabic speakers, it must be publicized in an Arabic newspaper." The same applies to public tenders issued by the State, which also need to be publicized in an Arabic publication published in Israel under Regulation 15(b) of the 5753/1993 Tender Regulations. However, we do not see any such requirements made of local authorities.

16. From what we have written about Section 82 of the King's Order, we can reach several conclusions about this case. *First of all*, the term "official language" alone, does not provide us any operative legal conclusions. While the title "official" grants a language an elevated status, other than what the law specifies, we cannot draw any operative legal conclusions other than in the circumstances delineated by the law. This is a sensitive issue and any legal conclusion favoring one interest may harm another. Therefore, we must be careful not to draw any legal conclusions based on a language's "official" status unless such a conclusion is necessary because of another legal principle, such as guaranteeing the right to vote

or be elected pursuant to 12/99 *Mar'i v. Sabak*. *Second*, a close read of Section 82 of the King's Order informs us that its main purpose, or at least one of its main purposes, is its functional purpose, which is to inform both the Arabic- and Hebrew-speaking public of all notifications issued by public authorities, whether they impose a public obligation or provide any other form of information.

*Third*, and most relevant to our discussion, the King's Order authorizes the High Commissioner to order local authorities to issue notifications in Hebrew and in Arabic. However, the High Commissioner – and nowadays, the government – has not used this authority to order local government to post signs in Hebrew and in Arabic. This begs the question: in light of the fact that we have a statute placing the authority upon a public body – in our case, the High Commissioner, or the national government – to issue an order of this sort, should we not base our conclusion on what the legislature has decided and not establish case law alongside the statute, so long as the implementation of this statute has not been directly addressed by the government? Would it not make more sense for the Petitioners to first turn to the government and request that it use its authority under Section 82 of the King's Order to order local governments (in this case, the Respondents) to post signs in Hebrew and in Arabic? The Petitioners should turn to the national government for relief, and the government may fully comply with their request, partially comply with it or completely ignore it. In any event, the Petitioners have

the right to come back to the High Court of Justice if they feel their concern was not adequately addressed. However, so long as they have not put in the required effort, as has always been the rule of this Court, can we not dismiss this case as unripe and misplaced?

17. Moreover, we have a statute authorizing the national government to obligate local government in Israel regarding the posting of "official notices." Would it be right for us, looking at the legal system as a whole, to establish a rule regarding the publication of notifications before all channels under the existing statute have been exhausted? I have no intention of getting into the procedural rules of the High Court of Justice, which require certain proceedings before turning to the Court (even if the rule is relevant). My intention is to explain the proper relationship between the legislature and the judiciary. I find it very difficult to make a common-law rule, alongside a statute, when the branch whose authority it is to do so has not been asked to address the matter. This is not something that can be done lightly. The King's Order grants the government the authority to act, and had the Petitioners turned to it, and had their request denied, even partially, we would have to determine whether its decision exceeds its authority or the amount of reasonableness required by law. Yet, in this case, we are being asked to step in for the authorized body and decide on its behalf, without the government ever being asked to address the issue. I find this unacceptable.

I disagree with the decision of my colleague, *President Barak*. I would also have a very difficult time accepting the necessary conclusion which stems from his decision that, had the government determined that side streets in north Tel Aviv-Jaffa have no need for signs in Arabic, alongside the Hebrew, such a decision would be beyond the authority of the government, so we must intervene and overturn it. However, despite the fact that the government did not have an opportunity to consider, examine and decide the matter, this is what my colleague has decided. Perhaps the government would have sided with the Petitioners or maybe even would have granted them more than they request. Alternatively, the government might have decided to establish an honorable commission to analyze the issues raised by this petition. Is the government not entitled to do this? If we are to tell the Respondents what to do in this case, we are, unjustly, in my opinion, depriving the government of its statutory authority to act in one way or another.

18. To summarize, Section 82 of the King's Order does not provide legal grounds for the Petitioners' claim. Furthermore, in my opinion, the existence of Section 82, specifically the authority it places upon the government, deprives us of the ability to make a ruling that would obligate the Respondents to act, so long as the Petitioners have not exhausted the proper legal channels by asking the government to act in accordance with Section 82 of the King's Order.

The Claim that there is an Obligation Arising from the Declaration of Independence

19. The Petitioners also claim that the obligation to post signs in Arabic can be directly derived from the principle of equality mentioned in the Declaration of Independence. In their words:

> [E]quality is an integral part of equal rights, which are guaranteed to all citizens by the Declaration of Independence, which holds the weight of constitutional law under the fundamental principles of the two new Basic Laws.
>
> [It states,] "The State of Israel will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex… *language*, education and culture."

If the Declaration of Independence had actually said what the Petitioners claim, we would be able to determine what its legal status is in Israeli law (something which the Petitioners did not delve into). Does "the Declaration… declare the vision of the nation and its principles but not have the constitutional weight allowing it to determine the legality of various statutes?" (HCJ 10/48 *Ziv v. Gubernik*, IsrSC 1 85, 89; *see also*, HCJ 7/48 *Alkarbuteli v. Defense Minister*, IsrSC 2 5, 13). Does the Declaration have interpretive power in a way that "all forms of legislation must be interpreted pursuant to the principles set forth in it, and in no way that opposes

it?" (CA 450/70 *Rogozinsky v. State of Israel*, IsrSC 26(1) 129, 135). After the passage of the two new Basic Laws, it is possible that the Declaration changed from being an interpretive source to an actual bill of rights. *Cf.* HCJ 1554/94 *Amutat Shoharei Gila't v. Minister of Education*, IsrSC 50(3) 2, 26. However, all these questions are irrelevant because the Petitioners have wrongly attributed a quote to the Declaration. This, unlike what the Petitioners have quoted, is what the Declaration of Independence actually says:

> The State of Israel… will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture…

20. As we can see, the Declaration clearly differentiates between the State's *obligation– to ensure* equal rights, socially and politically, for all its inhabitants, etc., and the *right of freedom*, which includes freedom of language, which the State must grant to all its residents. The right of citizens to equal rights, political and social, is not the same as the individual rights such as freedom of language, religion, etc. The right to equal rights, both political and social, must be provided by the government in the narrow sense of the word. Rights of this type are those "I am entitled to demand that someone perform for me or demand that someone refrain from acting against me. When I have such a right, the other has a *duty* to perform what I am entitled to, or refrain from doing what I am entitled to not be

done.": CrimA 95,99/51 *Podmasky v. Attorney General*, IsrSC6(1) 341, 354 (Agranat, J.). These are rights in their narrow sense and are the first category of rights as categorized by Hohfeld. *See* Salmond, "Jurisprudence," at 44 (12th ed., 1966).

By contrast, the second type of rights is those involving freedoms and liberties. These rights proclaim one to be "free, within known boundaries, to do what one wants for oneself or not to do what one does not want to do without State involvement, in other words, without the actions or inactions deemed illegal. These rights are based on the *lack* of legislation forbidding such acts": 95, 99/51 *Podmasky*, at 354. Furthermore, "The first category of rights permits me to demand something from *another* or require *another* to refrain from acting, whereas the second type grants *me* the freedom to act or refrain from acting in accordance with my wishes. However, what distinguishes most of the rights of the second category is that it characterizes the behavior of the individual as legal, meaning that the government cannot punish the owner of the right for expressing his right in any way. 'Everyone has the right to do what the law does not forbid'…" (*Id*. at 355).

21. Therefore, The Declaration of Independence guarantees everyone the right to freedom of language, which means, everyone is free to speak whatever language he desires. This right is a derivative of freedom of expression. As *Justice Barak*

noted in CA 105/92 *Re'em Engineering Contractors Ltd. v. The City of Upper Nazareth*, IsrSC 47(5) 189, 202:

> Within the framework of freedom of expression, one has the right to express oneself in any language one so desires. The Declaration of Independence, which declares the fundamental principles of the nation, has declared that the State of Israel shall "guarantee freedom of religion, conscience and language." One is given, therefore, the freedom to express oneself in any language one wants. One has the freedom to express one's thoughts (whether personal, social or commercial) in any language one prefers.

Thus, in the absence of a very compelling interest, which may in very specific circumstances justify limiting the use of a particular language, everyone has the freedom to express himself in any language he so desires, whether orally or in writing, and to publicize his opinions in any language. State authorities may not interfere with such matters by limiting one's right to express oneself in any language one desires. Moreover, the State is obligated to guarantee that all persons can speak any language.

22. Despite the fact that such a right exists, the Petitioners cannot base their claim on this right, because it is not enough that this right is guaranteed to all those in Israel. They want to obligate the Respondents to take positive action – an obligation that can only commence for rights in the first category, as categorized by Hohfeld – by requiring the Respondents to add Arabic to all signs posted in their jurisdiction. However, the Declaration does not require positive action for

these types of rights (rights in their "narrow sense"). The Declaration grants this right as a form of liberty, which does not involve any obligation on the part of the government (other than not intervening with this right and the duty to prevent people from depriving others of this right). The government's only obligation is to refrain from involving itself and has no positive obligation. In the case of 1554/94 *Amutat Shoharei Gila't*, the Petitioners claimed that young children who grew up with social hardships should have the right to receive grants from the government for "educational development." In his opinion, *Justice Or* stated (at 27):

> What we need to note is that the Petitioners have failed to explain how the right to "freedom of education", enshrined in the Declaration of Independence, creates an affirmative obligation for the government to educate children between the ages of 3 and 5 in the manner requested by the Petitioners. The right to "freedom of education," simply put, is the liberty to choose a form of education. For example, parents who want a religious education for their children have the right to provide such an education. Similarly, parents who prefer another type of education for their children, one that is not religious, have the right to choose that form of education. However, this right does not, by itself, obligate the State to provide any one form of education.

The right to freedom of education in the Declaration of Independence is just like the right to freedom of language. We can apply the words of *Justice Or* to this case. Freedom of language does not place any affirmative obligation upon the government.

Later on, we will talk about and examine the Canadian Charter of Human Rights (*see infra* para. 65) which explicitly declares both English and French as the official languages of Canada and that the two languages have equal status and are to be treated equally by the all the branches of government. We will compare the language of the Charter to our Declaration of Independence, and we will easily understand why the Declaration does not affirmatively obligate the newborn state to use the Arabic language.

23. Freedom of language comes with certain necessary norms that are self-evident, which we must not make light of when ensuring this freedom. In the early years of the State, not long after the Declaration of Independence guaranteed freedom of language, the Israeli Film and Theater Review Council forbade local groups from performing in the Yiddish language. Foreign actors were permitted to express themselves on stage in Yiddish, but not Israeli ones. I have a letter dated 25 Tevet 5711 (January 3, 1951) in which the chairman of the Israeli Film and Theater Review Association writes about the performance of "Zwei Kunilemels" (Two Kunilemels). This is the text of the letter:

> 25 Tevet 5711/3 January 1951
> Mr. Aharon Astragorsky
> 14 Ba'alei Melacha St.
> Tel Aviv
>
> Dear Sir,

Re: The request to perform the play "Two Kunilemels"

In response to your 27 December 1950 letter, we regret to inform you that in accordance with the decision of the Israeli Film and Theater Review Council, a local group is not allowed to perform in Yiddish.

Permission to perform in Yiddish is granted only to foreign actors visiting Israel.

Sincerely,

Kisilov,
Chairman

CC: Criminal Division of the National Branch of the Israeli Police, Tel Aviv
Commander of the Tel Aviv District of Israeli Police

The reader should notice the identity of those copied on the bottom of the letter. One thing should be admitted: the letter writers were quickly informed of the denial of their request.

Additionally, during that time, the Interior Ministry had a policy favoring Hebrew journalism over Yiddish journalism. *Cf.* HCJ 213/52 *M. Stein, Publisher of the "Democratic Newspaper" v. Interior Minister*, IsrSC 6 867. Those days of language censorship are long gone, but we can see that freedom of language was not always understood in the way we would think.

24. Therefore, the Declaration of Independence does not provide a legal basis for the Petitioners and does not obligate the Respondents to post their municipal signs in Arabic.

Is there an Obligation Arising from International Law?

25. Lacking any positive law addressing their claimed obligation, the Petitioners turned to international law. They claim that the obligation to honor the language of a minority population is enshrined in article 27 of the International Covenant on Civil and Political Rights, a covenant ratified by Israel in 1991. According to the Petitioners, article 27 of the Covenant provides for "an affirmative obligation upon States." However, article 27 of the Covenant (which is not quoted by the Petitioners) does not support this claim. Article 27 states:

> In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Reading this article shows us that the Petitioners are mixing again apples and oranges; they are confusing rights that entail affirmative obligations with rights that guarantee freedom and liberty. The language of article 27 refers exclusively to freedom and liberty, and does not impose any affirmative obligation upon the State, as the Petitioners claim. All article 27 does is require states to refrain from limiting minorities' right to use their language and to grant them freedom of religion and culture. *See also*, DAVID KRETZMER, THE LEGAL STATUS OF ARABS IN ISRAEL at 164 (Westview, 1990). All the Covenant requires of its signatories is

tolerance towards minority groups in matters of culture, religion and language; it does not obligate states to assist minorities in protecting, advancing or fostering its religion, culture or language.

26. Regarding the interpretation of article 27, the Petitioners point to General Comment 23 of the Human Rights Committee which states:

> [A]rticle 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.

By accepting this Comment, the Petitioners argue that "public authorities are obligated to honor the language of the minority." Furthermore, they argue that "[t]he accepted interpretation of this provision places an affirmative obligation upon the government." I disagree both with the Petitioners' explanation and the necessary conclusion stemming from it.

First, even if we were to agree, that article 27 creates an obligation upon the State; the obligation is a negative one, specifically, not to interfere with a minority's freedom of language, religion, or culture. Furthermore, I am willing to agree that there is an obligation on the part of the State to prevent others from interfering with the minority's freedom. As article 6.1 of the aforementioned Comment states:

> Although article 27 is expressed in negative terms, it, nevertheless, recognizes the existence of a "right" and requires that it not be denied. Consequently, a state party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the state party.

Upon reading this explanation of article 27, contrary to Petitioners' claim, we see that there is nothing that places an affirmative obligation upon the State. Article 27 is clear and no novel explanation is necessary. In any event, we should note that, contrary to the Petitioners' claim, any obligations stemming from article 27 of the Covenant apply to the national governments but not local authorities.

Without getting into the question of the extent to which a Covenant can grant rights to individuals within the borders of a state, we should note that, in general, they cannot. *See, e.g.*, HCJ 69, 493/81 *Abu Ita v. Commander of Judea and Samaria*, IsrSC 37(2) 197, 233 – 34 – We do not see anywhere that the International Covenant on Civil and Political Rights grants the Arab minority residing in the Respondent-cities the rights claimed by the Petitioners; in other words, rights requiring the State or local authorities to affirmatively act towards protecting, advancing and fostering the Arab language by posting signs in Arabic or in any other way.

<u>From Statute to Discretion – The Functional Test</u>

27. We have not found any statute or positive rule that obligates municipalities to post signs in Arabic or with Arabic. The municipalities have discretion to determine the design of the signs posted in its borders, including whether to post signs in Arabic alongside Hebrew. The question remains, however, how should the municipalities exercise this discretion? What are the considerations they must take into account, and is there a consideration that outweighs all others? We now turn to these questions.

28. The powers of a municipality are only those granted to it by law, either explicitly or implicitly. Its power to post signs mainly stems from its general authority to look out for the welfare of its residents (Section 249 of the Municipal Ordinance [new version]). In addition to this general authority, municipalities have the special authority to "name all roads, streets, alleys and plazas, or change the names when necessary… and ensure that street names are prominently posted..." (Section 235(4)(a) of the Municipal Ordinance [new version]). Additionally, municipalities, as the local authority over signs, have the authority to post in their jurisdictions warning, directional and information signs, traffic signs and road markers within their jurisdiction (Regulation 18 of the 5721/1961 Traffic Regulations). We can therefore all agree that each of the Respondents in this case have the authority over the signs posted within their borders. The question now is: does the exercise of the appropriate discretion within the framework of this

authority, as the Petitioners claim, *compel* the conclusion that all signs posted in Hebrew must contain an Arabic translation alongside it? And, furthermore, as the Petitioners argue, must the Arabic be just "as prominent as the Hebrew?" To answer this question we must analyze the considerations that the municipalities must take into account when exercising the authority granted to them by law. These considerations will be drawn, first and foremost, from the nature of the municipality's authorities and actions, and the nature of the relationship between a municipality and its residents. What is, therefore, the nature of the municipality's authority and actions and the nature of a relationship between a municipality and its residents?

29. In the case of HCJ 6741/99 *Yekutieli v. Interior Minister*, IsrSC 55(3) 673, we analyzed the considerations a municipality must take into account when utilizing authority granted to it by law, and we determined that a very clear distinction must be made between considerations that may be taken into account by the State (meaning the national government) and those taken into account by municipalities pursuant to its authority. Regarding this distinction we stated, among other things, the following (at 704):

> We have enumerated the flaws in the decision made by the Interior Minister… A close look at the issue tells us that the common denominator of all the problems – or, at least, most of them – is that he mixed apples and oranges. In other words, confusing the jurisdiction of the state government

> with that of local government, which are different from one another. There are policies of the government on the national level that are a bad fit for localities, and there are polices that fit municipalities that would be a bad fit for the national government.

In that case, we asked if municipalities have the authority to grant yeshiva students, who study Torah professionally, a discount on their municipal property taxes. Our decision (pursuant to the specific assumptions of that case) was that the state government has the authority to grant yeshiva students financial benefits, but municipalities do not, because their power is not the same. We stated (at 705):

> Our basic assumption in this case – and we are not going to challenge this assumption at this point – is that the State has the authority to provide financial assistance to those who study Torah full time. As far as the values the State wants to promote, no one argues that it has the authority to promote the students' study in the yeshiva, and that this can be done by providing them with minimum wage. Indeed, the budget of the Religious Affairs Ministry includes the guarantee of minimum wage for those who study Torah professionally, and these payments are not challenged in this case. These payments are a matter of government policy and are budgeted for in the State budget. It is an issue of national interests.

It is the State who is empowered to make such decisions, but not municipalities (*Id*. at 705 – 06):

> The national government is different than municipalities. Unlike the State government, whose policies are, by nature, of national concern, local authorities are limited only to what is specifically designated to them by law, and only within their borders. Their policies must reflect the local interests of the municipality and its residents. Local government is supposed to concern itself with the interests of its community, not that of the general public, and its policies must be consistent with the interests of the community living within its jurisdiction. Local government is supposed to

> provide services to all its residents, and the residents have the responsibility to finance these services…
>
> In this regard, we should keep in mind the general rule that a local authority should concern itself with local issues and distance itself from issues of national importance. All local authorities are to deal with their own unique issues, and refrain from involving themselves with issues that are of national importance.

Posting signs in a city, whether street signs or those posted on public buildings and the like are just like any other service a city provides for its residents such as lighting, sewage, sidewalks and streets. All these are among the day-to-day needs that are the responsibility of local government, which performs its duties according to its own discretion as to what are the best interests of its residents. If a municipality were to abandon the responsibilities entrusted to it, namely, to adequately provide services for its residents and delve into issues requiring national attention, issues which are not related to why people elect a mayor or a city council, a court will order the municipality to disassociate itself from such matters and focus on its responsibilities such as lights, streets, sewage and community centers. A court would remind the city that such national issues are for the State legislature – the Knesset – and the government to deal with, and not for local authorities, which should focus on their own responsibilities and refrain from dealing with issues of national significance, pretending it to be a municipal issue. *See also*, HCJ 122/54 *Axel v. Mayor and City Council of the Netanya District*,

IsrSC 8 1524, 1531 – 32; CrimA 217/68 *Yazramkas v. State of Israel*, IsrSC 22(2) 343, 363 – 64.

30. Posting signs is no different from lighting, streets and sewage, as it is but another service provided by the city for the daily benefit of its residents. Posting signs serves a functional purpose and is not meant to serve a national or statewide purpose. Posting signs is not a fundamental human necessity, nor does it serve or fulfill any ideology. Posting signs merely serves the purpose of informing people of street names, that a particular building is the city museum, that a road is closed due to construction and other simple and basic forms of information, which assist a city resident in finding his way around his city. Posting signs is meant for routine everyday life; they do not serve as ideological manifestos on beliefs, opinions or feelings. Municipalities are elected to serve the city's day-to-day needs. Every service provided by the city has the city seal on it, as do all signs posted within a city, which represents the welfare and comfort of its residents.

31. What about in this case? Everyone agrees that municipal signs within a city's jurisdiction – street names, public buildings, etc. – must be posted in a language understood by its residents. Signs posted in Outer-Mongolian in the streets of Tel Aviv-Jaffa would not serve any purpose, since they would not meet the needs of the residents. Signs that cannot be understood by the public do not serve their purpose, and a city posting such signs would not be fulfilling its duties.

Is this the case here?

If it were proven that Arab residents of the Respondents – for the sake of simplicity, we will discuss Tel Aviv-Jaffa – are harmed because they cannot read the signs posted by the city (remember, we are referring solely to the street signs posted on the side streets in Jewish neighborhoods, *see supra* para. 8), we would not hesitate to obligate the city to add Arabic alongside the Hebrew, whether on Soutine Street, Modigliani Street or any other street located in a Jewish neighborhood. The problem is, however, that in the petition before us, I have not found even one concrete complaint that someone had difficulty navigating the streets because of a lack of Arabic on the Soutine Street sign. I have not found even a grain of evidence of an Arab who got lost because of the lack of Arabic on the side streets in Jewish neighborhoods. We have not heard of any harm suffered by Arabs because of any difficulty in understanding streets signs posted in Hebrew, nor have we received any statistics as to the amount of Arabs who cannot read Hebrew.

The Petitioners have made themselves the guardians of the Respondents' residents, but have not been able to come up with even a single affidavit of someone who was harmed by the lack of Arabic writing. We heard plenty of arguments claiming "prevention of access" and "risk of danger," but these are all frivolous claims, which the Petitioners have not bothered to verify using tangible

data. Lacking compelling evidence, all the Petitioners' arguments claiming that the residents of the Respondent-cities are being harmed are meritless, have nothing to stand upon and this Court cannot grant them relief.

32. In letters sent from Petitioner No. 2 to the Respondents, the Petitioner repeatedly made the following claim: "Many Arab drivers complain that the signs posted in the City of Tel Aviv-Jaffa do not include Arabic… which harms Arab drivers, because the absence of Arabic makes it difficult for them to find their way around the city." This was written in a letter to City of Tel Aviv-Jaffa; identical letters were sent to the cities of Ramle and Lod. However, other than the generalization of "many Arab drivers" having difficulty, we did not hear of a single driver who complained. Perhaps the Petitioners did not file such an affidavit because there are no Arab drivers who have had the difficulty described by Petitioner No. 2?

The same goes for the Petitioners' claim – which this time is more carefully worded – that "[l]ocal authorities have an obligation to provide adequate access to public institutions for Arabic speakers, by providing signs in their language so that these citizens will have equal access to all public services" and that this obligation is especially important "when speaking of warning signs, because not understanding these signs endangers the safety of Arab citizens." However, here too, the Petitioners failed to concretize their claims.

33. Furthermore, in the past few years we have broadened the standing requirement (*locus standi*), and we have addressed public petitions (*actiones populares*) not just once and not even in just a few cases; however, even with this broad approach, we still have a rule that if there is someone who is allegedly harmed and he himself does not complain to the High Court of Justice, we will not hear the case. In such cases, we inform the petitioner attempting to intercede on behalf of another's rights: "Why are you fighting another person's battle? If the harmed party is not complaining, who are you to start an argument?" *Cf.*, HCJ 217/83 *Segal v. Interior Minister*, IsrSC 34(4) 429, 443; HCJ 852/86 *Aloni v. Justice Minister*, IsrSC 41(2) 1, 23; HCJ 910/86 *Ressler v. Defense Minister*, IsrSC 42(2) 441, 461 – 62, 469, 472; HCJ 2148/94 *Gelbert v. Chairman of the Commission Investigating the Hebron Massacre*, IsrSC 48(3) 573, 579.

In the case of HCJ 527/74 *Hannah Halef v. Northern District Zoning and Building Committee*, IsrSC 29(2) 319, the Zoning and Building Committee decided to rezone a parcel of land but did not publicize this decision in an Arabic newspaper as required by law. The petitioners claimed that because of the committee's failure to do so, it deprived them of the right to oppose the plan. The Court sided with the petitioners and nullified the committee's decision to rezone the land. Hence, a person who is harmed in some way has the right to petition to the High Court of Justice with regard to that particular source of harm and will be

entitled to relief should the Court determine that to be correct. Unlike in *Halef*, there is no harmed party before us in this case. All we have are general assertions regarding hypothetical damage. If this were not enough, there is also the following.

34. The residents of the Respondent-cities of Tel Aviv-Jaffa, Lod, Ramle and Upper Nazareth have elected their own respective mayors and council members, and their desire is for these people to run all the cities' municipal affairs. Among these affairs is the matter of municipal signs. However, we have not heard any complaints either from the residents of the Respondent-cities or from their respective elected officials regarding the issue of municipal signs. The residents and their elected officials are content with the municipal signs as they are and are certainly content with the adjustments the Respondents have offered to make in light of the Attorney General's opinion. These are the relevant parties to this issue, and they are content with the way things are and have not complained about them. The only complaints we have heard are the loud complaints of the Petitioners, who have nothing to do with the municipal lives of the cities involved. The Petitioners have made themselves the guardians of the Arab residents of the Respondents-cities – without the consent of the Arab residents themselves – and are claiming in the name of these residents something the city residents themselves are not raising. The Arab residents are not complaining, and yet the Petitioners are complaining on

their behalf, without the residents' authorization and without any request for representation. How is this acceptable?

35. Moreover, it is safe to assume that these cities have Arab members on their respective city councils. These representatives are supposed to represent the interests of those who elected them, which include interests relating to the posting of signs and placing Arabic on those signs. Nevertheless, we have not heard any complaints from any of these representatives. Should we be unable to say – would it be inappropriate to say – that these officials are the authentic representatives of the residents of the Respondent-cities, the same residents on whose behalf the Petitioners are supposedly raising their claim? So how can we accept arguments that are not being raised by the authentic representatives themselves? If this were not enough, we should add the following: should the issue of municipal signs not be first addressed by the city council - the elected representatives of the residents - to see what the people's elected representatives have to say? Indeed, I find it difficult to side with the Petitioners, as the purported representatives of the Respondents' respective Arab communities, before the respective city councils – which include Arab representatives – have addressed the matter. It is the Arab representatives of the city councils who live in these cities on a daily basis, not the Petitioners, so it is they who must decide whether the cities' decisions are reasonable.

36. It seems, at the very least, that the City of Tel Aviv-Jaffa did something to address this matter. Tel Aviv-Jaffa has two Arab members of its city council and pursuant to the second hearing in court, the city's lead attorney conferred with these two councilmen. After the meeting with the two Arab council members, the city's attorney, Adv. Ahaz Ben-Ari, reported the following:

> Counsel for the Respondent met with the two Arab members of the city council to hear their opinion regarding the show of respect for the Arabic language (and its speakers), and with regard to the practical aspect of what it is like in the city for those who primarily speak Arabic. The two council members opined that the current plan, with minor adjustments incorporated therein, sufficiently addresses the feelings of the Arab citizens of the State.

If this is the opinion of the Arab council members – the legitimate representatives of the city's residents – how could we heed the complaints of those who are not even city residents and whose petition is based purely upon ideological grounds? If the legitimate representatives themselves inform us that they have given the city's plan their blessing and that Tel Aviv-Jaffa's plan to change the signs sufficiently addresses the functional needs of the city's residents and that the plan honors the Arabic language and sufficiently takes into account the feelings of the Arab residents, how can we, the Court, tell the city that their plan is unacceptable? By coming to such a conclusion, if we so decide, would we not deviate from the acceptable norms regarding the balance of powers and authority between the executive and judicial branches of government and regarding the scope of judicial

review exercised by the High Court of Justice over the acts and omissions of public authorities? Can we seriously say that the city's plan – made with the consent of the Arab council members – is so unreasonable that it must be overturned? How can we force the city of Tel Aviv-Jaffa to do something its own Arab council members are not requesting? If this is the case for Tel Aviv-Jaffa, all the more so for the other cities involved which house a larger percentage of Arab residents. *See supra*.

37. It would be a terrible violation of what is an acceptable exercise of judicial review for us to involve ourselves in the decisions of the Respondents, especially since the municipal councils are elected entities that should represent and reflect the views of their electorate. Remember, we are not dealing with a fundamental right, which can even overrule the discretion of an elected body. We are dealing with a consideration that needs to be taken into account among other considerations in an effort to create a balance among all the competing forces. Once we have heard from the Arab council members informing us of what they have told us, it seems to me that there would need to be a far-reaching consideration for us to reject their opinion. Such a consideration, or something even close to it, has not been presented.

38. In the case of HCJ 240/98 *Adalah v. Minister of Religious Affairs*, IsrSC 52(5) 167, the petitioner complained of discrimination against Arabs in the State budget. We said (at 181):

> Three factors create a judicial decision triggering relief: a disagreement between parties (*lis inter partes*) – in the broad understanding of the term "disagreement"; a judicial decision in the dispute; and the award of relief alongside the decision. In all three of these factors is one common denominator: there must be a specific and concrete dispute (e.g., a complaint about not receiving a business license, the expropriation of land or contesting an illegal arrest). When there is a specific and concrete dispute, there will be a specific and concrete decision… and, like the dispute and the decision, a specific and concrete remedy… Usually, in the absence of a specific and concrete dispute, the court will dismiss the case.

The petition in that case did not meet the necessary requirements, and, therefore, we decided (at 187):

> [T]his petition is unlike other petitions; rather, it is a general manifesto of complaints alleging discrimination against the Israeli-Arab community during the course of budget allocation. Such a document is an inadequate petition to the High Court of Justice.

What we said in that case, applies here as well. The Petitioners do not have a specific and concrete dispute requiring a solution. They do not raise the plight of anyone in particular. They raise an issue, but one that is theoretical, general and vague about Arab residents living in the Respondent-cities who are having difficulty reading street signs. However, the Petitioners did not bother to present even a shred of evidence that would raise their claim from the speculative level to a

specific allegation. Hence, the Petitioners did not meet the minimum threshold required of anyone seeking relief from the High Court of Justice, which is to base any claim on actual solid facts. It is for good reason that in the past we have dismissed frivolous petitions like the one before us. This rule has served us well, and I would suggest that my colleagues not veer from this rule and, consequently, dismiss the petition.

39. To summarize, the Petitioners did not provide one iota of evidence that the Arab residents of the Respondent-cities are harmed by the lack of Arabic on city signs – specifically those posted on the side streets of Jewish neighborhoods. Also, we have not found any evidence that the lack of Arabic on these signs harms Arab residents' ability to adequately benefit from city services. General, unsubstantiated claims are not enough for the High Court of Justice to grant relief.

Similarly, we cannot ignore the words of the Attorney General's office, which, in its response to the petition wrote, "The Arab community as a whole, especially the generations born after the establishment of the State, has the ability to read and understand signs in both Hebrew and English." The Petitioners essentially agree that this is true, but argue that there still is an obligation to add Arabic "even if the minority speaks the language of the majority." By saying this, the Petitioners implicitly– almost explicitly – admit that the lack of Arabic writing on the side streets of Jewish neighborhoods in no way harms the Arab residents of

the Respondents' cities. If this is the case, and indeed it is, the functional basis of this petition falls away.

40. If what we have said until now were not enough, I add the following: the Respondents were selected by the Petitioners because of their respective Arab populations, which dwell alongside the local Jewish residents. The percentages of Arabs in these cities are between 6% (Tel Aviv-Jaffa) and 22% (Lod). The Petitioners' case is based upon their claim that the existence of the Arab residents and their functional needs imposes an obligation upon the Respondent-cities, which house these Arab communities, to post signs in Arabic. However, it is another question whether the underlying assumption of the petition has any validity. Here is why.

41. The Petitioners assume that an Arab resident of these cities conducts his day-to-day life [exclusively] in the city in which he lives and, thus, the cities, which have a significant Arab population, have the responsibility to post signs in Arabic. However, this assumption is mistaken. "Once upon a time, a person would plant himself in a specific location and would not leave save for exceptional circumstances. Whoever lived in Tel Aviv remained in Tel Aviv; whoever lived in Jerusalem stayed in Jerusalem; whoever lived in Herzlia stayed in Herzlia; and whoever lived in Haifa stayed in Haifa." (CA 5817/95 *Dr. Noa Rosenberg v.*

*Ministry of Housing*, IsrSC 50(1) 221, 232). This is no longer the case (*Id*. at 232-233):

> Times and customs have changed, as today is not like yesterday. Today, individuals and their families have an easier time wandering from place to place. For our purposes, there is not necessarily a direct connection between the factors that led to the population's dispersal and the needs and rights of the people. For example, it is possible for a person to live in Tel Aviv, despite the fact that he works in Ramat HaSharon or Herzlia. The reason he lives in Tel Aviv could be because rent is cheaper in Tel Aviv than in Ramat HaSharon or Herzlia. This is but one example. The point is that there is not necessarily a connection between a person's place of residence and his legitimate expectations that the government treat him properly, meaning reasonably, equally and without arbitrariness or discrimination …
>
> Furthermore, Ramat HaSharon borders several localities: the greater Tel Aviv area, Herzlia, and Hod HaSharon. Additionally, there are other local municipalities that are within a few hundred meters of Ramat HaSharon such as Ramat Gan, Kfar Saba, Raanana, Petah Tikva, Rosh HaAyin and Bnei Brak. Ramat HaSharon is only one of a cluster of municipalities that are all very close to one another and all these municipalities constitute one large contiguous area that is no different than one city…
>
> I, myself, do not know the difference between Tel Aviv (which is where the Petitioner lives) and Ramat HaSharon, or between Ramat HaSharon and Herzlia, or between Ramat HaSharon and Hod HaSharon, or Kfar Saba or Raanana. They all border one another, and often one will not realize when he leaves the confines of one and enters another.

The municipal borders of cities today are very arbitrary. In certain contexts, such as the need to pay property taxes, nothing is more important than the established municipal borders. However, as far as the residents' day-to-day activities are concerned, the borders are essentially meaningless and do not delineate where one

makes his living or conducts his activities. A person can live in Jaffa, which is within the borders of Tel Aviv-Jaffa, and work in Holon, Bat Yam, Herzlia or any of the other cities bordering Tel Aviv-Jaffa; and go out at night in a third municipality in the cluster of cities surrounding Tel Aviv-Jaffa. If the Arab residents of Tel Aviv-Jaffa truly have difficulty reading the Hebrew signs – and remember, this alleged difficulty has not been proven – they will also have this difficulty in Holon, Bat Yam, Ramat Gan, Petah Tikva, Ramat HaSharon, Hod HaSharon, Kfar Saba and Raanana. Posting signs only within the formal borders of Tel Aviv-Jaffa, where they actually reside, will not suffice, and eventually we will hear demands to post signs in these neighboring municipalities based on the argument that they too are, in a way "mixed cities."

42. The foremost obligations of the cities of Bat Yam and Holon, for example, are towards their own residents; however, if this issue raised is for a functional purpose, is there a reason why Bat Yam and Holon should not have to bear the same obligations? The Arab residents of Tel Aviv-Jaffa also contribute to Bat Yam and Holon, whether through employment or for leisure purposes, so why should these cities not have an obligation towards those who contribute towards their economy? If this is so regarding cities bordering Tel Aviv-Jaffa, all the more so with regard to cities in which area Arabs are known to spend significant time such as Netanya, Petah Tikva, Afula, Hadera and others. And because "your friend has a

friend, and the friend of your friend has a friend" (Babylonian Talmud in Bava Batra 28b), eventually, the Petitioners claim will spread to all of, or, at least most of Israel.

Since the distinction between the Respondent-cities and the surrounding areas is very artificial, it would be hard to require only the Respondents to post bilingual signs. However, I believe that by applying the principle of "less is more" we see the flaws in the functional effect of the Petitioners' claim and that limiting the obligation only to the Respondents' cities is arbitrary and artificial. From all this we can see that the Petitioners' claim of functionality is not based on the size of the Arab population of any particular municipality, whatever it may be, but rather the overall absence of Arabic on signs; however, no proof [of harm] has been presented, and, therefore, the claim should be dismissed.

43. To summarize, the Attorney General's position, one which has been agreed to and adopted by the Respondents, is both within the bounds of the appropriate authority and reasonable. It strikes the proper balance of sensitivity and understanding among the various true interests of the Arab community in the Respondent-cities and addresses the community's functional needs, which are posting signs in Arabic on the major streets, in Arab neighborhoods and in public buildings. Implementing this principle will allow Arabs coming through these cities, both residents and non-residents, to adequately find their way around the

city; provides an appropriate amount of respect to the language and culture of Arab-Israeli citizens; and at the same time leaves the Hebrew not as a mere language among the other languages of the land, but as the primary language of the country. The Respondents' position balances between the various considerations involved, and I cannot find any good reason to order them to act otherwise.

Arabic as an Expression of Nationality and Culture: Is there a Collective Right to have a Cultural and National Identity Fostered?

44. We have now learned that the Petitioners do not have any positive legal norm upon which they can base their claim. There is no law or any other legal source which obligates the Respondents to add Arabic to the signs they post in their cities, nor is there any practical or functional reason that would obligate them to do so. Also, no one has come before the Court claiming direct and personal harm from the lack of Arabic. What argument do the Petitioners still have?

45. It is clear that the Petitioners see themselves as petitioning on behalf of the Arab community in Israel as a whole. Their claims and complaints before the Court are on behalf of "Arabic speakers as a unique national linguistic group." They are not seeking to fight their own battle, but rather they seek to fight the battle of the "Arab minority" as a whole. They are not asking us to intervene on behalf of the personal and direct interests of a particular individual, and not even on behalf of the unique and direct interests of the Arabs residing in the

Respondent-cities. The Petitioners see themselves as the representatives of the Arab community in Israel and are claiming, on its behalf, the recognition of a right, which would stem from the recognition of the community as a collective group, which would impose a duty upon the Respondent-cities, and, by extension, the State as a whole, to safeguard the cultural and national identity of the Arab community.

46. This argument, in the name of the Arab collective and on its behalf, accompanies this petition in its various sections throughout the entire petition from start to finish. Practically speaking, this argument is what gives life to the petition and is what makes it unique. By making this argument, the Petitioners are asking the Court to recognize a new type of right, namely, the collective right of the Arab minority in Israel to have their national and cultural identity safeguarded and fostered.

The Petitioners are not claiming this right on behalf of any individual member of the Arab minority, but rather, this right stems from each individual's membership in a national and cultural collective, specifically, the Arab minority in Israel. The clear and obvious purpose of the petition is to obligate the public authorities to advance the unique characteristics of the group. Stemming from such a right, the Petitioners claim, is the right to have the Arabic language advanced, which, in turn, creates a right to have the various types of municipal signs posted in

Arabic, the language of the minority. In other words, the basic right being sought is the collective right of the minority to a national and cultural identity. This right gives rise to the right of the minority to have their language safeguarded and fostered, as it is what characterizes the minority, and from this stems the right to have Arabic writing posted on municipal signs. Indeed, this petition is no ordinary petition. This petition is unlike others we are used to dealing with, for which we have set standards for deciding.

47. To illustrate, allow me to highlight various arguments scattered throughout the petition:

- [The Respondents' policy regarding their municipal signage constitutes (M.C.)] a violation of the dignity of Arab citizens. (Petition's Introduction)
- The dignity of Arab citizens is harmed because language functions as a national and cultural identity. *Id*. (Note that the Petitioners are referring to "Arab citizens" as a whole, not just the residents of the Respondents-cities.)
- [The main goal of Petitioner No. 1 is (M.C.)] the advancement of the Arab minority in Israel. (Para. 1 of petition)
- The impact of the violation [due to the Respondents' policy (M.C.)] is especially severe because of the role of the language in constituting a

cultural and national identity. (Legal claim following para. 15 of petition).

- The duty of public authorities to honor the language of the minority. (Para. 21 of the petition).
- Arab citizens residing in the Respondent-cities constitute a national linguistic and cultural minority. One of the characteristics of a unique cultural identity is a unique language. (Para. 24 of the petition)
- Therefore, even if the Arabic language did not enjoy any legal status, Arab citizens residing in the Respondent-cities are entitled to be able to read local signs in their language. (Para. 25 of the petition)
- The Respondents' discriminatory policy, which ignores the status of the Arabic language as an official language, violates the dignity of Arabic speakers as a group with national and linguistic uniqueness. Any policy discriminating against a group severely violates the dignity of the group's members. It creates feelings of deprivation and alienation, testifies to its second-class status and infringes upon their feeling of belonging. Discriminating against a minority group in this way violates the constitutional principle of Basic Law: Human Dignity and Liberty. (Para. 27 of the petition)

- [The lack of Arabic signs (M.C.)] constitutes a debasement of the [Arab minority (M.C.)] from Israeli life. This debasement strengthens the feelings of deprivation and alienation among the members of this minority, and hurts their feeling of belonging. (Para. 33 of the petition)
- Language performs a unique function in the cultural and national development of the minority. In the various multi-national countries in the world, for example, Switzerland and Canada, multilingualism is the first and most important indication of a separate cultural identity. Therefore, the importance of granting public expression to the language of the minority goes beyond the practical aspect of providing information for citizens. Ensuring the use of the language of the minority also stems from the right of the minority to preserve its national identity and cultural uniqueness. (Para 34 of the petition)
- Therefore, language discrimination violates the feelings of belonging of the group being discriminated against. Beyond the unequal application of the law and the uncomfortable feelings experienced by the speakers of the minority's language, there is a real harm to the cultural identity of the minority. (Para. 36 of the petition)

- Parenthetically, it is not enough that Arabic be added to the signs just for the purposes of fulfilling an obligation. The letters must be the same size as the Hebrew letters and must be written properly, in accordance with the rules of the language. Not adhering to these demands also constitutes a violation of the language minority's dignity. (Petition's conclusion)

48. The Petitioners ask that we recognize Israeli Arabs as a national and cultural minority, a group entitled, by way of their Arabic language, to have their separate national and cultural identity safeguarded and fostered. Furthermore, the Petitioners ask that we obligate public authorities to recognize this right of the Arab community by adding street signs in Arabic. The Petitioners want us to recognize the Israeli-Arab minority as a national minority with an independent identity, which as a group has the right to have its culture and traditions preserved and fostered. Additionally, they argue that as such, public authorities have the obligation to actively assist the minority in fostering its unique identity. This all-encompassing obligation includes adding Arabic to all street signs as recognition of the minority's uniqueness and the importance of their language by protecting it.

In legal terms we can say that the Petitioners, who granted themselves the right to represent the Arab community in Israel, ask on behalf of that community that we recognize the entitlement of a *communal right*, stemming from their

membership in a particular *group*, to have their national identity and culture fostered and, from this, a right to have their language fostered and safeguarded by, among other ways, adding Arabic to municipal signs posted by local authorities. The Petitioners are not asking us to advance the interests of an individual. The Petitioners are asking to advance an interest that stems from the *collective* uniqueness of the Arab community, namely, the interest of preserving the unique identity and differences of this minority group. Specifically, in this case, the Petitioners struggle to strengthen the status of the Arabic language as an essential component of Arab nationality and as the vessel by which its unique characteristics are expressed. The Petitioners claim that because of the importance of language to the national identity of the Arab minority, public authorities have the obligation to assist it in protecting and fostering its language. According to the Petitioners, adding Arabic to municipal signs is supposed to express the public authorities' recognition of the uniqueness of the culture and nationality of the Arab minority in Israel and fulfills its obligation to assist the minority in protecting and fostering its independent identity.

49. The Petitioners claim the existence of a collective right of a group to have its national identity and culture safeguarded. The problem is that they are unable to point to a source in Israeli law, either from a statute or from case law, for such a positive right. This should not come as a surprise. Usually, the rights recognized by

our legal system are individual rights. As a general rule, rights, with some exceptions, are only granted to individuals.

This approach places the individual at the center, and personifies the value, the welfare and uniqueness of each person, which is what this Court has based the law of rights upon from the time of its inception. Over the years, the approach of this Court has been that each individual is entitled to his own rights as an individual and not as a member of a group. "The main contribution of the Supreme Court to Israeli law, from the time of the establishment of the State, is the recognition of the existence of individual rights and the establishment of the proper balance between these rights and public order and security... From the time of the State's establishment, the Supreme Court has established human rights, through which it bases its recognition of human value, the sanctity of life and his liberty." (MCR 537/95 *Genimat v. State of Israel*, IsrSC 49(3) 355, 413 (Barak, Deputy President)). The Court has obviously recognized the need to strike the proper balance between individual rights and the needs of society and what is best for it. However, society in and of itself is not entitled to rights, but rather is a factor in determining the scope of individual rights. "This is what led to the rules established by HCJ 1/49 *Bejerano v. Minister of Police*, IsrSC 2, 80; HCJ 144/50 *Shaib v. Defense Minister*, IsrSC 5, 399; HCJ 73, 87/53 *Kol Am Ltd. v. Interior Minister*, IsrSC 7, 871; HCJ 7/48 *Al-Karbuteli v. Defense Minister*, IsrSC 2, 5;

HCJ 337/81 *Miterni v. Transportation Minister*, IsrSC 37(3) 337; Election Appeal 2, 3/84 *Neiman v. Chairman of the Election Committee for the Eleventh Knesset, Avneri v. Chairman of the Election Committee for the Eleventh Knesset*, IsrSC 39(2) 225, and many other good rules guide us on this path..." (*Id*. at 400). All [the following] rules deal with individual rights: freedom of expression, freedom of occupation, freedom from detainment, the right to be elected, and others. The basis of these rights stems from the idea that each individual has his own independent value and that his personal pursuits are important for the realization of his desires and personal benefit. This idea has required, and still requires, that we foster the personality of the individual, his liberty and autonomy and protect it from the State. This idea applies to the individual in his individual state, as is his right.

50. This outlook, as we said, is what gave life to the Basic Laws, which came to light in 1992. These new Basic Laws "plant themselves within the existing normative framework…" (*Genimat* at 413), as has been demonstrated from case law issued by this Court. Section 1 of Basic Law: Human Dignity and Liberty states:

> 1. The basic rights of people in Israel are based upon the recognition of human value, the sanctity of life and his existence as a free man. This must be honored in the spirit of the principles set forth by the Declaration of Independence.

As derived from these principles, these rights flow from deep within the Basic Laws, as individual rights in a liberal democracy: the right to life the right to control one's own body and the right to dignity, personal liberty, the right to travel to and from one's country, and the right to privacy. The Basic Laws refer to individual rights; they do not refer to the collective rights of groups of people, whether the group is a national group, a cultural group or any other group. Furthermore, the Basic Laws do not deal with the rights of individuals on the basis of their membership in a particular group. The society that surrounds an individual is only relevant for determining the extent and scope of the individual's rights, and this too is considered "no more than is necessary."

51. The Petitioners come before us with a different approach. The right to which they refer, specifically – the right to have their national and cultural identity fostered – is not an individual right, nor is it a right to which citizens of this State are entitled. A right, such as the one the Petitioners refer to, stems from a person's membership in a particular national- and cultural-minority group. The purpose of such a right would be to assist the members of the minority in safeguarding and advancing their independent national identity. Such a right is intended to strengthen the lines dividing the minority group from the greater population; to differentiate it from other surrounding groups; and protect it from integration or assimilation with other groups. The purpose of such a right is to enable the

minority group to safeguard its unique characteristics, its cohesion as one group and its way of life and to foster its culture and traditions.

52. Obviously, we respect the Petitioners' approach and their desire to preserve the uniqueness of the Arab minority in Israel. However, the question is whether this approach, as noble and worthy as it may be, means the entitlement of a right or a set of rights within the Israeli legal system. Our answer to this question is no. Israeli law does not recognize the collective right of a minority, along with a duty upon the government, to have its unique identity and culture fostered, nor have we ever heard of a minority's right to have its language preserved and fostered along with an obligation on the part of the public authorities to assist it in doing so. We are familiar with freedom of culture and freedom of language. It is the right of every individual, with certain exceptions, to practice any cultural act he wants. Everyone has the freedom to express himself in whatever language he wishes, and the State may not force someone to express himself in any specific language, or sanction him for using another language. However, there is no obligation on the part of the State to assist the minority in preserving and developing its language and culture. We have never recognized such an obligation.

53. The State is obviously permitted to decide on its own that it wants to assist in preserving and developing a particular language, whether via statute or another way. For example, the 5756/1996 Public Authority for Yiddish Culture

Actestablished the National Authority for Yiddish Culture in Israel whose purpose is, among others, "to raise public awareness of Yiddish culture in all its forms, and, for this purpose, to foster the research of its culture" and to "advance, support and promote contemporary works in the Yiddish language" (Section 2 of the Act). The same applies to the 5756/1996 Public Authority for Ladino Culture Act, which set up the National Authority for Ladino Culture in Israel, whose purpose is similar to that of the Public Authority for Yiddish Culture is for the Yiddish language. However, such a decision, which is a State decision, is the prerogative of the government. Neither Yiddish speakers, nor Ladino speakers nor the speakers of any other language have the right to receive assistance from public authorities, who have no obligation to preserve or foster languages.

54. In their claim that the Arab minority has a right – and the government, a parallel obligation – to preserve and foster their language, the Petitioners request that we create something from nothing. They ask that we recognize the right of the Arab minority to "foster their national and cultural identity," and that this general right be realized, among other ways, through a specific right, namely, the right to have municipal signs posted in the Arabic language. Essentially, the Petitioners are asking that we make freedom of language and freedom of culture, both individual rights, into positive rights which give rise to obligations on the part of public authorities favoring the Arab minority by preserving and fostering its collective

identity. More particularly, we are being asked to obligate the Respondents-cities to add Arabic to all their municipal signs. We cannot do such a thing, nor can we find any justification for it.

In its extensive case law, the Supreme Court has, time and time again, dealt with the issue of individual rights. However, unlike individual rights, this Court has not established collective rights stemming from the differences among particular groups in the general population, whose purpose would be to preserve such differences. We have never recognized the collective legal right of a group to have its culture and language preserved and fostered, and we certainly have not recognized an obligation on the part of the government to do so. Additionally, as it pertains to the matter of language, we closely examined Section 82 of the King's Order. If such a collective right can be derived from it, the King's Order clearly defines its scope, and we are not allowed to exceed its limits as set by the legislature or broaden the scope of its interpretation. Furthermore, as we will further explain, recognizing the collective right to foster the national and cultural identity of the Arab minority, as requested by the Petitioners, is actually a *political act*, which falls under the authority of the political bodies and not the courts.

The Political Nature of this Petition

55. The petition asking that we recognize the collective right of the Israeli-Arab minority, from which stems an obligation on the part of the Respondents to post

municipal signs in their respective cities in Arabic, is not only important on the theoretical level, but also, most importantly, carries practical significance with regard to the relationship between the judiciary and the legislature. The Petitioners ask that the Court take a position on a clear political issue, no less, and declare, as judicial law, that Israeli Arabs are not merely citizens with equal rights (and obligations); the petitioners are asking us to determine that Israeli Arabs are a national and cultural minority that is entitled to assistance from the government in preserving and advancing its separate identity. Such a decision is highly political and the authority to make such a decision lies with the political authorities – led by the Knesset – and not the courts.

56. From its inception, the State has recognized Arab citizens living within its borders as citizens with equal rights. This status was granted to the Arabs by the Declaration of Independence, which guarantees the provision of "complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex" and also called for "the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions." The Declaration of Independence also guaranteed that Arabs would enjoy the status of citizens with equal rights. Just as a Jewish citizen in Israel benefits from the rights provided by statute and case law, so does an Arab citizen.

"All citizens of Israel, whether Jewish or not, are 'stakeholders' in the State… within which all citizens are entitled to equal rights": CA 2316/96 *Isaacson v. Party Registry*, IsrSC 50(2) 529, 549.

57. The notion that Israeli Arabs are citizens with equal rights is what guided the Court in HCJ 6698/95 *Qaden v. Israel Lands Administration*, IsrSC 54(1) 258, 268. In that case, we decided that "[t]he State is not legally permitted to give land to the Jewish Agency for the purpose of establishing a community in the village of Katsir that discriminates between Jews and non-Jews." The underlying consideration taken into account by the Court in that case is the high value of the principle of equality among citizens of the State (*Id*. at 272):

> Equality is one of the fundamental principles of the State of Israel. Every government body, starting with the national government and its various branches and employees, must treat every individual equally…
>
> The State must honor the basic right of every citizen to equality and protect that right.

By stating "every individual equally," we specifically spoke of individuals and not groups. Based on the principle of equality and our determination that equal rights for all citizens is a fundamental principle for us, we also decided that "the State may not discriminate among individuals when apportioning State land" (*Id*. at 275). What guided us in making this determination was the recognition that discrimination based on religion or nationality is inconsistent with the moral and

just principles of our society and is therefore illegal. We were not asked to decide, nor did we decide, that the Arab community in Israel, as a minority group, has any sort of collective rights. As usual, we only spoke of the equality of the individual, and once we decided that this was violated, we took action. The focus on the individual is clearly expressed in the short opinion I wrote in that case (*Id*. at 287):

> In the distribution of public resources among individual members of Israeli society, the Petitioners were wrongly discriminated against and are entitled to receive what the others received. For this reason, I agree with the opinion of my colleague, *President Barak*.

The principle of equality also guided us in many opinions in which we determined that the State must budget equally for the Arab community. As we said in HCJ 1113/99 *Adalah v. Minister of Religious Affairs*, IsrSC 54(2) 164, 170:

> The principle of equality obligates every public institution in the State, which, of course, includes the State itself. The principle of equality applies to all areas in which the State involves itself. It first and foremost applies to the budgeting of State resources whether land, money or anything else that belongs to all citizens who all have the right to benefit from them without discrimination on the basis of religion, race, gender or any other improper consideration.

*see also*: HCJ 2814/97 *The High Commission for Monitoring Israeli Arab Education v. Ministry of Education, Culture and Sport*, IsrSC 54(3) 233; HCJ 727/00 *Committee of the Heads of Public Arab Authorities in Israel v. Housing and Building Minister*, IsrSC 56(2) 79. These decisions, and others like them, apply the principle of equality when budgeting for the Israeli-Arab community.

The rules established by these cases stem from the basic principle that it is forbidden to discriminate among citizens. These decisions do not, however, grant rights to the Arab community as a national- and cultural-minority group, nor do they require the government to foster the national characteristics of the Arab community in Israel. We have granted equality among individual citizens, but not more than that.

58. Note that the right of Arab Israelis to equality has been codified over the past few years. For example, Section 18(a)(1)(a) of the 5735/1975 Government Companies Act states: "The directorate of all government companies must contain appropriate representation from the Arab population." Similarly, Section 15(a)(A) of the 5719/1959 Public Service Act (appointments) states that public officials must "adequately represent, under the circumstances … members of the Arab population, including members of the Druze and Circassian communities…" Likewise, Section 2(11) of the 5713/1953 (as amended, 5760/2000) Public Education Act states:

> 2. The Purpose of Public Education
>
> (1)…
>
> (11) To recognize the language, culture, history, heritage and unique traditions of the Arab population and other groups in the State of Israel, and to recognize that all citizens of Israel are entitled to equal rights.

On a certain level, these laws recognize the collective rights of Israeli Arabs and their unique language and culture. However, this recognition is specific to the circumstances of the legislation in question, and is, therefore, confined to the limits established by the legislature. Israeli law does not recognize the collective right of Israeli Arabs, as a minority group, to public aid in preserving and fostering their national and cultural identity.

59. We analyzed some of the laws and case law that address the stature of Arabs in Israel as equal citizens in order to ascertain the true meaning of the Petitioners' request and the drastic changes to the Israeli legal system they are asking us to make. The underlying assumption of the petition is that Israeli Arabs have the status of a national and cultural minority, and the sole purpose of adding Arabic to municipal signs would be to "preserve the national identity and unique culture" of the Arab minority. The Petitioners ask that we create a right, whose purpose would be to assist the minority in preserving its unique identity, a creation that would be no less than something from nothing. This Court is being asked to require the Respondents to make their signs bilingual and that the "[Arabic] writing be the same size as the Hebrew" in order to enable Arabs to protect their separate cultural identity from eroding. However, creating such a right and the underlying motivation for doing so, by its nature, requires making a political decision, which is not the role or under the authority of this Court. Courts should not create rights

before the legislature has had its say and before the public has thoroughly debated which path this country should take. As for the language or languages of the county, the matter of official languages is a constitutional issue, the scope of which should be defined by the constitution. This is the case even in Israel where the official languages are enumerated by the 1922 King's Order, which is also known as its "mini-constitution". This idea that the issue of languages must be dealt with by the constitution tells us that the matter sought by the Petitioners, namely, the recognition of collective rights involving languages, must be addressed elsewhere, not in court.

60. It should be added in this regard: if this were a regular dispute between an individual and the government, we would not avoid rendering a decision if the petition raised a political question. When an individual is involved in a dispute, even if his position is common to a group of people or even to the public as a whole, the Court will hear the plight and award relief, even if there are political implications arising from the decision. However, the Court will always confine itself to legal standards and will not bring political ideology into legal decisions. *Cf. In re Rossler*, at 492 (Barak, J.). The exclusive use of legal standards when making judicial decisions is the underlying principle by which the judiciary guides itself. This principle accompanies us wherever we go, like a shadow that accompanies a person as he walks. When a political issue is raised in court, the

court must adjudicate it using the relevant legal standard. Nevertheless, in a case where political authorities must act, like, for example, in a case regarding the national and cultural rights of a minority group, the Court will not infringe upon the authority of another branch. *Cf. also*, 2, 3/84 *Neiman*, at 296, 303 (M. Elon J.).

61. It should be noted again that the real issue raised by this petition is not the issue of municipal signs in the Respondent-cities; rather, the true purpose of the petition is the national and cultural rights of Israeli Arabs. To the best of my understanding, such rights are beyond those recognized for individuals in Israel. Such rights stem from the collective differences of the minority, and their purpose would be only to assist it in preserving these differences. The Petitioners claim that such rights deal with the obligation of public authorities to foster the minority's culture and protect it from being diluted or assimilated into the culture of the majority. Granting such rights, or, ones similar to those being requested, first and foremost raises political questions that must be dealt with by the political authorities. The issue is both sensitive and complicated and its ramifications on the character of Israel as a Jewish and democratic state are far reaching. The nature of the issue dictates that the courthouse is not the place for this issue to be decided. Because the political system, headed by the Knesset, has not recognized the sort of rights the Petitioners wish to be recognized, namely, that the State should assist minorities in preserving and fostering their separate identity and culture, and

because the legal system has not created a firm and clear framework for recognizing such rights, finding for the Petitioners would not be a legal decision (with political implications), but rather a political decision that carries with it both political and legal implications. Thus, because of the nature of the issue presented, it would be inappropriate for this Court to find for the Petitioners and create rights out of nothing.

62. In case there is any doubt, we add the following: we are not saying anything at all – good or bad - regarding the validity of the Petitioners' political aspirations. All we are saying is that the place for attaining such goals is in the political arena, not the courts. If the political bodies were to create a legal basis for recognizing such rights, specifically, legal recognition of minorities' cultural rights that include obligations on the part of the government, the doors of the court would be open for them. However, so long as the Petitioners merely have an ideological vision; so long as the Petitioners cannot demonstrate any positive legal norm that translates into a legal obligation on the part of the public authorities; so long as these conditions cannot all be met, this Court cannot grant the relief they seek. The power of the Court does not allow it to create a new positive right – whose purpose would be to preserve and advance the national and cultural identity of the Arab minority in Israel. If the Court were to do so, it would be acting beyond the scope of judicial power acceptable in a democratic society that has a balance of powers.

Indeed, it may seem that the petition is one regarding the signs posted in the Respondent-cities, but, like rays of light scattered by a prism, this is misleading. The true essence of the petition is political and regards the collective rights of the Arab minority in Israel. A decision in such a case would be political in nature; not a judicial decision that we are accustomed to making. Such a petition should be dismissed.

Language Rights in Comparative Law

63. We need to proceed with caution when we try comparing foreign law with our own legal system. A nation's laws are a reflection of its people, and the needs and characteristics of one nation are not necessarily the same as another. Add the random historical events that have occurred over the years and you will see why there are more than a few difficulties in comparing one legal system to another. Of course, the nature of the issue also affects the ability to make inferences from other systems of law. In a matter that is international by nature, such as international commerce and trade customs, it is easier to make a comparison because of the nature of the issue. To a lesser extent, the same is true for the rules of private law such as sales and the like (although many international conventions have been signed in order to unify the laws for these matters). On the other hand, issues such as marital status and family law are issues closely tied to the history and customs

of each and every nation, thus making it difficult to analyze comparative law relating to such matters. The same applies to the issue of language.

64. Many countries have constitutional or statutory provisions regarding its official language or languages. However, legislation regarding minority-language rights is generally very carefully worded. The language of the minority may be but one manifestation of the uniqueness of the minority and its distinction from the country's majority, but it is a very important one. The issue of language does not relate to individuals, but to a group of people living within a country that has its own unique characteristics separating it from the rest of the country's citizens. Language rights naturally involve political sensitivities and will often give rise to public dispute. Such sensitivities are evident in bilingual countries such as Canada. I would like to briefly address the Canadian approach; however, we should be careful to point out that since this issue is intimately connected to the history of the country and to its political issues, we will limit the discussion to the techniques and thought process and avoid a thorough examination of elements that naturally change from one country to the next.

65. Canada has two official languages: English and French. The status of these languages has a complicated history. Over the years, the issue of language in Canada has become an independent issue and the rights of the respective languages are an ongoing dispute that has frequently been addressed by the courts. The first

law addressing the issue of bilingualism in Canada and the status of the English and French languages is Section 133 of the 1867 Constitution Act, which states:

> 133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

Today, the issue is addressed by the Canadian Charter of Human Rights and Freedoms, which is Part I of the 1982 Constitution Act in Sections 16 – 23. We shall quote some of these provisions:

> 16. Official Language of Canada
>
> (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
>
> …
>
> 17. Proceedings of Parliament
>
> (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament…
>
> 18. Parliamentary Statutes and Records
>
> (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative…
>
> 19. Proceedings in Courts Established by Parliament

(1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament…

20. Communications by Public with Federal Institutions

(1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

a) there is significant demand for communications with and services from that office in such language; or

b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French…

Section 16 of the Charter establishes the main principle, namely, that Canada is a bilingual country, whose official languages are English and French. The Charter delineates the stature of these languages and imposes concrete legal obligations upon the government in a variety of issues. By analyzing the manner in which these provisions were drafted, we can determine the underlying principle characterizing the language requirements of the Canadian Charter. The Charter was drafted very carefully. There is no general bilingual requirement upon the public authorities for any government act or notice; to the contrary, the Charter clearly specifies exactly what is required to be bilingual. As the Canadian Court has stated in *Ford v. Quebec* [1988] 2 S.C.R. 712, 751:

> The language rights in the Constitution impose obligations on government and governmental institutions that are, in the words of Beetz J. in

> *MacDonald*, a "precise scheme," providing specific opportunities to use English or French, or to receive services in English or French, in concrete, readily ascertainable and limited circumstances.

66. Furthermore, the Canadian Court takes a very careful approach when interpreting constitutional language rights, and when explaining language rights established by the Charter and even by statute, it demonstrates a very restrained approach. In a number of decisions, the Canadian court has determined that there is a clear distinction between basic human rights such as the right to life, personal liberty, prohibition against torture and the like, and other rights. The court determined that basic human rights are elementary, fundamental and primary rights that carry more weight than other rights, which include language rights. These rights, unlike basic human rights, are the result of a *political compromise*, and, thus, the courts should attempt to remain within the boundaries of the compromise and avoid limiting or expanding upon them as much as possible. Indeed, knowing the political background leading to language rights places the responsibility upon the courts to exercise as much restraint as possible. The Court must remember that the appropriate forum for creating language rights is within the confines of the political system. Therefore, it must ensure that it interprets the relevant laws in a careful and restrained manner. The Court must remember that the appropriate place for advancing language rights is through legislation – not through judicial proceedings – and that the political compromise that led to the creation of these

rights obligates it to be careful and refrain from making changes that are under the purview of the legislature. As Beetz J. stated in the case of *Société des Acadiens v. Association of Parents* [1986] 1 S.C.R. 549:

> Unlike language rights which are based on political compromise, legal rights tend to be seminal in nature because they are rooted in principle. Some of them, such as the one expressed in s. 7 of the *Charter* [the right to life, liberty and security of the person – M. C.], are so broad as to call for frequent judicial determination.
>
> Language rights, on the other hand, although some of them have been enlarged and incorporated into the *Charter*, remain nonetheless founded on political compromise.
>
> This essential difference between the two types of rights dictates a distinct judicial approach with respect to each. More particularly, the courts should pause before they decide to act as instruments of change with respect to language rights. This is not to say that language rights provisions are cast in stone and should remain immune altogether from judicial interpretation. But, in my opinion, the courts should approach them with more restraint than they would in construing legal rights.
>
> ...
>
> ...The legislative process, unlike the judicial one, is a political process and hence particularly suited to the advancement of rights founded on political compromise.
>
> ...
>
> In my opinion, s. 16 of the *Charter* confirms the rule that the courts should exercise restraint in their interpretation of language rights provisions.

The Canadian court made a similar determination in the case of *MacDonald v. City of Montreal* [1986] 1 S.C.R. 460, where, an English speaker was issued a court

summons in French. In addressing an argument made regarding the interpretation of Section 133 of the 1867 Constitution Act (*see supra* para. 65), the court criticized the attempt to interpret the provision in a way requiring such documents to be bilingual, when a simple reading of the text indicates that one can choose either English or French. The court stated:

> No interpretation of a constitutional provision, however broad, liberal, purposive or remedial can have the effect of giving to a text a meaning which it cannot reasonably bear and which would even express the converse of what it says.

(*Id*. at 487). The court determined that Section 133 of the 1867 Act only requires "a limited form of compulsory bilingualism…" It continued:

> This incomplete but precise scheme is a constitutional minimum which resulted from a historical compromise arrived at by the founding people who agreed upon the terms of the federal union... And it is a scheme which can of course be modified by way of constitutional amendment. But it is not open to the courts, under the guise of interpretation, to improve upon, supplement or amend this historical constitutional compromise.

(*Id*. at 496). It is clear that the court does not want to change or amend, under the veil of interpretation, arrangements made by way of political compromise.

67. In other Canadian opinions the court repeatedly emphasizes the importance of language as a vessel for personal and cultural expression. The court has also expressed its willingness to interpret the language rights of the Charter and grant remedies suited for the purpose of these rights, which are preserving the language

of the minority and noting the importance of cooperation between speakers of both languages. However, the court reiterated its distinction between traditional individual rights and language rights and that language rights are the product of political compromise, and when someone seeks to impose an obligation on the part of the government favoring one group, the courts must proceed with caution. *See also, Mahe v. Alberta* [1990] 1 S.C.R. 342, 364 - 65; *Reference re Public Schools Act* (Man.) [1993] 1 S.C.R. 839, 850-852; however, there are those who disagree with this method of interpretation, see the opinion brought down in *R. v. Beaulac* [1999] 1S.C.R. 768. Either way, Canadian courts address the interpretation of a statute and apply rules of interpretation to various constitutional rules. In our case, we are dealing with the discretion of the public authority. This discretion is not bound by a direct law obligating the local authorities to act in a specific way. It seems that in these circumstances, the first school of thought has the upper hand, meaning that the Israeli judiciary should exercise maximum restraint when adjudicating the discretion of local authorities and when it is asked to direct them to act against their wishes on the issue of language.

International Conventions

68. Regarding the issue of language rights we turn our attention to two conventions passed by the Council of Europe. The first is the European Charter for Regional or Minority Languages, which was signed in Strasbourg in 1992 and

went into effect in 1998. The other is the Framework Convention for Protection of National Minorities, also signed in Strasbourg in 1995, which went into effect in 1998. Israel is not a party to either convention.

There is no reason to analyze these conventions in depth, not just because Israel is not a party to them and not only because, even if it were, the convention would be binding only in matters of foreign relations, not internally. We will not analyze these conventions because they are full of exceptions and exceptions to the exceptions and grant a lot of discretion to countries to act or to not act, all of which demonstrate the difficulties that arise when language rights are at issue and the great sensitivity involved in recognizing them.

Summary

69. It is no coincidence that we have not found a single case in which the Court has independently used its authority to recognize the right of a minority to language. We have not found a single decision in which the Court has sided with the petition of a minority group by recognizing its cultural and national uniqueness and has granted the minority rights whose purpose is to advance it. We have never heard of a court that has imposed a positive obligation upon public authorities to foster the language of a minority without a statutory basis for doing so, nor have we ever heard of a court anywhere that has sided with a party's frivolous arguments that citizens' safety is at risk because they do not know the language,

when the petitioners have not even bothered to verify their claims on established data and reliable evidence. This is what the Petitioners are asking of us, and I cannot see how we can accept such a claim. It is in the political arena, not the judicial one, that is the appropriate forum for the Petitioners to bring their claim and fight their battle for the recognition of language rights for the Arab minority in Israel. Only after a political discussion resulting in a new legal framework, whether through legislation or otherwise – can the Court address the matter by enforcing the duties prescribed by law. The Court cannot, and may not, provide a legal backdrop for political aspirations so long as the political aspirations have not developed into positive legal norms. An attempt to circumvent the political system by going straight to the Court will not succeed.

Polemics

70. At the beginning of his opinion, my colleague, *President Barak* states the issue before us:

> The question before us is whether municipalities with an Arab minority are required to use Arabic, alongside Hebrew, on all of their signs.

Indeed, this is true; however, that is merely the question's exterior, its outer shell. The true question presented to us by the Petitioners deals with a collective right to language, a right that, according to the Petitioners, the Arab minority enjoys within the confines of the Respondent-cities. This question does not only regard to

municipal signage. The issue of municipal signs is but only one manifestation of the deeper, underlying issue at hand.

71. In his opinion, the *President* outlines four considerations, each of which pulls us in a different direction: a person's right to his own language and principles of equality and tolerance on one hand, and the stature of the Hebrew language and national cohesiveness and sovereignty on the other. In weighing and balancing these matters, the *President* concludes that honoring the right to language and the principle of equality leads "to the conclusion that the municipal signs in the Respondent-cities must have Arabic added alongside the Hebrew" (*Supra* para. 26). As we explained at length – and perhaps even too much – we do not accept such a position; however, even if I had adopted the approach taken by my colleague, I still would not have drawn the same conclusion.

72. Regarding the right to freedom of language, my colleague, the *President*, writes that the importance of language to mankind requires its protection. He states:

> The Declaration of Independence declares that the State of Israel "guarantees freedom of religion, conscience, language, education and culture." "The individual has the freedom to express himself in any language he desires. He has the freedom to express his thoughts (whether personal, societal or commercial) in any language he wishes." (CA 105/92 *Re'em Engineering*, at 202). This freedom stems from both the constitutional right to freedom of expression and the right to human dignity (*See* AA 294/91 The *Kehilat Yerushalayim Sacred Society v. Kestenbaum*, IsrSC 46(2) 464, 520).

> Contrary to this personal right stands the government's obligation to safeguard this right.

*(Supra* para. 18 of the President's opinion).

In response, we need look no further than what we have written above regarding the different types of rights. Freedom of language is a liberty, and this type of right, by its definition, does not impose a positive obligation upon others (except for the obligation not to interfere with the liberty). Indeed, the *President* says, "Contrary to this personal right stands the government's obligation to safeguard this right." However, the right to have this right protected does not include the affirmative obligation to post municipal signs in Arabic. The nature of freedom of language is one of freedom and liberty; it does not impose any positive obligation upon the government. Furthermore, as we have stated above, freedom of language is an individual right. However, the Petitioners are not basing their petition on this sort of right. The Petitioners are asking for the right of a minority to have its language fostered, a right that stems from the unique characteristics of the minority. This would be a group right, which is different from an individual right. In my opinion, it is incorrect to recognize a collective right to language based on the right of the individual to freedom of language. So far, the Supreme Court, in its case law, and the Basic Laws have only recognized individual rights; collective

rights belong to a different family of rights, and they cannot be derived from one another.

73. Regarding the principle of equality, I reiterate that the Petitioners did not provide even an ounce of proof of any harm. My colleague states, "A place in which some of the residents cannot understand the municipal signs violates their right to equally enjoy municipal services" (*Supra* para. 19). This is true. Something that harms the right of some to receive public services must be fixed, and this Court will swiftly act to assist the harmed party. However, in this case, all we have are mere allegations. We have neither heard nor seen real proof of any hardship on the part of the Arab minority. If in a regular dispute we require proof of harm, we certainly would require such proof in our case, where we are dealing with a public petition. In HCJ 2148/94 *Gelbert v. Chairman of the Commission Investigating the Hebron Massacre*, IsrSC 48(3) 573, 601 we stated:

> When dealing with the suffering of an individual, we will work to make him whole as much as possible; however, if a petitioner comes with a claim on behalf of the nation or the world, it is appropriate that we thoroughly investigate the claim at least at the beginning of the proceedings. A Petitioner such as the one before us has made himself a representative of the community, and the burden is upon him to ensure that he is well intentioned, of flawless character and speaks wisely… Courts are not study halls, and questions of law and justice may only be raised on the basis of facts and a real dispute. The Petitioners did not establish any facts and this case has no real dispute.

We have not seen nor have we heard of anyone who has been harmed in this case. We have not received any affidavits alleging harm, nor have any statistics been presented to this effect. What is the percentage of Arabs in the Respondent-cities who are not fluent in Hebrew? How many of them use the street signs and how many of them have difficulty reading them? We know nothing about these questions. The Petitioners have built a Tower of Babel with their claims of injustice and discrimination, but we have not seen or heard even an ounce of evidence proving any of it. How can the Court provide relief to the Petitioners in such a case? As we have stated over and over again in this opinion, the real basis for this petition is nothing but a collective right for the Arab minority in Israel and in the Respondent-cities. However, not only is such a right not among the fundamental rights we are familiar with, but such a right has also never been recognized in this Court's case law.

74. After presenting the four conflicting considerations, my colleague, the *President*, approaches the task of balancing the considerations. My colleague readily admits that this task is not easy. He says, "Striking the proper balance between national cohesiveness and sovereignty on one side and freedom of language, equality and tolerance on the other, regarding the issue of using a language other than Hebrew on municipal signs on side streets in neighborhoods in which there is no concentration of people speaking that language, is not at all

simple" (*Supra* para. 24 of the President's decision). I agree. However, if the balancing test is so difficult, would it not be appropriate to hold that the Respondents, who have agreed to follow the position of the Attorney General, have adopted a reasonable stance? If the balancing test is "not at all simple" for the Supreme Court, can we not say that a reasonable municipality could reach the same conclusion reached by the Respondents? Why is it necessary to reach the one and only conclusion asked for by the Petitioners? Why should we be required to obligate the Respondents in the manner requested by the Petitioners? Why is it necessary to reach the conclusion advocated by the *President*? Are *all* the compromises so bad to the extent that we must rule them all out? Are there not some appropriate compromises somewhere between posting signs in Arabic on *all* street signs and only on those that the Respondents are willing to post? It makes me wonder.

75. Finally, my colleague, the *President*, has given the Respondents between two and four years to change their signs. It seems that this too is an unnecessary burden upon the Respondents. Undoubtedly, changing the signs will be at a cost, and while we have not seen any estimates, it would seem to me that we are talking about a cost in the hundreds of thousands of shekels. The Petitioners arbitrarily decided to file their petition at a certain time. They could have filed it two years ago or two years from now, and I see no justification for requiring the execution of

my colleague's order to be in accordance with the Petitioners' demands. Personally, I would grant more time and differentiate between the various types of signs.

Conclusion

76. If my opinion is to be heard, the temporary order would be nullified and the petition would be dismissed.

Epilogue

77. I have read the opinion of my colleague, *Justice Dorner*, and it has strengthened my conclusion that no obligation should be placed upon the Respondents, contrary to the opinion of my colleagues, *President Barak* and *Justice Dorner*. My colleague provides a long list of laws from which she deduces her conclusion; however, I would say that just the opposite conclusion seems logical. The details of the legislation and regulations in other cases should leave us expecting the same detailed legislation in our case so that we do not create new laws out of nowhere. As I stated in my opinion (*supra* para. 10), saying that a language is "official" is a programmatic legal statement and we would expect the legislature to delineate the particulars of such a status. If this is the case in Canada, a country well known to be bilingual, and a country where language is an ongoing debate (*see supra* para. 65 - 67), shall we not say the same for ourselves? Precisely because of the sensitive nature of the topic of language and its use, we should

honor the legislature with directing us in the proper path. With the exception of certain exceptional cases, this case not being one of them, it would not be appropriate for the Court to fill these lacunas or alleged lacunas.

78. As I have written in my opinion, this issue revolves around the relationship between the minority and majority segments of the population. This issue is mainly one for the legislative and executive branches of government to decide. If an individual right were to be harmed, this Court would make itself heard loud and clear. This is not the case when speaking of relations between the Jewish majority and Arab minority in Israel. Furthermore, we must clearly distinguish between the right of the minority to use its language and obligations placed upon public authorities regarding the use of language. In my opinion, when dealing with the issue of obligations placed upon public authorities, I would look closely towards what the legislature has decided and refrain from issuing obligations from the bench, except in the most exceptional of cases. I have not said, nor will I say, that the issue of the relationship between the majority and minority segments of the population is always non-justiciable. However, when it comes to such issues, it seems to me that we must be very careful to avoid making mistakes. The relationship between the majority and minority segments of the population, by its nature, should be worked out between the majority and the minority within the accepted democratic framework. Needless to say, but I will reemphasize, we are

not talking about individual rights, in which this Court has repeatedly been involved and deals with on a daily basis.

Finally, I have read the reasons provided by my colleague, *Justice Dorner*, for her conclusion, and I have to say that I do not know how she reaches such a conclusion on the basis of the reasons provided.

Justice D. Dorner

1. In the petition before us the Petitioners claim that Section 82 of the 1922 King's Order in Council (over the Land of Israel) (henceforth, "King's Order") grants the Arabic language the status of an official language, a status obligating the Respondent-cities, in which an Arab community lives alongside the Jewish one, to add Arabic to the Hebrew municipal signs posted. The Petitioners also claim that this requirement does not only stem from Section 82, but also from the principle of equality, the right to human dignity and international law.

My colleague, *President Barak*, sides with the Petitioners. He holds that while Section 82 does not apply to local government, and while it is doubtful whether it applies to street signs, the requirement to add Arabic results from a balance between various competing considerations that local authorities must take into account when exercising their discretion.

My colleague, *Justice M. Cheshin* disagrees with the *President*. Even though *Justice Cheshin* holds that Section 82 applies to posting signs in Arabic, he agrees that local government does not have any obligation to adhere to the request of the Petitioners. However, in his opinion, in the absence of a legal norm – in a case where freedom of language is ensured, but no positive obligation is placed upon the local authorities – and in the absence of evidence that an individual's right to equality is harmed – such as an affidavit from an Arab resident of one of the Respondents' cities stating that because he is not fluent enough in the Hebrew language he is harmed by the lack of Arabic – this Court should not interfere with the Respondents' decisions.

I agree with the outcome suggested by the *President*; however, in my opinion, the Respondents' obligation stems from Section 82 of the King's Order as interpreted after its amendment by Section 15(b) of the 5708/1948 Government and Legal System Organization Ordinance (henceforth, "Government Organization Ordinance"), which voided the status of the English language as an official language as well as the preference for English. This interpretation is influenced from an array of statutes that set the normative legal backdrop upon which Section 82 operates.

<u>Arabic as an Official Language under Section 82</u>

2. The title of Section 82 is "Official Languages." To understand the meaning of an "official language" in Section 82 we need to turn to the history of this country and the legislative history of this Section. To quote the words of A. Barak in his book, LEGAL INTERPRETATION (vol. 2 "Interpreting Legislation," 5753), in the chapter titled " A Page of History is Worth a Volume of Logic," at 408, he states, "The purpose of a law can be understood against the historical background of the nation and the country. Sometimes it is obvious. The 5708/1948 Government Organization Ordinance cannot be properly understood without outlining the historical background of the establishment of the State and its government." Section 82 was enacted by the British Mandate, which governed two populations: Jewish and Arab. With some differences, the Section was adopted by the State of Israel under different societal norms than those that existed under the British Mandate after the Arab community became a minority within the Jewish and democratic State of Israel.

3. The King's Order was enacted in the Mandate for Palestine. The Mandate was approved by the League of Nations when it elected the King of the United Kingdom to rule the Land of Israel as the trustee of the League of Nations with certain specifications. The Mandate stressed the historical ties of the Jewish People to the Land of Israel, and obligated the Mandate government to establish a national home for Jews in the Land of Israel. The Mandate guaranteed that all residents of

the Land of Israel would have freedom of religion, conscious and worship along with the guarantee that there would be no discrimination on the basis of race, religion or language. To actualize these goals, the allies granted the Mandate the right to enact laws, administer the land and discretion as to the form of government that is to be set up in the Land of Israel.

It is within this framework that Section 22 of the Mandate establishes English, Arabic and Hebrew as the official languages:

> English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic.

The King's Order, which has been termed by some as the "constitution of the Land of Israel," (*see* AMNON RUBINSTEIN, CONSTITUTIONAL LAW OF THE STATE OF ISRAEL (5th ed. Amnon Rubinstein and Barak Medina, at 1172, 5757)) – includes certain principles such as repetition of the Balfour Declaration and the principles of the Mandate. Section 82, as amended in 1939, adopted Section 22 of the Mandate establishing English, Arabic and Hebrew as "Official Languages," as the title suggests (Hebrew Translation Omitted).

The section delineates when, pursuant to their status as official languages, all three languages must be used and when one may be used by the government and local authorities in areas deemed necessary by the High Commissioner or by

residents requiring public services. Similarly, authorities were required to use all three languages in notices specified by the section, and residents have the right to use any of the three languages when turning to the courts or to government offices.

Although the term "official languages" is only found in the title of the section and does not appear in the text of the law, the fact that these languages are listed as official languages is the main point of this Section. The term "Official Language" is a known legal term. *See e.g.*, Sections 4(1) and 6(1) of the South African constitution. The body of the provision establishes the various legal implications of the term "official." *See* RUBINSTEIN, CONSTITUTIONAL LAW OF THE STATE OF ISRAEL at 87 - 88; Avigdor Sultan, *Official Languages in Israel*, 23 HAPRAKLIT 387, 387 - 88 (5727). The status of the Hebrew and Arabic languages as the official languages of the two communities also comes up in the 1933 Education Regulations, which recognize separate education systems, one in the Arabic language and one in the Hebrew language. *See* Regulations 2 and 9(b) of the Education Regulations.

Even the historic decision of the United Nations to recognize the establishment of a Jewish State in the Land of Israel on November 29, 1947 refers to the Arabic language as the language of the minority in the State of Israel. It says:

> The following stipulation shall be added to the declaration concerning the Jewish State: "In the Jewish State adequate facilities shall be given to

> Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the Courts and in the administration."

4. Indeed, the Declaration of Independence of the State of Israel (henceforth, "the Declaration of Independence") guarantees all citizens freedom of language, education and culture, but relates to the Hebrew language as holding an important national value to the Jewish nation, emphasizing the resurrection of the Hebrew language as part of the historical connection of the Jewish nation to its land and the return of its people over the recent years. By declaring the resurrection of the Hebrew language as one of the defining characteristics of the establishment of the Jewish nation in its land on one side and the guarantee of freedom of language, education and culture for all citizens on the other, the Declaration of Independence sets forth the principles that must be balanced in light of the status of the two languages – Hebrew and Arabic – in the State of Israel.

Likewise, immediately after the establishment of the State, the Provisional State Council in Section 15(b) of the Government Organization Ordinance determined that, "Any legal reference to the use of the English language is void." As a result, Section 82's requirement to use the English language is void, on the one hand, but on the other hand, and more importantly, the status of the Arabic language as an official language of the Jewish and democratic State of Israel was

ratified, on the basis of the UN declaration regarding the establishment of the State of Israel and the Declaration of Independence.

5. The principle that Hebrew is the main language and Arabic is an official language has been perpetuated by a long list of legislation.

Section 24 of the 5741/1981 Interpretation Act states that the Hebrew version of a statute constitutes the binding text, except for laws enacted in English before the establishment of the State and for which a new Hebrew version has not been published. The superior status of the Hebrew language is also evident from Section 5(a)(5) of the 5712/1952 Citizenship Act, which conditions Israeli citizenship upon some knowledge of the Hebrew language. Likewise, Section 26(3) of the 5721/1961 Israeli Bar Act conditions registration for a legal internship for the Israeli Bar Association upon the knowledge of the Hebrew language. However, while the status of the English language was nullified by Section 15(b) of the Government Organization Ordinance, proposed legislation which would have done the same to the Arabic language was rejected. *See* proposed legislation: 5712/1952 Official Language Act, Knesset Chronicles vol. 12 at 2528.

The status of the Arabic language as an official language has been reiterated by education, communication and election laws. The Education Regulations mentioned earlier are still good law. Additionally, Section 4 of the 5713/1953 Public Education Act states, "The education curriculum of non-Jewish educational

institutions shall be adjusted in accordance with their unique characteristics." In the year 2000, this law was amended to state that one of the goals of public education is to "recognize the unique language, culture, history, heritage and unique traditions of the Arab population…" (Public Education Act (amendment 5), Section 11(2)). The 5756/1996 Public Education Regulations (Advisory Council for Arab Education) established a council whose job it is to examine the state of education in Arab schools and to advise as to how it can be advanced and completely integrated into the public-education system. Regulation 5 requires the council to recommend an educational and pedagogical policy that would guarantee the equality of Israeli Arab citizens while taking into account their unique language, culture and heritage.

Government-run media is required to have an Arabic broadcast. Section 3(3) of the 5725/1965 Broadcasting Authority Act and Section 5(5) of the 5750/1990 Second Television and Radio Authority Act require that the government broadcast in Arabic "in order to meet the needs of the Arabic speaking population…"

On one hand, election laws express the superiority of the Hebrew language, but on the other hand also allow for Arab voters to vote in their language by providing them with the ability to select a party ballot under the Arabic letter and name the Election Committee has determined to correspond to the Hebrew one. Voters can vote using the Hebrew ballot or the Arabic translation. *See* Section

76(b) of the 5729/1969 Knesset and Prime Minister Elections Act [integrated version] (henceforth, "Knesset Elections Act"); Section 51(b) of the 5725/1965 Local Government Act (elections) (henceforth, "Local Government Elections Act"); Section 184 of the 5718/1958 Local Councils Order (district councils) (henceforth, "Local Councils Order"); Section 7(c)(2) of the 5735/1975 Local Government Act (electing a chairman, his deputies and their terms) (henceforth, "Electing Local Government Chairman Act").

Three out of these four laws explicitly provide for the use of a handwritten Arabic ballot, containing the Arabic letter alone. *See* Regulation 82(6) of the 5733/1973 Regulations for Knesset and Prime Minister Elections; Section 184(c) of the Local Councils Order; Section 7(c)(4) of the Electing Local Government Chairman Act, all of which allow a handwritten Arabic ballot containing only Arabic writing. A similar provision does not exist in the Local Government Elections Act; however, the Supreme Court in CA 12/99 *Mar'i v. Sabak*, IsrSC 53(2) 128, in a majority opinion, broadly interpreted the statute, determining that a handwritten Arabic ballot may be used, even for local elections. *Deputy President S. Levin* stated in his dissenting opinion (at 144):

> The legislative purpose of Section 61(c) is only to make it easier for the voter who cannot find the ballot of the party he is interested in without changing the basic framework of having the ballots in Hebrew. This does not have anything to do with the question of defining the Arabic language as an

official language and the explicit arrangements made for it by other election laws.

However, the majority opinion, written by *Justice M. Cheshin*, and to which I joined, disagreed with this. In the binding words of *Justice M. Cheshin*:

> In accordance with Section 82 of the 1922 King's Order in Council for the Land of Israel, the Arabic language enjoys a special elevated status in our country, and some even say it has the status of an "official" language (whatever the term "official" may mean)… The main point is that the Arabic language is the primary language of a fifth of the county's population; the language they speak, the language of their culture and the language of their religion. This is a significant enough portion of the population to require that we honor the community and its language. The State of Israel is a "Jewish and democratic" state, and because of this, it must honor its minority - the people, their culture and their language. This constitutional principle guides us in broadly interpreting the meaning of Section 61(c) of the Election Law.

Hence, the official status of the Arabic language is not limited to the uses listed in Section 82, as it is not an exclusive list. The main point of this Section is to establish the status of the Arabic language as an official language of the State of Israel.

Arabic as an Official Language and the Principle of Equality

6. As a general rule, the principle of equality between Jews and Arabs applies to personal rights. This rule comes with some exceptions such as the recognition of Arabic as the second official language alongside the Hebrew language. *See* YITZHAK ZAMIR, ADMINISTRATIVE AUTHORITY at 44 (5756).

Section 82, which grants Arabic the status of an official language, must, first and foremost, be interpreted in light of legislation granting the Hebrew language, the language of the majority, preference and superior status in a Jewish and democratic state. The Hebrew language is "one of the ties that bind us as a nation" (CA 105/92 *Re'em Engineering Contractors Ltd. v. The City of Upper Nazareth*, IsrSC 47(5) 189, 208 (Barak, J.)).

In the State of Israel, Arabic is not just any other language of a community under British rule, it is the language of a minority that is guaranteed by the Declaration of Independence, like all citizens of the State, freedom of language, education and culture. Section 82, as amended upon the establishment of the State, must be interpreted in concert with its purpose in the State of Israel as a Jewish and democratic state. *See* HCJ 680/88 *Shnitzer v. The Military Censor*, IsrSC 42(4) 617; 105/92 *Re'em Engineering*, at 199.

7. Therefore, the conclusion is that while, as the national language of the majority, Hebrew is the first official language of the State of Israel, the status of Arabic as an official language, in accordance with Section 82, as amended, is meant to actualize the freedom of language, religion and culture of the Arab minority.

This freedom is not only realized through permitting the Arab community to use their language, but also by requiring authorities to allow the Arab minority to

live their lives in the State of Israel in their own language. The assumption is that Arab citizens in Israel may only know Arabic, or may only speak this language fluently. *See* 12/99 *Mar'i* (*Justice M. Cheshin* assumes that voters in Arab villages might only know Arabic); *see also*, David Wippman, "Symposium: Human Rights on the Eve of the Next Century: Aspects of Human Rights Implementation: The Evolution and Implementation of: Minority Rights" 66 Fordham L. Rev. 597, 605 (1997), who says:

> Although article 27 [of the Covenant on Civil and Political Rights] does not on its face require positive state action, a number of commentators argue that it would add nothing to other articles of the Covenant if it is interpreted simply as a right to be free from discrimination with reference to culture [and] language... [T]he protection of minorities, as opposed to the mere prevention of discrimination, requires positive action that includes concrete services rendered to minority groups…

This purpose is necessarily derived from the principle of equality which is the "essence and the character of the State of Israel." Election Appeal 2/88 *Ben Shalom v. Knesset Election Committee*, IsrSC 43(4) 221, 272 (M. Alon, Deputy President). It is the "soul of our entire constitutional regime." HCJ 98/69 *Bergman v. Finance Minister*, IsrSC 23(1) 693, 698 (Moshe Landau, J.).

8. The obligation to permit a non-Jewish minority to conduct its life in its own language is also a Jewish concept. Our sources teach us to accept the language and culture of foreign residents. *See* Babylonian Talmud Avodah Zara 64b; Sefer

HaHinukh, Mitzva 94. They teach us that Jews must treat minorities as human beings deserving of rights, by formally recognizing their laws and culture. Maimonides states in the Laws of Kings 10:12:

> It seems to me that this is not the case for a foreign resident; rather, we always judge him according to their laws. Also, it seems to me that we treat foreign residents with respect and kindness like any Israelite, because we are commanded to sustain them, as the verse states, "Give it to the foreigner who is at your gate, and he will eat it."

As I have mentioned, the State has indeed recognized such an obligation by way of a long list of legislation, and the same is true for Arabic signs posted on intercity highways and within the cities of Jerusalem, Haifa and Acre, and by the agreement of the Respondents to post signs in Arabic on their main streets, in areas housing a significant Arab population and on signs directing to public institutions and inside public institutions.

However, the status of the Arabic language as an official language is inconsistent with limiting the signs to certain areas within the Respondent-cities, as doing so has a connotation of causing harm. Like my colleague, the *President*, I have not found a good, practical reason to distinguish between the municipal signs posted in Jerusalem, Haifa and Acre, where posting signs in Arabic is self evident, and the signs in the Respondent-cities.

I therefore agree with the decision of the *President* to accept the petition.

Decided in the majority opinion of *President Barak*, against the opinion of *Justice M. Cheshin*.

Today, 16 Av 5762 (July 25, 2002)