

HCJ 6924/98

Association for Civil Rights in Israel

v

- 1. State of Israel**
- 2. Minister of National Infrastructures**
- 3. Minister of Finance**

The Supreme Court sitting as the High Court of Justice

[9 July 2001]

Before Justices M. Cheshin, I. Zamir, D. Beinisch

Objection to an *order nisi* issued March 14, 1999.

Facts: In this petition, the petitioner, the Association for Civil Rights in Israel, asked the Court to direct the Government of Israel, the Minister of National Infrastructures, and the Minister of Finance to nullify the appointment of some of the representatives on behalf of the Government in the Israel Lands Council and to appoint in their stead, Arabs as members of the Council.

Held: The court analyzed the substance and applicability of the principle of equality and decided that given that the Government is to appoint an additional six representatives on its behalf as members of the Council, the *order nisi* is to be made absolute in the sense that the respondents are ordered to weigh, in accordance with what was detailed in the judgment, whether it is possible to appoint an additional Arab as a member in the Israel Lands Council.

Basic Laws cited:

Basic Law: Israel Lands ss. 1, 2.

Basic Law: Human Dignity and Liberty s. 1.

Legislation cited:

Israel Land Administration Law, 5720-1960, ss. 1, 2, 4A.

Israel Lands Law, 5720-1960.

Israel Land Administration Law (Amendment) 5755-1995, s. 5.

Government Corporations Law 5735-1975, ss. 18A, 18A1, 60A

Women's Equality of Rights Law 5711-1951.

Equal Pay for Female and Male Employees Law, 5724-1964.

Equal Employment Opportunities Law 5748-1988, s. 2.

Authority for Advancement of Women Law, 5758-1998.

Civil Service Law (Appointments), 5719-1959, ss. 15A, 15A (b), 15A (b) (2).

National Insurance Law [Consolidated Version] 5755-1995, ss. 20, 22.

Employment Service Law, 5719-1959, s. 42.

Patient's Rights Law 5756-1996, s. 4.

Draft legislation cited:

Draft Proposal for the Israel Land Administration Law, 5720-1960

Draft Proposal for the Israel Land Administration Law (Amendment) (Israel

Land Administration Council) 5755-1994.

Draft Proposal for the Israel Land Administration Law (Amendment no. 3), 5758-1998.

Draft Proposal for the Government Corporations Law (Amendment no. 13) (Appropriate Representation for the Arab Population) 5760-2000.

Draft Civil Service Law (Appointments) (Amendment no. 11) 5760-2000.

Israeli Supreme Court cases cited:

- [1] HCJ 6698/95 *Ka'adan v. Israel Land Administration Authority*, IsrSC 54(1) 258. [2000] IsrLR 51.
- [2] HCJ 453/94 *Israel Women's Network v. Government of Israel*, IsrSC 48(5) 501; [1992-4] IsrLR 425.
- [3] HCJ 2671/98 *Israel Women's Network v. Minister of Labor and Social Affairs*, IsrSC 52(3) 630.
- [4] HCJ 1113/99 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs*, IsrSC 54(2) 164; [2000] IsrLR 133.
- [5] HCJ 421/71 *Yaf Ora Ltd v. Broadcasting Authority*, IsrSC 25(2) 741.
- [6] HCJ 2814/97 *Upper Tracking Committee for Matters of Arab Education in Israel v. Ministry of Education, Culture and Sport*, IsrSC 54(3) 233.
- [7] HCJ 953/87 *Poraz v. Mayor of the City of Tel-Aviv-Jaffa*, IsrSC 42(2) 309.

Israeli books cited:

- [8] Y. Weisman, *Property Law – General Part* (1993).
- [9] U. Benziman, A. Manzur, *Subtenants – Arabs of Israel, their Status and the Policy toward Them* (1992).
- [10] I. Zamir, *Administrative Power* (Volume A. 1996).

Israeli articles cited:

- [11] D. Barak-Erez 'A Dunam Here and a Dunam There: The Israel Lands Administration in the Vise of Interests' *Iyunei Mishpat* 21 (1998) 613.
- [12] I. Zamir, M. Sobel 'Equality before the Law,' *Mishpat U'Memshal E* (2000) 165.
- [13] F. Radai, 'As to Affirmative Action' *Mishpat U'Memshal C* (1995-1996) 145.
- [14] A. Rubinstein, 'On the Equality for Arabs in Israel' *Kiryat Hamishpat A* (2001) 17.

Foreign books cited:

- [15] D. Kretzmer *The Legal Status of the Arabs in Israel* (Boulder, 1990).

Other:

- [16] State Comptroller – Annual Report 44 for the Year 1193 and for the Accounting Year 1992 (1994).
- [17] Declaration of the Establishment of the State of Israel.
- [18] Report of the Subcommittee as to the Status of Minorities in Civil Service and in Public Services (1989).
- [19] *The Regime of the State Israel – Book of Sources* (Y. Galnor, M. Hafnung eds., 1993).

For the petitioner – Hadas Tagari.

For the respondents – Osnat Mendel, Head of High Court of Justice Department,
State Attorney's Office.

JUDGMENT

Justice I. Zamir

1. The Association for Civil Rights in Israel (hereinafter: 'the petitioner') asks the Court to direct the Government of Israel, the Minister of National Infrastructures, and the Minister of Finance (hereinafter: 'the respondents') to nullify the appointment of some of the Government representatives in the Israel Lands Council and to appoint in their place, Arabs as members of the Council.

The Law

2. The law which establishes the Israel Lands Council (hereinafter: 'the Council') is the Israel Land Administration Law, 5720-1960 (hereinafter: 'the law'). Section 3 regulates the appointment and the role of the Council in stating:

'The Government will appoint an Israel Lands Council which will establish the land policy according to which the Administration will operate, will supervise the actions of the Administration, and will approve its budget proposal that will be established in the law'.

The composition of the Council was established in section 4A as follows:

'4A(A) The Minister, who will be the chairperson, and members whose numbers will not be less than eighteen and not more than twenty four, which the Government will appoint, by proposal of the ministers, will serve in the Council, as detailed below:

(1) Half of the Council members will be on behalf of the Government, and half will be on behalf of the Jewish National Fund and by its proposal;

(2) (a) At least half of the members on behalf of the Government will be State employees, holding senior positions in the government offices connected to the matter, and the remainder will be individuals from academia and representatives of the public;

(b) The members on behalf of the Jewish National Fund will be members of the Board of Directors, employees of the Jewish National Fund or individuals from academia; the Jewish National Fund is also permitted to propose one representative on behalf of the Jewish Agency;

(3) Members of the council who hold positions not in civil service nor in the service of the Jewish National Fund, and who in these positions have an interest in land policy

(hereinafter – interest holder in land policy), will not make up more than a third of the number of the Council members, and of them no more than one half will hold positions in the agricultural sector.

(B) The Government will be given details as to the qualifications of the candidates, including their curriculum vitae, their education, their dealings in the past and present, their experience, and any other detail which is substantive and relates to the matter.

(C) The Minister, with the approval of the Council, will appoint a substitute for the Chairperson from among its members.

(D) Notice as to the appointment of the members of the Council will be published in the register.

Additional clauses in the law establish provisions as to limitations on appointing members to the Council, the period of tenure, the conclusion of the tenure, the appointment of alternates for a member of the Council, protocols in the Council and more.

The minister who today serves as the Chairperson of the Council is the Minister of National *Infrastructures*.

The two ministers that according to section 4A(a) of the law propose to the Government the names of the candidates for appointment to the Council are today the Minister of Finance and the Minister of National *Infrastructures*.

3. The law also establishes the Israel Lands Administration (hereinafter: ‘the Administration’). Section 2 of the law establishes that the Government will set up the Administration which will ‘administer the Israel Lands’; that it will appoint the Director of the Administration and that the Administration employees will be civil servants. The authority of the Administration is sweeping authority that is almost not regulated by the law. However, section 4 of the law establishes that the Director of the Administration will submit to the Council a report of the activities of the Council at least once a year, and it is clear that the Administration must act according to the policy established by the Council, and that it is subject to the supervision of the Council. See section 3 of the law, *supra*, paragraph 2.

As to the Administration see HCJ 6698/95 *Ka’adan v. Israel Land Administration Authority* [1] (hereinafter: ‘the *Ka’adan* case’) at pp. 269-272.

4. Israel Lands which are subject to administration by the Administration, were defined in the Basic Law: Israel Lands. Section 1 of the basic law establishes that Israel Lands are ‘the lands in Israel, of the State, of the Development Authority or of the Jewish National Fund.’ This section further establishes that the ownership of Israel Lands will not be transferred, whether by sale or by any other means. However, section 2 of the basic law, removes from the application of the

prohibition types of lands and types of transactions which have been established for this purpose in the law. Such transactions were established in the Israel Lands Law, 5720-1960. As to the Basic Law: Israel Lands and as to Israel lands in general see Y. Weisman, *Property Law – General Part* [8], p. 195 and on.

In actuality, Israel Lands include more than 90% of all the lands in the State. See Weisman in his book *supra* [8] at p. 193. If so, it is clear that the land policy determined by the Council and the oversight of the Council over the Administration has enormous influence over all that relates to development of the Land both from a national and from a private aspect. See D. Barak-Erez ‘A Dunam Here and a Dunam There: The Israel Lands Administration in the Vise of Interests’ [11]. From here it is also clear that there is great importance to the composition of the Council.

Composition of the Council

5. The law that established the Council and the Administration in 1960 – did not state a word about the composition of the Council. How so? As stated in the explanatory notes to the Draft Proposal for the Israel Land Administration Law, 5720-1960, at that time the covenant between the State and the Jewish National Fund (hereinafter: ‘JNF’), was about to be signed, and it contained provisions as to the Council and the Administration (hereinafter: ‘the Covenant’). The legislator made due with the fact that the composition of the Council would be coordinated in the Covenant. And indeed, that Covenant that was signed on November 28, 1961 and published in the *Yalkut Pirsumim* 5728-1968, no. 1597, arranged the composition of the Council. According to the Covenant, the number of the members in the Council would be thirteen, and half less one would be appointed by proposal of the JNF.

Over the years the number of Council members was increased on three occasions, until it reached twenty-seven. The number was increased, as stated by the State Comptroller, without the need for this being clarified and with the numerical relationship between members from the JNF and other members being maintained. See State Comptroller – *Annual Report 44 for the Year 1993 and for the Accounting Year 1992* [16] at pp. 224-225.

6. The situation in fact was not satisfactory. It raised criticism on the part of the State Comptroller. See said *Annual Report of the State Comptroller* [16] at p. 221 and on. Following the report of the State Comptroller a private Draft Law (on behalf of three members of Knesset) was submitted to the Knesset which was primarily intended to arrange the composition and the functionality of the Council: Draft Proposal for the Israel Land Administration Law (Amendment) (Israel Land Administration Council) 5755-1994. In the explanatory notes to the Draft Law (p. 179) it was stated:

‘The actions of the Administration in all that relates to Israel lands take place via an internal legislative body which is the Council of the Administration. This Council operates by

power of undefined arrangements, primarily internal, and in a manner which deviates from the proper order and the proper administration.

In report 44 of the State Comptroller, criticism was expressed . . . in that report the State Comptroller revealed that in fact a majority that is connected in one way or another to the agricultural sector in actuality controls the Council and its various committees. Indeed, the law does not relate to the need to give expression in the Council to one sector or another, but it would be preferable, if there were not in the Administration Council a majority for a specific economic group.’

On the basis of this Draft Law, the Israel Land Administration Law (Amendment) 5755-1995 (hereinafter: ‘the amending law’) was passed. The amending law added section 4A to the law, which regulates the composition of the Council, and additional sections which related to the Council. See *supra* paragraph 2. In accordance with section 5 of the amending law, the period of tenure of the Council members ended in February 1997, and the Government was meant to appoint new members to the Council in accordance with the amending law.

7. Looking toward the appointment of new members to the Council the petitioner, in February 1997 approached the respondents in a letter. In the letter, it said, *inter alia*, as follows:

‘The actions of the Council have great impact over various sectors in the population, and in fact the composition of the Council, has to date reflected the interests of various sectors of the public. However, this representation did not apply as to the Arab population, and as said today not even one Arab member has been included in the Council. Therefore, we turn to you with a request that in the Council that is to be appointed there will be appropriate representation of Arab members, of appropriate professional experience and qualifications.

We are of the view that the situation that has existed to date, according to which there is no representation for the Arab population in the body that determines the policy of the Administration, is illegitimate at its core. The Arab population which is about a fifth of the State’s population has unique interests on the subject of lands, interests which are not represented by other entities. The principle of equality necessitates that this population will be granted appropriate representation in the Israel Lands Council. Half of the members of the Council – twelve out of twenty four – are representatives of the government, of which at least six are senior civil servants, and the rest (up to six) are individuals from academia and representatives of the public. This diverse composition that the law established, and in

particular the membership of about six members who are individuals from academia and representatives of the public, was intended to enable flexibility in determining the composition of the Council, flexibility that would ensure proper representation for diverse publics.’

8. On March 21 1997, the Government decided to appoint eighteen members to the Council: of them nine on behalf of the Government, all civil servants who represent various government offices, and nine on behalf of the JNF. Among the members that were appointed there was not a single representative of the public nor was there a single Arab member.

On June 15, 1997 Dan Meridor, the then Minister of Finance wrote to the petitioner and said as follows: ‘I am of the view that there is nothing to prevent the appointment of Arab citizens to the Israel Lands Council. Your proposal will be taken into account in my considerations, at the time of making a decision as to the inclusion of additional [members] to the Administration Council.’

In the meantime, as arises from the pleadings, five additional members have been appointed (at an unknown date), of which three are on behalf of the Government and two on behalf of the JNF, and among them there is not one Arab member.

Since the quota of members on behalf of the Government as established in section 4A of the law was filled, no available space remained for an Arab member in the Council. ‘There is therefore no other recourse’ so wrote the legal counsel of the Ministry of National *Infrastructures* on July 26, 1998 to the petitioner ‘but to amend the law in order to create more spaces for representatives of the public.’

9. On June 15, 1998, a government sponsored draft law was published which proposed to increase the maximum number of members in the Council from twenty-four to thirty: Draft Israel Land Administration Law (Amendment no. 3), 5758-1998. In the explanatory notes to this draft law (p. 374) it was stated: ‘. . . with the goal of ensuring representation on behalf of the public in the Israel Lands Council, it is proposed to establish that the number of representatives on behalf of the Government who are civil servants will not be greater than twelve.’

The legal counsel in the Ministry of National *Infrastructures* announced to the petitioner that the Minister intends to act, after the draft law becomes law, to appoint a representative from among the Arab public out of the quota of representatives of the public in the Council.

However, the draft law, although it passed a first reading in the *Knesset* (on July 7, 1998), was never submitted for a second or third reading, and it is impossible to know if and when it will be made into law.

The petition

10. This being so, the petitioner filed the petition to this Court, in which it requests that the Government nullify the appointment of some of

the Government representatives on the Council and appoint in their stead Arab members in a proportion which constitutes an appropriate representation of the overall Council members.

After an initial hearing on the petition the Court issued an *order nisi* (on March 14, 1999). The response to the petition was submitted in two levels: the level of principle and the level of practice. On the level of principle, the respondents claimed that the Government on whose behalf half of the members are appointed must appoint senior civil servants who will represent the government offices which have a connection to the matter and will act to implement the land policy of the Government. Moreover, the respondents claim that even if the Government appoints representatives of the public to the Council, it is not clear that it must give 'appropriate representation' to the Arab population. In any event, according to their claim, there is no need for the Court to make a determination on this question in the level of principle, as the question is standing before a resolution in the practical level.

In the practical level, the respondents gave notice that the government intends to appoint an Arab member to the Council in the near future even if the Draft Israel Land Administration Law (Amendment no. 3) (*supra* paragraph 9) is not passed. In the view of the respondents, the appointment of an Arab member to the Council out of the maximum quota of six representatives of the public is an appropriate representation of the Arab population in the Council.

11. Indeed, after a time, the Government decided (on May 14, 1998) to appoint Mr. Salah Suleiman as a representative of the public who represents the Arab sector in the Council. However, following the request of the Attorney General to conduct a re-examination of the question of Mr. Suleiman's political affiliation the Government decided to limit the appointment to a period of about half a year. Later (in the month of January 2001) the Government extended the appointment for an additional half a year until the month of July 2001.

In a supplementary notice by the State Attorney's office (from April 5, 2001) it was stated that the Attorney General directed the legal counsels from the various government offices which relate to the matter to prepare for the appointment of an Arab member to the Council, who would replace Mr. Suleiman, in the month of July, 2001. Even at the time of the hearing it was said to the Court by the counsel for the respondents that the Government intends to appoint an Arab member to the Council when the period of tenure of Mr. Suleiman ends.

Based on what has been stated, the Court presumes that when the time comes an Arab member will be appointed as a representative of the public in the Council in the place of Mr. Suleiman.

12. The respondents, who object to the claim that they have a legal duty to give appropriate representation to the Arab population on the Council, are of the opinion that even if there is such a duty imposed on them they have fulfilled it by appointing one Arab representative of the public to the Council. Is this indeed so? The question what the duty to

give appropriate representation necessitates where such a duty is imposed is a difficult question. The answer depends to a great extent on the context, including the statutory provisions, the identity of the entity, the essence of its role, and the other circumstances of the given case. See HCJ 453/94 *Israel Women's Network v. Government of Israel* (hereinafter: 'the first *Israel Women's Network* case') at pp. 527-528.

However, be the duty to give appropriate representation what it may be, in the given case it is clear that the appointment of one Arab member as a representative of the public out of a maximum quota of six representatives of the public on the Council fulfills the duty of appropriate representation of the Arab population among the representatives of the public on the Council.

Therefore it becomes unnecessary to discuss and determine in this petition the question if indeed a duty is imposed on the respondents to give appropriate representation to the Arab population among the representatives of the public on the Council.

13. The petitioner is not satisfied with the appointment of one Arab among the representatives of the public to the Council. It claims that the Government has a duty to give the Arab population appropriate representation not only among the representatives of the public but in the Council in its entirety. In the Council there are twenty four members. One Arab member is not considered, according to its claim, appropriate representation for the Arab population which makes up about one fifth of the population in Israel. Therefore, it requests that additional Arab members be appointed to the Council.

Indeed, the petitioner, who is aware that the law requires the appointment of half of the members of the Council on behalf of the JNF, does not ask for the appointment of Arab members on behalf of the JNF. The explanation for this is, apparently, that the JNF is a Jewish organization which is obligated, by its articles of incorporation to purchase lands for the settlement of Jews in the land of Israel. However, the petitioner asks for the appointment of additional Arab members on behalf of the Government in order to reach an appropriate representation of the Arab population in the Council. It claims that such representation is necessitated by the principle of equality.

The question that is before the Court is therefore whether the principle of equality necessitates the appointment of additional Arabs as members of the Council.

Principle of equality

14. As to the importance of the principle of equality it is no longer necessary to go on at length. In the words of Justice M. Cheshin 'It is a first among principles in royalty, head and shoulders above all the other principles.' HCJ 2671/98 *Israel Women's Network v. Minister of Labor and Social Affairs* (hereinafter: 'the Second *Israel Women's Network* case') [3] at p. 650. As to equality in general see I. Zamir, M. Sobel 'Equality before the Law' [12].

The Court has given a broad meaning to the principle of equality in a

large number of decisions and has applied it to almost every type of distinction between people on the basis of irrelevant considerations. Thus, for example, a distinction between people who seek to receive a subsidy based on the place they live or the date of application may be considered a violation of the principle of equality. However, the original meaning of the principle of equality, and it appears that it is also the precise definition, is a narrower definition. In this meaning, which is also accepted in other countries, the principle of equality relates to a limited list of defined grounds which can be called the classic grounds of equality, and Justice M. Cheshin calls them generic grounds of equality. These are for example, religion, race, nationality and gender: every person is entitled to equality without distinction as to religion, race, nationality and gender. The principle of equality in this sense, as distinguished from the broad sense, is considered in many states, and is worthy of being considered, a constitutional right. Not without a reason did the Declaration of the Establishment of the State of Israel [17] note the obligation of the State to keep up 'total social and political equality of rights for all its citizens without distinction as to religion, race and gender.'

Violation of the principle of equality in the narrow sense is considered particularly severe, and so said Justice M. Cheshin in the *Second Israel Women's Network* case [3] (at pp. 658-659):

'An additional example of generic discrimination [in addition to the discrimination against a woman for being a woman. I.Z.] is the discrimination against a person for the color of their skin or for their race. Generic discrimination, as has already been said, is discrimination which mortally wounds human dignity.'

See also the *Ka'adan* case [1] (*supra* paragraph 3) at pp. 275-276.

15. Such is also discrimination against an Arab for being an Arab, and it is the same if the discrimination is based on religion or nationhood. It is a violation of the principle of equality in the narrow sense. Therefore, it carries particular severity.

The principle of equality in this sense is the soul of democracy. Democracy demands not only one vote for one person in elections, but also equality for all at all times. The real test for the principle of equality is anchored in the treatment of the minority: religious, national or other. If there is no equality for the minority there is no democracy for the majority.

This is also so as relates to equality toward Arabs. However, the difference between the question of equality toward Arabs and the question of equality toward others is not to be ignored. Thus, for example, is the question of equality toward women. This question is not unique to the State of Israel. It is universal. Discrimination against women in the State of Israel like in other states stems primarily from prejudicial opinion. The struggle against such opinion has been taking place for some time with determination in Israel, based on broad social

consensus, and it is achieving a significant amount of success. So too, as an additional example, is the struggle for equality of people with disabilities. This struggle, as well, takes place on a broad foundation of understanding and empathy. These struggles do not awaken, at least in an open realm, fundamental resistance or emotional recoil. This is not so with the question of discrimination against Arabs. Indeed in the legal realm there is no fundamental difference between the question of equality toward the Arab population and the question of equality toward another group. In that realm the question of equality is the question of equality toward a religious or national minority, be it what it may be. This too is a universal question and it too has a universal answer. The answer is that a religious or national minority, and especially such a minority, is entitled to equality. However, in the practical realm in the State of Israel there is a special significance to the question of equality toward Arabs. This question is connected to a complex relationship that has developed between Jews and Arabs in this country over a long period of time. Despite this, and perhaps particularly because of this, there is a need for equality. The equality is vital to life together. The good of society and in the real calculation the good of every individual in society necessitate nurturing the principle of equality between Jews and Arabs. In any event, this is the dictate of the law, and therefore it is the duty of the Court.

And President Barak said as follows in the *Ka'adan* case [1] (*supra* paragraph 3, at pp. 282).

'The State of Israel is a Jewish state in which various minorities, including the Arab minority, live. Each of the minorities living in Israel enjoys complete equality of rights. It is true, members of the Jewish nation were granted a special key to enter home (see the Law of Return-5710-1950), but once a person is lawfully at home, he enjoys equal rights with all other household members. . . . There is, therefore, no contradiction between the values of the State of Israel as a Jewish and democratic state and between the absolute equality of all of its citizens. The opposite is true: equality of rights for all people in Israel, be their religion whatever it may be and be their nationality whatever it may be, is derived from the values of the State of Israel as a Jewish and democratic state.'

16. According to the principle of equality there is, *inter alia*, a duty to allocate State resources in an equal manner to Arabs as to Jews. See HCJ 1113/99 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs* [4] (hereinafter: 'the *Adalah* case'). Civil service jobs also constitute resources of the state. These are particularly important resources, as they carry with them the possibility of impact on many issues, including on the distribution of monetary and other resources. Therefore, the principle of equality necessitates that state jobs are allocated without discrimination between Jews and Arabs. The meaning is that a person's appointment to a state job is not to be

prevented just because he is an Arab.

However, does this also mean that the Arab population is entitled to appropriate representation in civil service and associated entities, such as, for example, the Israel Lands Council?

The duty of appropriate representation

The principle of equality in its common meaning, both the narrow meaning and the broad meaning, does not necessitate appropriate representation. Indeed there is a connection between the principle of equality and appropriate representation, but there is also a difference between them. The principle of equality in its common meaning is fundamentally a passive concept: it may prohibit a person from taking into account irrelevant considerations such as religion, nationality, race or gender. On the other hand appropriate representation is at its core an active concept: it may require a person to act to reach appropriate representation, including taking into account considerations such as religion, nationality, race or gender as a relevant consideration.

The essence of appropriate representation is expressed in the first *Israel Women's Network* case [2] (*supra* paragraph 12). Section 18A of the Government Corporations Law 5735-1975 stood at the center of this case. And this is the language of the section:

'(a) The composition of the board of directors of a Government corporation shall give proper expression to representation of both genders.

(b) Until proper expression of such representation is achieved, ministers shall appoint, in so far as is possible in the circumstances of the case, directors of the gender that is not properly represented at that time on the board of directors of the corporation.'

In the decision, Justice Mazza clarified that the duty established in section 18A to give proper expression to representation of both genders, is a duty of affirmative action. Affirmative action is generally directed at correcting a social distortion that has harmed equality. In said case it stems from the reality of sub-equality in the representation of women in boards of directors of government corporations and is directed at advancing equality between the genders on these boards of directors. Therefore, said Justice Mazza, affirmative action, while it appears to harm equality because it preferences members of a certain group on the basis of considerations of religion, nationality, race, gender and the like, in fact is derived from the principle of equality and serves as a means to achieve equality. As to affirmative action see F. Radai, 'As to Affirmative Action' [13]; Zamir and Sobel, in said article [12] at pp. 200-204.

18. Is there a place to analogize the first *Israel Women's Network* case [2] and the present case? In this case, like in the first *Israel Women's Network* case [2] the petitioner is not asking the court to direct the respondents to act in the appointment of members according to the common meaning of equality, as the petitioner is not making the claim

that the Government rejected a candidate for membership in the Council because he is an Arab. But what? The petitioner is requesting that the Court order the respondents to act in appointment of members to the Council by way of affirmative action toward the Arab population. The Court so ordered in the first *Israel Women's Network* case [2] since women had weak representation in the boards of directors of government corporations; in the petitioner's opinion, it is to be similarly ordered in this case, since Arabs have weak representation in civil service, and included in this in the Council.

Despite this, there is no room for analogy between the first *Israel Women's Network* case [2] and the present case. In the first *Israel Women's Network* case [2] a duty was imposed on affirmative action in order to advance the appropriate representation of women in an explicit statutory directive, meaning in section 18A of the Government Corporations Law. On the other hand in the present case there is no such an explicit provision which requires appropriate representation of Arabs in the Council. There is therefore no statute that provides a foundation for the petitioner's claim that there is a duty to provide the Arab population appropriate representation in the Council.

19. The petitioner claims, however, that the duty to give the Arab population appropriate representation in the Council does not require an explicit statutory directive, but it exists by power of the principle of equality. The basis for this claim is the decision in the second *Israel Women's Network* case [3] (*supra* paragraph 14). How is the second *Israel Women's Network* case [3] different from the first *Israel Women's Network* case [2]? In the second *Israel Women's Network* case [3] the Court applied the duty of appropriate representation to women even without an explicit statutory directive.

In the second *Israel Women's Network* case [3] the appointment of a deputy to the Director of the National Insurance Institute was discussed. At that time the Director of the National Insurance Institute had eight deputies including a woman who was on vacation, apparently for the purpose of retirement. After the position of one of the deputies was vacated the Minister of Labor and Welfare decided to appoint a certain person, a man and not a woman, to the position that was vacated, for a trial period. The petitioner asked that this appointment be nullified and that the minister be obligated to appoint a woman to the position that was vacated in order to advance the representation of women among the Deputy Directors of the National Insurance Institute.

The Court examined statutes and case law as to the principle of equality of the genders, including the requirement of appropriate representation of women in civil service, and the applicability of statutes and case law to the management of the National Insurance Institute. As the Court noted, at first came the Declaration of the Establishment of the State of Israel [17], which declared the obligation of the State to fulfill complete political and social equality of rights without difference as to religion, race and gender. Later came the Women's Equality of Rights Law 5711-1951, and statutes which required equality between the

genders in the work area, including, Equal Pay for Female and Male Employees Law, 5724-1964, Equal Employment Opportunities Law 5748-1988, and Authority for Advancement of Women Law, 5758-1998. Alongside the statutes the Court ruled clearly that every administrative authority is required, even without a statutory provision, to fulfill the equality between genders. Against this background Justice M. Cheshin (**Ibid** [3] at p. 658) said as follows:

‘Statutes we have brought and case law we have surveyed have seemed to us as points of light, and the light is the light of equality, equality for man and woman in each and every matter. We will go from one point of light to another, and the doctrine of equality will reveal itself before us in its full glory.’

On this foundation of statutes and case law against discrimination on the basis of gender statutory provisions grew which required affirmative action in order to advance appropriate representation of women in public service. Section 18A of the Government Corporations law requires ‘appropriate expression’ for the representation of women in the Boards of Directors of government corporations, and section 60A of this statute requires that it will also be so with certain entities (detailed in the addendum to the law) that were established by statute, such as the Council for Film Critique and the National Council for Planning and Construction. Section 15A of the Civil Service Law (Appointments) 5719-1959, requires ‘appropriate expression’ for the representation of women ‘among the employees in civil service’. This requirement also applies to the appointment of employees to local councils. See **ibid** [3] at p. 661. And since section 22 of the National Insurance Law [Consolidated Version] 5755-1995 establishes that appointments of employees of the Institution will be according to the rules established for appointment of civil servants, the duty of appropriate representation of women, as established in section 15A of the Civil Service Law (Appointments), also applies to the appointment of employees in the National Insurance Institute. Justice M. Cheshin summarized the statutory provisions and said (at pp. 662-663):

‘These representation directives were not intended only to instruct about themselves. They came to instruct about a new direction in the Israeli legal system, a direction which we have not recognized or known in the past. A new and good wind has begun to blow among Israeli statutes. . . We have likened legal provisions which deal with equality for women and prohibit their discrimination as points of light. We have drawn a line between all the points of light and here a doctrine in the law of the land has revealed itself before us, a doctrine whose force goes beyond the particular legal provisions. Joining the points of light one to its neighbor created a type of critical mass and so the doctrine was created, whose ramifications reach far. . . all the representation directives, despite the differences between

them, constitute – each to itself – a crystallization of that matter and express the same core principle. And the principle is: the provision of appropriate representation to women and men in public bodies as a need made necessary by the principle of equality.’

However, as it turned out, the legal provisions as to appropriate representation for women, while they cover the majority of the civil service, they leave islands here and there that are not covered. This is so, among others, in the National Insurance Institute. Indeed the duty of appropriate representation for women, as determined in section 15A of the Civil Service Law (Appointments) applies to the appointment of employees of the Institute, as said in section 22 of the National Insurance Law [Consolidated Version]; however, ‘surprisingly’, in the words of Justice M. Cheshin, this duty does not apply to the appointment of the management of the Institute, meaning the Director, the Assistant Director, and the deputies, that according to section 20 of the law are appointed by the Minister. See *ibid* [3] at pp. 646,648. Why and how? There is no explicit or clear answer to this. Absent a reason the answer that apparently appears is that this is none other than a happenstance omission, meaning a deficiency in the law and not negative regulation. This being so the power of the doctrine as to appropriate representation of women in public service is great enough to fill in the blank and also apply itself to the management of the Institute for National Insurance. And indeed this is how the Court ruled in the second *Israel Women’s Network* case [3].

Appropriate representation for Arabs

20. Therefore, is there room to make an analogy between the second *Israel Women’s Network* case [3] and the present case? At the time the petition was filed the answer, apparently, was in the negative. The statutory provisions and case law which required equality for women, and in particular appropriate representation in public service via affirmative action, were several fold more numerous and heavier than the statutory provisions and case law which required equality for Arabs. The cumulative weight of the statutory provisions and case law which required equality for women gave a basis to say, as the Court said in the second *Israel Women’s Network* case [3], that ‘a doctrine whose force goes beyond the particular legal provisions’ (*Ibid*, at p. 622) had been created as to appropriate representation of women in public entities. See *supra* paragraph 19. On the other hand the cumulative weight of statutory provisions and case law which required equality for Arabs was much smaller. In this situation there was not, apparently, a basis to say that a similar doctrine was created as to the appropriate representation of Arabs in public entities.

21. Even if this is the case, claims the petitioner, in any event there is a need for a doctrine as to appropriate representation of Arabs in public entities, as the Arab population suffers generic discrimination which violates human dignity. The petitioner presents data: although

Arabs constitute close to a fifth of the total residents in the State, the proportion of Arab employees in civil service is only approximately 4.2%; among the senior employees in civil service the proportion of Arab employees is only about 1% and there are government offices in which the proportion of Arab employees is even lower. The petitioner relies for this matter on various sources. See, *inter alia*: U. Benziman, A. Manzur, *Subtenants – Arabs of Israel, their Status and the Policy toward Them* [9], and in particular at pp. 142-143 as well as D. Kretzmer *The Legal Status of the Arabs in Israel* [15].

The respondents have not presented (apparently because they did not see a need to present from a legal standpoint) data as to the relative proportion of Arabs in civil service. But they also did not deny the data that the petitioner presented. Indeed, words of truth are apparent in the petitioner's claim. In the Report of the Subcommittee as to the Status of Minorities in Civil Service and in Public Services [18] from the year 1989 (which was appointed by the public-professional committee, known as the Koverski Committee, for overall examination of the civil service and of entities supported by the State budget) data was presented as to the relative proportion of minorities employed in eight government offices. It was found that the proportion of minorities of the overall employees was approximately 5%, and apparently even lower. The conclusion, as stated in the report, is 'that the proportion of minorities employed in civil service is generally low and at times even very low'. See select sections of this report in the book *The Regime of the State of Israel – A Source Book*, at p. 346.

Recently, Mr. Elyakim Rubinstein, Attorney General, wrote in a published article that 'the representation of the Arab minority in civil service and public service is far less than their part in the population, and stands at single digit percentages only,' and he mentioned a government decision from 1993, following a recommendation of the Koverski Committee, to advance educated Arabs at senior levels of civil service by way of creating job openings exempt from the duty of a tender: A. Rubinstein, 'On the Equality for Arabs in Israel' [14] at p. 21.

In the second *Israel Women's Network* case [3] Justice M. Cheshin stated, (at p. 664) as to the representation of women in public entities that 'the phenomenon that appears to us is this, that the place of women is missing in public entities to a degree and in circumstances that the laws of statistics would have difficulty explaining without adding to the system the element of discrimination as well'. Is there no place to say so as well as to the representation of Arabs in public entities?

22. Be the answer what it may be, and be the explanation what it may be, the situation today is different from the situation that was. It is different first and foremost because of the growing awareness as to the existing situation and the need to change the situation. And indeed, lately there has been a change. The change found expression in moderate improvement of representation of the Arab population in civil service, and it found striking expression in new statutes. A few years only after the statutory provisions as to appropriate representation of

women in public service – section 18A of the Government Corporations Law and section 15A of the Civil Service Law (Appointments) – were passed, the legislator came along and also applied these provisions to the appropriate representation of Arabs. Following this the great gap that existed in legislation between the duty of equality toward women and the duty of equality toward Arabs in all that relates to representation in public entities was almost closed. Therefore, it now needs to be examined, against the present day legal situation, if there is a basis to say that a doctrine has been created as to appropriate representation of Arabs in public service similar to the doctrine that was created, as determined in the second *Israel Women's Network* case [3], as to appropriate representation of women. What arises from this examination?

23. Most of the legal sources which require equality for women, including appropriate representation for women in public service, also require in the same breath equality, including appropriate representation, for Arabs.

One can open with the Declaration of the Establishment of the State of Israel [17] which speaks of the responsibility of the State to fulfill complete social and political equality of rights without differences as to 'religion, race, or gender'. Moreover, the declaration also called to Arabs in Israel, in the height of the War of Independence, to preserve the peace and take part in building the State on the basis of full and equal citizenship 'and on the basis of appropriate representation in all its institutions, temporary and permanent'. It is proper to emphasize: appropriate representation in all its institutions. As has been ruled, the Declaration represents the 'I believe' of the State, and therefore it serves the Court as a source for statutory construction. Moreover, section 1 of the Basic Law: Human Dignity and Liberty declares that the basic rights of a person in Israel 'will be respected in the spirit of the principles in the Declaration of the Establishment of the State of Israel'.

Indeed, the Court has spoken in many decisions, in which it relied on the principle of equality, in one breath on equality in terms of gender and equality in terms of religion and nationality. Thus, as one example among many, in H CJ 421/71 *Yaf Ora Ltd v. Broadcasting Authority* [5] at p. 743, Justice H. Cohn stated:

' . . . it is the law (although for now still unwritten) that any discrimination on the grounds of race, gender, religion, belief, political or other view, or the like, is prohibited to any authority operating by law.'

Accordingly, the court noted the duty of the State to act with equality to Arabs, *inter alia*, in the allocation of resources of the State. See lately the *Adalah* case [4] *supra* paragraph 15; H CJ 2814/97 *Upper Tracking Committee for Matters of Arab Education in Israel v. Ministry of Education, Culture and Sport* [6].

24. Similarly in legislation. Generally it is common in legislation which requires equality to bind together the prohibition to discriminate on grounds of gender with the prohibition to discriminate on the grounds

of religion, race or nationality. See for example: Employment Service Law, 5719-1959, s. 42; Equal Employment Opportunities Law 5748-1988, s. 2; Patient's Rights Law 5756-1996, s. 4.

25. Most important of all, in the present matter, after the legislator saw fit to impose an obligation to advance appropriate representation of women in public service, it saw the need after a few years to impose the same duty toward Arabs. In March 2000 a private draft law was submitted to the *Knesset* on this issue: Draft Proposal for the Government Corporations Law (Amendment no. 13) (Appropriate Representation for the Arab Population) 5760-2000. In the explanatory notes of the draft law (at p. 345) it was said that 'the number of directors from among the Arab population in Government Corporations is very low'; it was therefore proposed to add to the Government Corporations law a provision which would establish, similar to the appropriate representation of women that was established in section 18A of the law, a duty of appropriate representation for the Arab population. On the basis of this draft proposal section 18A1 was added to the Government Corporations Law, and this is its language:

'(a) The composition of the board of directors of a Government corporation shall give proper expression to representation of the Arab population.

(b) Until proper expression of such representation is achieved, ministers shall appoint, in so far as is possible in the circumstances of the case, directors from among the Arab population.

(c) For purposes of this section 'the Arab population' – includes the Druze and Circassian population'

On October 24, 2000, the Attorney General issued a guideline to the Prime Minister and cabinet members as to the implementation of this section. See this guideline as an addendum to said article by Rubinstein [14] at p. 29. *Inter alia*, the Attorney General states in the guideline as follows:

'It cannot be denied that the said statutory amendment came against the background of a dearth of appointments from among the Arab population for roles of the said type. This provision therefore comes to achieve a result that it is appropriate to reach for, in these entities and others, by power of basic rules of equality and fairness, even without this being anchored in Knesset legislation.'

And he concludes the guideline with a call to the Prime Minister and the members of the cabinet to fulfill the duty of appropriate representation according to this provision, *inter alia*, in order to prevent a ground for disqualifying the appointment.

Does the duty of appropriate representation according to this provision also apply to the Israel Lands Council? The answer is in the negative. The Council is not a government corporation, as it is defined in the Government Corporations Law. Indeed according to section 60A

of this law the duty of appropriate representation also applies to entities established by statute, and they are detailed in an addendum to this statute. However the Council is not counted among the entities detailed in the addendum to the law. The result is that section 18A1 of the law which requires appropriate representation for the Arab population, does not apply to the Council.

26. Approximately a year ago the Government submitted the Civil Service Law (Appointments) (Amendment no. 11) 5760-2000. In the explanatory notes to this draft proposal (at p. 496) it was said as follows: 'The Arab population, including the Druze population and the Circassian population in the State, although it constitutes almost a fifth of the State's population, is represented in civil service only at the rate of about 5% of the totality of the government employees, and among the senior position holders in civil service at an even lower rate.' Therefore, it was stated in the explanatory notes, in continuation of the legislative trend which found expression in the addition of section 18A1 to the Government Corporations Law, it is proposed to establish, in a statute, provisions as to appropriate representation in civil service for the Arab population. On the basis of this draft proposal section 15A of the Civil Service Law (Appointments) was amended. The language of the section today is as follows:

(a) Among the employees in civil service, including all the professions and the ranks, in each office, and support unit, appropriate expression will be given, under the circumstances, for the representation of members of both genders, of people with disabilities, and of members of the Arab population, including the Druze and Circassian (in this law – appropriate representation).

(b) The Government will operate to advance appropriate representation among the employees in civil service in accordance with the objectives it will set, and for this purpose, inter alia –

(1) The office or support units which relate to the matter, as well as the Civil Service Commission, each in their field, will undertake the necessary means under the circumstances which can enable and encourage appropriate representation.

..

(2) The Government may designate job openings in which, to the extent possible, will be employed only candidates who are qualified for the job, from among a group which is entitled to appropriate representation according to the provisions of subsection (a) which is not appropriately represented, as the Government shall determine.

(3) The Government may order, as to a job opening or a group of job openings or a rank or a group of ranks, which will be detailed in the order, and for a period that will be determined, the granting of preference to candidates from

among the group that is entitled to appropriate representation according to the provisions of subsection (a) that is not represented in an appropriate manner, where they have similar qualifications to the qualifications of other candidates. . .

(c) The provisions of this section will apply to all manner of acceptance to employment and advancement in employment according to this statute, including appointment by way of a tender, employment without a tender and appointment in fact.'

The section goes on to establish provisions which do not relate to the matter discussed in the petition as to fulfilling the duty to provide appropriate representation.

27. It is clear that section 15A of the Civil Service Law (Appointments) establishes a duty of affirmative action for the Arab population in appointments to civil service. However, the section is not simple. It raises various questions. There is no need to discuss them in this petition. In this petition it is a sufficient question whether the section requires granting appropriate representation to members of the Arab population in the Israel Lands Council.

The Civil Service Law (Appointments) regulates appointments in civil service. However the Israel Lands Council is not part of the civil service. Most of the members in the Council are also not civil servants, but representatives of the public or representatives of JNF. Indeed, the Council is by its composition and its substance, a satellite body, outside of the government mechanism, similar to other public councils, investigative committees, administrative tribunals and more. As to satellite bodies see I. Zamir, *Administrative Power* (Volume 1) [10] at p. 411 and on. It appears that section 15A does not apply to satellite bodies including the Israel Lands Council.

28. However, even if section 15A of the Civil Service Law (Appointments) does not directly apply to the Israel Lands Council, it still has indirect weight on the question whether it is appropriate to grant appropriate representation to the Arab population in the Council. As in fact, this section joins up as an additional component to a network of legal sources which oblige equal treatment of the Arab population. See *supra* paragraphs 22-25. The cumulative weight of all of these is very similar to the cumulative weight of legal sources which require equal treatment of women. Therefore, the conclusion also has to be similar. As to the legal sources which require equality to women, Justice M. Cheshin in the second *Israel Women's Network* case [3] said that these sources are similar to 'points of light', and that 'Joining the points of light one to its neighbor created a type of critical mass and so the doctrine was created' (*Ibid*, at p. 662) as to appropriate representation for women in public entities. See *supra* paragraph 19. Similarly, it is to be said as to legal sources which require equal treatment of Arabs: alongside the doctrine which requires granting appropriate representation

to women they create a doctrine which requires granting appropriate representation to Arabs in public service. What is the duty which stems from this doctrine?

29. The Court gave the answer in the second *Israel Women's Network* case [3]. There, the Court ruled that the duty of appropriate representation of women, according to section 15A of the Civil Service Law (Appointments), applies to all the employees of the National Insurance Institute, except for members of the Institute's management. See *supra* paragraph 19. Here, the duty of appropriate representation of women, people with disabilities, and members of the Arab population, according to that section, applies to all the employees of the Israel Lands Administration, excluding members of the Council. There, the Court ruled that the doctrine as to appropriate representation for women also extends over the appointment of the members of the management of the National Insurance Institute. By power of that doctrine, the Court further ruled, that there is a duty on the Minister when coming to appoint a Deputy Director of the Institute to work toward advancing the representation of women. What does this mean? This does not mean that there is a duty on the Minister to appoint a woman to this job. But rather what? In the words of Justice M. Cheshin (**Ibid**, at p. 671):

‘It is imposed on the Minister to fulfill his duty according to the doctrine, the duty to act in order to give appropriate representation to women: to make an effort and to diligently work toward finding suitable candidates to fill the job of deputy director in the National Insurance Institute.’

Justice M. Cheshin noted (**Ibid**, at p. 670) that there exists a difference between the duty to grant appropriate representation according to section 15A of the Civil Service Law (Appointments) and the duty to grant appropriate representation according to the doctrine. What is the difference? The duty the statute imposes in section 15A, is not just to act but to achieve a result: the result is ‘appropriate expression’ for the representation of women, of people with disabilities, and of members of the Arab population. It is clear that a result depends on action: the authorized authority must act to achieve appropriate representation. For this purpose the statute establishes various means, such as designating positions for employing candidates from among the group entitled to appropriate representation according to section 15A(b)(2) of the Civil Service Law (Appointments). As long as there is not appropriate representation the authorized authority has the burden to prove that it has done all that is necessary and possible by law under the circumstances to achieve appropriate representation.

On the other hand the duty imposed based on the doctrine relates primarily to the discretion of the authorized authority. The authority authorized to make an appointment is obligated, like any administrative authority as to any power, to consider all the relevant considerations and give each relevant consideration the appropriate weight. Generally, religion, nationality and race are irrelevant considerations, and therefore the authorized authority is prohibited from taking them into

consideration for purposes of using the power. However, as to appointment to public service, belonging to the Arab population, is, by force of the doctrine, a relevant consideration. Accordingly, not only is the authorized authority entitled to bring it into account, but it even is required to bring it into account as one of the relevant considerations and give it the appropriate weight. There is no great innovation here. The principle of equality is in any case, and without connection to the doctrine, a relevant consideration that the authorized authority must bring into account when it makes an appointment. See H CJ 953/87 *Poraz v. Mayor of the City of Tel-Aviv-Jaffa* [7]. And still there is innovation in the doctrine. The innovation is in the substance of the relevant consideration. According to the doctrine the relevant consideration says that in an appointment to public service it is not sufficient to act with equality toward an Arab candidate but it is also necessary to act with affirmative action toward an Arab candidate with the goal of providing the Arab population with appropriate representation in public service. See Zamir and Sobel in their article [12] at pp. 200-204. However, this consideration is still only one from among the relevant considerations. The authority must weigh all the relevant considerations, and particularly the personal fitness of the candidate to fill the role, in order to reach the proper balance. However, in the framework of the balancing, the candidate's belonging to the Arab population is, as long as appropriate representation has not been achieved, a relevant consideration in the candidate's favor. This is the affirmative action required by the doctrine in order to fulfill the principle of equality toward the Arab population.

In fact, the difference between the duty imposed by the statute and the duty imposed by the doctrine may be hazy. But it exists first of all in the fundamental realm, and additionally in the practical realm. *Inter alia*, the provisions established in section 15A(b) of the Civil Service Law (Appointments) such as designating jobs in order to advance the appropriate representation, apply only to the duty imposed by the statute.

The present case

30. What is the conclusion that arises from all that has been said, as to the present case. Section 4A of the Israel Land Administration Law, establishes that the Government will appoint, by proposal of the ministers, half of the members (in fact, twelve members) in the Israel Lands Council and among them at least half (in fact six) 'civil servants, holding senior positions in the government offices connected to the matter. . . ' see *supra* paragraph 2. This authority is subject to the doctrine. According to the doctrine it is incumbent on every minister who proposes a candidate for membership in the Council to weigh, *inter alia*, the need to also give appropriate representation to the Arab population in the Council and to give this consideration appropriate weight. For this purpose the Minister must inquire whether there is among the senior office-holders in his office an Arab candidate substantively qualified for appointment as a member of the Council. If there is such an individual, and there is no good reason to deny his

candidacy or to prefer another candidate over him, it is proper to propose him for appointment as a member of the Council.

A similar duty is imposed on the Government when it receives the proposals of the Ministers for appointment of members in the Council and must decide on an appointment. It must consider the question whether there is in these proposals to provide appropriate representation to the Arab population. If not, it must inquire if nonetheless there is no practical possibility to find a worthy Arab candidate among the senior office-holders in the government offices which relate to the matter in order to advance the appropriate representation of the Arab population.

31. It is a question what the duty to give appropriate representation to the Arab population in a certain entity requires, and in this case – the Council. The answer may change depending on the circumstances of the case. Appropriate representation is not a formal duty, but a substantive duty, that has purpose and an objective. Therefore it is not correct to say that section 18A of the Government Corporations Law, which requires giving appropriate expression in the Boards of Directors of Government Corporations to women, requires that in every such Board of Directors the women will be half of the overall members. But it also is not to be said that the symbolic presence of one woman is sufficient in order to fulfill the duty of appropriate expression. The required extent of representation is dependent on the context. See the first *Israel Women's Network* case [2] (*supra* paragraph 12), at pp. 527-528. It is also to be said thus as to appropriate representation of the Arab population in Boards of Directors of Government Corporations, as is required by section 18A1 of the Government Corporations Law. This section does not require that the number of Arab members in every Board of Directors of a Government Corporation will be one fifth of the overall members. Similarly it is also to be said as to the duty to give appropriate representation in civil service whether for women, whether for members of the Arab population or for persons with disabilities.

The question of what constitutes appropriate representation in a specific entity is dependent, *inter alia*, on the substance of the entity, including the practical importance of the entity in terms of the group entitled to appropriate representation. Accordingly, it appears that the importance of representation and the force of representation in the Israel Lands Council are greater as to members of the Arab population than as to, for example, people with disabilities. The Government and the ministers that relate to the matter are to also bring this consideration into account in the process of appointing members to the Council.

32. In the present case, the statute establishes that civil servants are not to be appointed as members in the Council unless they are 'senior' civil servants in the offices which relate to the matter. The petitioner presumes that there are no such Arab employees. The Court does not know if this presumption has a basis. In any event, this is not sufficient to exempt the ministers who relate to the matter and the government from the duty to employ their discretion in a manner that is intended to advance, if possible, the appropriate representation of the Arab

population. If indeed it turns out that among the 'senior' civil servants in the government offices there is not a single Arab employee who will be qualified for appointment as a member of the Council, then this is proof of a distorted situation, which s. 15A of the Civil Service Law (Appointments) and s. 18A1 of the Government Corporations Law were intended to repair. However, repair of the distorted is a process, and as is the way of such processes it takes time. In such a case there is no recourse but to wait until there will be senior civil servants in the government offices which relate to the matter, as is necessitated by s. 15A of the Civil Service Law (Appointments). The Court is not entitled to take, or order the Government to take, a short cut, in contradiction of a statutory provision. However, according to the law the government must take the road at the appropriate speed.

If it turns out that today there is not among the senior government employees in the government offices which relate to the matter a single qualified Arab employee who is qualified to be appointed as a member of the Council, it is appropriate that the Government also consider the possibility of appointing an additional Arab from among individuals in academia and public representatives which the Government is qualified to appoint as members in the Council.

33. The petitioner requested that the Government nullify the appointment of some of the members in the Council in order to enable the appointment of Arabs in their place in a manner that will constitute appropriate representation for the Arab population. However, as the petitioner recently notified the Court, and the respondents affirmed, several Council members recently retired, and of the quota of twelve members who are appointed to the Council on behalf of the Government today only six members are serving in the Council. Meaning, the Government is now authorized to appoint six additional members to the Council. Indeed, as the respondents' counsel notified the Court several days ago, the Minister of National *Infrastructures* sent the Minister of Finance a proposal for the appointment of six additional members to the Council on behalf of the Government.

The respondents' counsel did not note in the notice who the candidates are who were proposed by the minister. However, since the notice does not state otherwise, one would think that there is not an Arab among the candidates. The notice also does not state that there is not among the senior office-holders in the government offices which relate to the matter an Arab who is qualified to be appointed as a member of the Council. This being so, the ministers have a duty to consider anew the list of candidates in light of what has been said in this judgment.

Summary

34. In summary, the Government has appointed during the time of the hearings in the petition an Arab as a representative of the public in the Israel Lands Council, and it has taken upon itself to appoint, upon the conclusion of his tenure, an Arab as a representative of the public in his place.

Justice I. Zamir

Now the Government is to appoint an additional six representatives on its behalf as members of the Council. As to the appointment of these members I propose making the *order nisi* absolute, which orders the respondents to weigh, according to what has been stated in this judgment, if it is possible to appoint an additional Arab as a member in the Israel Lands Council.

The respondents will bear the court costs of the petitioner in a total sum of 10,000 NIS.

Justice M. Cheshin

I agree.

Justice D. Beinisch

I agree.

It has been decided as per the decision of Justice Zamir.

18 Tamuz 5761

9 July 2001