

In the Supreme Court sitting as High Court of Justice

HCJ 2383/04

Before: Deputy President E. Mazza
Justice A. Procaccia
Justice E.E. Levy

Petitioners: 1. Leora Milo
2. Daniel Shabtai Milo

v.

Respondents: 1. Minister of Defence
2. Committee on Conscience-Based
Exemptions under section 39 of the Defence Service Law
3. Appeals Committee

Petition for Order Nisi and Interlocutory Order

Date of session: 22 Nissan 5764 (13 April 2004)

On behalf of Petitioner 1: Adv. Gaby Lasky; Adv. Smadar Ben Natan

On behalf of Petitioner 2: Pro Se

On behalf of Respondents: Adv. Yuval Roitman

JUDGMENT

Justice A. Procaccia:

Introduction

1. The time has come once again to revisit the question of refusal to serve in the IDF for reasons of conscience, and how it stands in relation to the law and the prevailing social order; the issue of the gap between the dictates of the individual's conscience and the imperatives of the law — whether it can be bridged, what are its limits, and what is the proper middle ground between the individual's inner moral obligation and the fundamental principles of democracy and the rule of law; what are the boundaries within which a human society is capable of acknowledging the legitimacy of disobeying the law on grounds of personal conscience while at the same time safeguarding itself from doom; how it might be possible to reconcile the constitutional value whereby freedom of conscience is recognized as a fundamental value with the democratic value predicated on majority rule, and which requires that the minority and the individual respect the law, as well; how one can reconcile the internal contradiction that might arise between a form of government based on majority rule and individual conscience in a liberal pluralistic state, which recognizes this set of values and attributes considerable weight to each of them within the overall social order.

Background

2. The Petitioner reached the age of conscription to the IDF. Close to her date of induction into the army, she submitted a request to the military authorities for an exemption from military service for reasons of conscience, in view of her objection to the IDF's policy in the Administered Territories, which contravened her humanistic, moral ideology. The military authorities rejected the exemption request, and the Petitioner's obligation to serve her compulsory military service stood. Refusing to accept the decision, the Petitioner was tried and given a prison sentence. She is currently due to serve another prison sentence, which has been stayed pending the decision in the present petition. The petition seeks to have the decision of the

competent military authority not to exempt the petitioner from compulsory service reviewed and, in so doing, raises questions of principle regarding the phenomenon of refusal to serve in the army, both in the legal and social contexts, among them the questions of the circumstances and conditions under which refusal might constitute grounds for exemption from military service, and whether a distinction might be warranted for this purpose between women and men of military age.

Facts

3. The Petitioner is a "person of military age" as defined in sec. 1 of the Defence Service Law (Consolidated Version), 5746-1986 (hereinafter: "the Law"). Close to her date of induction, scheduled for September 30, 2003, she approached the army's conscription authorities requesting to be exempted from defence service for reasons of conscience. She based her request on sec. 39 of the Law, claiming that her conscience did not allow her to serve in an army of occupation, as this went against her moral and social obligation. The reasons for the request were set forth in a letter she had sent to the army's exemption committee (Appendix P3/A):

I cannot cooperate with the occupation army of the State of Israel... I object to the occupation. I object to it not because it harms us directly, but mainly on ideological grounds. The occupation contravenes my humanistic, moral ideology... The Israeli government implements a policy of daily humiliation in the occupied territories, which is chiefly expressed in the presence of IDF soldiers. I will not be part of an entity that carries out morally wrong policies... Regretfully, instead of setting an example of morality and justice for the whole world, the State of Israel chooses to raise the blackest banner of them all — a banner stained by evident wrongdoings against innocent Palestinians, and stained in particular by its control over their everyday life... As far as personal conscience goes, my conscience clearly tells me that the IDF is an immoral entity, and that this is not the right way for me to contribute to my country... I have no intention of giving up

easily — this is my country! It is my democratic right to shape it in line with my values, which are supposed, moreover, to be those of Judaism in general...

The Petitioner was summoned before the Committee on Conscience-Based Exemptions (hereinafter: "the Exemption Committee"), where she stated that she was not a pacifist, and that if the IDF were to pull out of the territories of Judea, Samaria and the Gaza Strip, she would be willing to serve within its ranks. Among other things, she told the committee: "If the army were to pull out of the territories, I would have no problem enlisting. Had I lived in the Czech Republic, I would have enlisted. I believe a country should have an army" (R/1).

On August 28, 2003, the Exemption Committee denied the Petitioner's request for an exemption, explaining:

The committee was not satisfied that reasons of conscience prevented her from serving in the IDF. The reason is the IDF's presence in the territories.

On September 15, 2003, the Petitioner filed an appeal contesting the decision of the Exemption Committee, in which she wrote, among other things:

I insist that this is my conscience — the strict prohibition against serving in an occupation army which, in protecting the settlement "enterprise", violates international law and the Ten Commandments every day and every hour; this is incompatible with my basic values. I persist in my demand to contribute to Israeli society in a way that is right for me, i.e. to go on to serve within the framework of the National Service...

The Appeals Committee heard the Petitioner and her witnesses, and decided to reject the appeal. In its decision, it stated as follows:

The committee was not satisfied that reasons of conscience prevented the candidate for military service from carrying out her military service. The arguments put forward by the candidate and her witnesses focused primarily on social reasons and the candidate's desire to contribute to society outside the army.

On February 22, 2004, after her request for an earlier enlistment date was granted by the military authorities, the Petitioner reported for the start of her military service but refused to go through the induction process. As a result, she was tried in a disciplinary hearing, and was sentenced to 14 days in jail, which ended on March 5, 2004. After serving her sentence, she presented herself once again at the induction base, on March 7, 2004, and was once again sentenced for disobeying a similar order. At her request, the start of the prison sentence was deferred to March 11, 2004. On March 8, 2004, the Petitioner and her father, Mr. Daniel Shabtai Milo, filed the petition now before us, in the course of which an interlocutory order was issued delaying execution of the Petitioner's additional prison sentence pending a decision on the petition.

The Parties' Arguments.

The Petitioner's Arguments

4. The Petitioner contends that her reasons for seeking exemption from compulsory service in the IDF are conscientious, and are not reasons of another kind as was determined by the Exemption Committees in their decisions. As such, the matter falls within the scope of sec. 39 of the Law, which grants a female person of military age a statutory exemption from military service by reasons of conscience, or reasons connected with her family's religious way of life, preventing her from serving in defence service. It is argued that once such reasons of conscience have been proven, a woman is granted exemption from service by virtue of the Law, with no discretion given to the military authorities in the matter. In this, a female person of military age differs from a male person of military age, who is subject in this matter to sec. 36 of the Law, under which the Minister of Defence is vested with discretionary authority to determine when and under what circumstances it is possible and appropriate to exempt a person of military age from compulsory

service, inter alia, for reasons of conscientious objection. The Petitioner claims to have satisfied the burden of proof that rests with her to show that her objection to serving in the army was motivated by true reasons of conscience, and that consequently, under the provisions of sec. 39 of the Law, the Exemption Committees must recognize her reasons and her statutory right to the exemption sought.

Respondents' Position

5. The Respondents' position is that the petition must be dismissed *in limine* for laches. Speaking to the merits of the case, they claim that the army's Exemption Committees acted within their authority, and that there should be no intervention in their decisions. First, they argue, there should be no intervention in the factual findings according to which the Petitioner's objection to military service should not be classified as conscientious objection, but rather as objection premised upon social reasons and a desire to contribute of her personal capabilities to extra-military frameworks. Second, reasons of conscience that warrant granting a female person of military age exemption by virtue of sec. 39 of the Law are, by nature, such that preclude a woman from military service *as such*. What this means is that only reasons that by nature rule out military service *as such* should fall within the scope of the statutory exemption granted to women. These reasons differ in substance from reasons of selective refusal, which are characterized by ideological, social or political motives, and which make refusal to serve in the army conditional upon the nature and character of the service, its location, or the kind of actions required of the soldier during the service, etc. The Exemption Committees found the Petitioner's refusal to serve in the army to be distinctly socio-political, thus amounting to contingent selective refusal. As such grounds for refusal do not entitle one to exemption, there is no occasion to intervene in the decision made by the competent military authority that rejected the Petitioner's exemption request, and the petition must be dismissed on the merits.

Definition of the question to be decided

6. In a society erected upon the pillars of democracy, the will of the majority is the bedrock of social order. The law and the arrangements derived therefrom, adopted as per the will of the majority, must be obeyed by virtue of the very nature

of the democratic process, failing which a civilized society cannot endure. Obeying the law is both a legal and a moral obligation. Its fulfillment underlies our life together in society, and is the basis for the mutual respect of human rights and the protection of universal values, among them human equality and liberty (Y. Zamir, *The Boundary of Obeying the Law*, Festschrift in Honor of the 80th Birthday of Shimon Agranat, 1987, p. 119 (Hebrew)). With that said, since ancient times, human society has contended with the possible conflict between the demands of the law and of social order, and the dictates of the individual's conscience when it calls upon the individual to disobey the law. This conflict raises profound moral and ethical questions. It raises juridical questions. Under what circumstances can or should society recognize the phenomenon of refusal to respect the law; when and how is it fitting to reconcile the individual's internal moral compass and the will of the majority in a democratic regime?

The margins afforded by society for acknowledging the necessity and feasibility of reconciling the dictates of personal conscience with those of the law have always been very narrow. Such narrowness is necessitated by the existential needs of a human society seeking to conduct itself within an agreed order in which the rule of law must be respected, and a set of rights and duties is equally applicable to all citizens. Yet even within the confines of the existential need to enforce respect of the law as a universal obligation, various judicial authorities recognize the existence of circumstances constituting exceptions to this rule, within which the individual's right to disobey the law is acknowledged under certain conditions. Such circumstances are very few and far between, and they, too, fall within the law rather than outside it. Thus, for example, exemption from criminal responsibility is recognized in the case of a person who has disobeyed a manifestly unlawful order (sec. 24(a) of the Penal Law, 5737-1977). An order is manifestly unlawful when it is extremely immoral and its illegality is glaring (CrimA 336/61 *Eichmann v. Attorney General*, IsrSC 16 2033; CMA 279-283/58 *Ofer v. Chief Military Prosecutor*, IsrDC 44 362; CM MR 3/57 *Military Prosecutor v. Major Malinki*, IsrDC 17 90).

The law itself sometimes recognizes, within definite narrow bounds, reasons of conscience as grounds for making an exception and treating a person, a conscientious objector, differently from all the others. Such exception is made within the framework of and as prescribed by the law. This is the case in Israel. The

readiness to recognize conscientious objection within narrow limits stems, first and foremost, from the fact that freedom of conscience is a recognized constitutional value in Israeli law. This value stems from the Declaration of Independence, derives from human dignity and liberty, and is tied to the value of tolerance towards the opinions and views of others in a pluralistic society (HCJ 7622/02 *Zonshein v. Military Advocate General*, IsrSC 57(1) 726, 734). It comes from recognizing conscientious objection as a human phenomenon. The legal arrangement that recognizes reasons of conscience as grounds for making an exception for one individual among all others reflects the outcome of striking a balance that seeks to reconcile between the needs of social order and equal sharing of rights and duties by all members of society, on the one hand, and the consideration given to the individual exception who removes himself from the collective, on the other hand. It tolerates the exceptionality of the individual where this poses no immediate, real danger to the public order, whether because of the content and nature of the exception or in terms of the phenomenon's scope. Striking this balance is all the more difficult and delicate in a society engaged in a struggle for its life and security, and facing a constant challenge to its existence. The possible margin for recognizing the individual exception from the public at large in a society living and acting in times of emergency is naturally very narrow. Were this not the case, social order and the rule of law might weaken, and the democratic process might be supplanted by anarchy. Recognizing the individual's conscientious reasons as grounds for exemption from compulsory service in the IDF is likewise defined within the law, as a product of balances struck between the public interest and respect for the individual's consciousness.

Military service in Israel is a civil duty that falls to any person of military age. It is a legal duty applicable by virtue of the law. It is also a moral duty in view of the country's basic, immediate survival needs. It is a duty equally imposed, for all civilians to bear. Nevertheless, the Defence Service Law recognizes exceptions to the duty of military service for various considerations and purposes. Inter alia, it also recognizes — within definite narrow boundaries — the possibility of granting an exemption from military service for reasons of conscience. The boundaries within which this exception is recognized are the subject this hearing.

The focus of the question to be decided is this: What kind of refusal might justify granting exemption from compulsory military service in the IDF under the

Law? Derived from it are the following questions: Is the distinction between absolute refusal to serve in the army and selective refusal that is conditional relevant for the purpose of exemption from compulsory service? How does conscientious objection stand in relation to refusal that essentially amounts to civil disobedience? Is there a distinction between men and women of military age as regards exemption for reasons of conscience, and how does the general power to grant exemption from service under sec. 36 of the Law stand in relation to the exemption provisions specific to women of military age under sec. 39 of the Law? What is the interrelationship between these two sources of exemption provided under the Law? When, and under what circumstances, is the competent authority given discretion in granting exemptions, and what discretionary guidelines should it exercise? And does proving certain facts and conditions suffice, under certain circumstances, to confer a statutory right to exemption?

Legislative framework

7. The Law addresses exemption from military service in two contexts. Section 36 of the Law provides for a general power given to the Minister of Defence to exempt a person of military age from compulsory service, as follows:

Power to exempt from or defer service 36. The Minister of Defence may, by order, if he sees fit to do so for reasons connected with the size of the regular forces or reserve forces of the Israel Defence Forces or for reasons connected with the requirements of education, security settlement or the national economy or for family or other reasons

(1) exempt a person of military age from the duty of regular service or reduce the period of his service;

(2) exempt a person of military age from the duty of reserve service for a specific period or absolutely...

Exemption from military service for reasons of conscience falls within the term "other reasons" in the opening paragraph of sec. 36, which authorizes the Minister, where appropriate, to exempt a person of military age from regular or reserve service for

reasons of conscience (the *Zonshein* case, *ibid.*, p. 732; HCJ 1380/02 *Ben-Artzi v. Minister of Defence*, IsrSC 56(4), 476, 477) (hereinafter: "General Power of Exemption").

Alongside the General Power of Exemption under sec. 36, applicable to all persons of military age, is a special exemption provision in sec. 39(c) of the Law, which relates to a female person of military age, granting her statutory exemption under certain conditions. This is worded as follows:

Statutory exemption from service 39 (c) A female person of military age who has proved, in such manner and to such authority as shall be prescribed by regulations, that reasons of conscience or reasons connected with her family's religious way of life prevent her from serving in defence service shall be exempt from the duty of that service.

(hereinafter: "Special Exemption")

The question of conscientious objection has occupied the legal world for years in connection with exemption requests by men of military age under sec. 36 of the Law. Examining the nature of the Special Exemption for reasons of conscience as it relates to women of military age is another link in the chain of proceedings and rulings on the issue of refusal to enlist for reasons of conscience, and it raises, first and foremost, questions regarding the criteria for implementing the Special Exemption for women under sec. 39. Beyond that, it raises questions regarding the possible applicability of the General Power of Exemption in sec. 36 to women, and regarding the relationship between the General Power of Exemption and the Special Exemption in this context.

The Special Exemption: Reasons of conscience as grounds for exempting a female person of military age

8. The Special Exemption provision in sec. 39(c) suggests that a female person of military age, who has proved that reasons of conscience prevent her from serving

in defence service, shall be exempt from that duty of service. This provision comprises it two principal conditions:

One, the existence of reasons of conscience pertaining to military service; the *second*, that such reasons prevent her from doing military service. The first condition is about factually proving that the woman liable for conscription has reasons of conscience pertaining to her service. The second condition, of a legal-normative character, examines whether the reasons of conscience proved are indeed of a nature that duly prevents her service in the army from the normative perspective. When this criterion is met for a female person of military age, she is exempt from compulsory service by virtue of the Law, and this is not subject to the discretion of the military authorities.

The first condition has to do with the impression formed by the army's Exemption Committees, based on the testimony of the exemption-seeker, regarding the substance of her claimed reasons, and the credibility of her claim. This process bears some resemblance to the process of assessing testimony in court in order to assess witness reliability and establish findings of fact based upon them. The difficulty inherent in assessing the reliability of claims alleging reasons of conscience in connection with draft refusal have been described by the Court in the *Ben-Artzi* case (*ibid.*, p. 478) (*per* Justice Cheshin), as follows:

Conscientious objection is a purely subjective affair — a matter of the heart — and we have long known that only the Lord looks on the heart, but man looks only on the outward appearance. Indeed, concluding that so-and-so is requesting an exemption from regular service because military service runs counter to his conscience is no easy task by any reckoning. In a sense, this is akin to a trial court determining that it believes such-and-such a witness, but not another. In fact, the conclusion that so-and-so is a conscientious objector, or not, is not merely a question of trust. It is a question of understanding the body of evidence presented to the committee, and it is, in any case, a decision open to review by a court. However, the

burden of proving that the committee erred in its decision — and not only erred, but erred so much as to have the court overturn its decision — is a burden that lies with the petitioner".

(and *cf.* HCJ 4062/95 *Epstein v. Minister of Defence*, Dinim Elyon 41, 794).

In the first stage of examining the claim of objection, the Exemption Committee must therefore examine how sincere the applicant's arguments are and how credible she is. The question is whether she speaks the truth in asserting the existence of conscientious reasons preventing her from serving in the army, or whether her claim is a cover-up for other motives, such as convenience or a desire to evade the draft, wrapped up in an artificial shroud of conscientious scruples. If the exemption-seeker's reasons are judged genuine, the Exemption Committee is required, within the framework of the initial inquiry stage, to classify their nature by their content, and determine whether these are indeed conscientious reasons or rather reasons of a different character. This classification relates to the content of the reasons and to an evaluation of whether they have to do with reasons of conscience or reasons of a different hue, whether social, political or other. The classification issue can get trickier when the rationale for refusal consists of different, intertwined reasons, some conscientious and others not. If the reasons for objection are classified in such a way as to fall completely outside the scope of conscience in the sense of the Law, the competent authority's examination is concluded at the close of the first stage, and the exemption request is rejected. If, on the other hand, the straightforward classification of the reasons for objection indicates that they are conscientious motives, be they uniquely so or intermixed with other reasons, the examination then moves on to its second stage, namely a normative investigation of the question whether any reason of conscience can lead to exempting a female person of military age from her duty to serve, or whether only specific types of conscientious reasons might bring about this outcome.

Reasons of conscience: Conscientious objection versus civil disobedience

9. Freedom of conscience is recognized in Israel as a constitutional value derived from the Declaration of Independence and the state's democratic character.

It is intertwined with the values of freedom of religion and belief (HCJ 292/83 *Temple Mount Faithful v. Jerusalem District Police Commissioner*, IsrSC 38(2) 449, 454; Berenson, *Freedom of Religion and Conscience in the State of Israel*, 3 Tel Aviv University Law Review, 1973-1974, p. 405 (Hebrew)). Freedom of conscience, as a general constitutional value, could cover the entire spectrum of an individual's opinions, ideas and beliefs in all areas of life. However, its specific content and scope may vary depending on context. In the context of the issue of disobeying the law, the concept of "reasons of conscience" takes on a specific, narrow meaning appropriate to the particular nature of the matter.

In analyzing the various ideological reasons for disobeying the law, philosophic writings recognize the distinction between civil disobedience and conscientious objection (J. Rawls, *A THEORY OF JUSTICE*, p. 369; D. Heyd, *Objection — Political or Conscientious*, *ON DEMOCRACY AND OBEDIENCE* (1990), pp. 87, 88-89 (Hebrew); J. Raz, *THE AUTHORITY OF LAW*, 1979, pp. 263, 276; L. Sheleff, *THE VOICE OF DIGNITY: CONSCIENTIOUS OBJECTION OUT OF CIVIC LOYALTY*, 1989, pp. 5-84, 159 (Hebrew)). The distinction is important not only because of its conceptual, theoretical categorization of different types of ideological disobedience. It has practical implications in implementing the Law and applying the exemption from military service to persons of military age in the IDF.

"Civil disobedience" is defined as disobedience whose motives, mainly ideological and political, are driven by a desire to effect a change in law, policy or social order, which are deemed essentially just. What characterizes civil disobedience is that, in order to realize the change it has set out to achieve, the disobedience usually takes place in public, takes on a proactive yet non-violent demonstrative form, and is mostly carried out in collaboration with others. The disobedient act is meant to send a message to the governing institutions regarding the need for a change in policy or law, and it seeks to impress this message on the general public. Civil disobedience does not revolve around the individual. It revolves around the need for a change of policy in matters relating to society and state.

"Conscientious objection" differs in nature from civil disobedience in that it is a distinctively individual affair, personal and idiosyncratic in both its characteristics and motives. "The objector refuses to follow an order that is not in keeping with his

religious, moral or personal values" (Heyd, *ibid.*, p. 89). Conscientious objection does not seek to change the world order, but to keep the individual's purity of belief and moral integrity intact. "Objection is not some action taken at the individual's initiative, but a passive reaction to circumstances" (Heyd, *ibid.*, p. 89). A hallmark of conscientious objection is thus its individual dimension, and the objector is not usually interested in influencing others into behaving like him. As such, this kind of objection often takes place out of sight, deep inside the objector's heart. It is unique and particular to a person as an individual, within himself. Whereas civil disobedience faces outward, toward the public at large, conscientious objection faces inwards, toward one's personal moral sense, and is deeply embedded within the individual.

The distinction between objection for reasons of civil disobedience and objection for conscientious reasons is not always an easy one to make. Political-ideological disobedience is sometimes inseparably bound with conscientious, personal objection. At times, the drive to change the way things are may go hand in hand with a personal conscientious, moral inability to be part of the executive apparatus implementing the policy criticized. It is also possible for objection originating in the dictates of one's personal conscience to breed objection of the civil-disobedience kind, fueled by ideological-political reasons. Thus, the various roots of refusal to obey the law — the political-ideological and the moral-personal ones — might be inextricably intertwined (Raz, *ibid.*, p. 263; Rawls, *ibid.*, p. 371; the *Zonshein* case, *ibid.*). The theoretical distinction between objection through civil disobedience and conscientious objection is reflected in the phenomenon of objection to fulfilling one's compulsory military service.

Selective versus general objection

10. The distinction between conscientious objection and ideological-political objection may have some bearing upon the character and extent of refusal to serve in the army. These are not accurate definitions or hard-and-fast lines marking off the various types of objection, but general lines pointing to the existence of a tendency in the following directions: Overall objection to serving in the army, which makes no condition, and essentially objects to any use of force at any time or any place, is typically grounded in the individual's conscience. It stems from the individual's internal conscientious, moral objection to taking part in any form of military service

as such, without any necessary regard to the nature of the service, to army policy, to the timing of service or its place. Circumstances, place or time are immaterial. This differs from selective objection, which is contingent by nature. It does not categorically rule out military service, but makes it contingent on the fulfilment of certain conditions. It might be rooted in objection to army policy on political, ideological or notional grounds. It remains in effect as long as the policy remains unchanged. The condition underlying the objection may take on different forms — objection to serving in a particular area, at a particular time, or to performing certain acts as part of the service (HCJ 734/83 *Schein v. Minister of Defence*, IsrSC 38(3) 393; *Zonshein* case, *ibid.*). Selective objection bears the fundamental marks of civil disobedience, but might also combine interwoven reasons of conscience and personal morality. The difficulty in distinguishing between political-ideological objection and conscientious objection, especially the selective kind, was underscored by President Barak in the *Zonshein* case (*ibid.*, pp. 737-8):

The ability to distinguish between one who invokes conscientious objection in good faith and one opposed to government or Knesset policy is diminished when it comes to selective objection, as the line between objecting to some state policy or other and conscientious objection to carrying out this policy is thin, sometimes razor-thin.

Distinction between general conscientious objection and selective objection within the policy on exemption from military service under sec. 36 of the Law

11. For decades now, in exercising its power of exemption from military service under sec. 36 of the Law, the competent authority has implemented a distinction between general conscientious objection and selective objection to service. The test it applies is this: What is the nature and view of the service objector on the use of force and on war in general, as against the service objector's view on military service at the ideological-notional level based in political-social outlook. The competent authority's exemption policy, as of now, allows for the possibility of exempting a person from service on grounds of general conscientious objection. It does not grant exemption from service in situations involving selective objection. Even the willingness to concede an exemption on grounds of general conscientious objection

is a policy given to change, and inextricably linked to circumstances and current needs (the *Schein* case, *ibid*; HCJ 4062/95 *Epstein v. Minister of Defence*).

In the *Zonshein* case, this policy of the competent authority came under judicial scrutiny. President Barak, delivering the opinion of the Court, weighed freedom of conscience as a constitutional value against the needs of the state in defending its security and the importance of upholding the value of equal sharing of the security burden by all citizens of the state. He pointed to the social danger inherent in broadening the recognition of conscientious objection as grounds for exemption from service, to its harmful effect on security needs, to the unfairness and the discrimination between citizens that it entails. He noted the difference in nature between general objection and selective objection, the scope of the phenomenon, and the set of balances that narrows the possibility of recognizing partial objection while allowing recognition of general objection under certain conditions. The conclusion was that the public authority's policy, which allows exemption for reasons of general conscientious objection, in appropriate circumstances, and that currently denies exemption to selective objection, satisfies the test of public law, by striking a proper balance between the conflicting values. President Barak explains the reasoning behind this as follows (*ibid.*, p. 737):

Refusal to serve in the army for "comprehensive" reasons of conscience is not the same as refusal to do so for selective reasons of conscience. Indeed, when the scales are tipped against recognizing conscientious objection, they are much more heavily tipped against recognizing selective conscientious objection than "comprehensive" conscientious objection. The gravity of granting an exemption from a universally binding duty is obvious. Selective conscientious objection is, by nature, a wider phenomenon than the "comprehensive" kind, and it expresses, in full force, the feeling of discrimination between "blood and blood". But beyond that, it bears upon the very issue of security considerations, since the group in question has a tendency to grow. Moreover, in a pluralistic society like ours, recognizing selective

conscientious objection might weaken the hoops that bind us together as a people. Yesterday, it was objection to serving in southern of Lebanon. Today, the objection is to serving in Judea and Samaria. Tomorrow, the objection will be to removing certain settlement outposts in the region. The people's army might become an army of tribes composed of different units, where each unit has areas in which it is permitted to act conscientiously and others where it is conscientiously forbidden to operate. In a polarized society like our own, this is a hefty consideration.

The balance struck by the Minister of Defence, whereby granting exemption from military service to selective conscientious objectors is currently unacceptable, is one that satisfies the test of reasonableness and proportionality (HCJ 470/80 *Algazi v. Minister of Defence*; the *Schein* case, *ibid.*, pp. 399, 403; HCJ 630/89 *Machness v. Chief of Staff*).

For a similar conception of the distinction between general conscientious objection and selective objection, see, in the U.S., the War and National Defense, Military Selective Service Act, 1967, 50 U.S.C. App. § 456(J); and the rulings in *Gillette v. U.S.*, 401 U.S. 437 (1971); *U.S. v. Seeger*, 380 U.S. 163, 173 (1965).

Applicability of the General Power of Exemption by virtue of sec. 36 of the Law to men and women

12. The power accorded to the Minister of Defence by virtue of sec. 36 of the Law to exempt a person from the duty to serve in the IDF does not distinguish between men and women. It applies to "a person of military age" as defined in the Law, and the definition in question applies equally to men and women. The Power of Exemption, which also extends to exemption for reasons of conscience, thus applies to men and women of military age, and it stands to reason that the policy implemented in exercising the Power of Exemption for reasons of conscience would be similar, if not identical, in both situations, without there being a substantial distinction between them. Reasons of conscience in this context are founded on "a serious moral decision — not based on religious reasons — on right and wrong as

seen by the individual, who considers himself bound to act in accordance with it, such that acting against it would be greatly injurious to his conscience" (the *Zonshein case*, *ibid.*, p. 733).

There is likewise nothing in the exemption policy adopted by the Minister of Defence, which distinguishes between general conscientious objection and selective objection to military service, that would constitute a basis for a distinction between men and women of military age. The main consideration for ruling out recognition of selective objection as grounds for exemption from service rests on the assumption that this kind of objection is generally rooted in political-ideological reasons that are not to be recognized within the confines of the army, which is founded and functions upon a broad national conception. Introducing a political element into the IDF's conscription policy might negatively affect the fundamental conception of the defence service. It might give rise to discrimination between individuals, and eventually undermine the normal democratic process, which is predicated on equal sharing of the burden of social duties.

The stance that a government and military apparatus cannot tolerate a situation where persons of military age can dictate if and when they will serve in the army, where they will serve, what actions they will carry out, what orders they will deign to follow and which ones they will refuse, holds equally true for male and female persons of military age. The danger inherent in selective objection for national morale and the value of unity characterizing the army as the people's army is no different whether women or men are involved. In this respect, the same holds true to both.

It is likewise hard to accept the argument that a distinction should be drawn between men and women in terms of the extent of the exemption granted on grounds of conscientious objection on account of women's inherently lesser contribution to the defence service as compared to men, so that in weighing personal freedom of conscience against the public interest, the first value is to be preferred. This should be answered as follows: First, there is no doubting the substantial contribution of women to service in the IDF. Their involvement in the army is as old as the state itself (see F. Raday, *The Army: Feminism and Citizenship*, Dafna Barak-Erez (ed.), *ARMY, SOCIETY AND LAW*, 2002, pp. 185, 190ff. (Hebrew)).

Ingrained from the very early days of the state's existence was the notion that there should be no discrimination between men and women in regard to the right and duty to serve in the army, so as to strengthen the army in might and spirit (Knesset Proceedings, session of September 8, 1948, DIVREI HAKNESSET, Vol. 2, 1949, pp. 1624-5 (Hebrew)). This trend grew stronger over the years with the normative changes that have contributed to greater integration of women in army combat units. Thus, in HCJ 4541/94 *Alice Miller v. Minister of Defence* (IsrSC 49(4) 94) (<http://versa.cardozo.yu.edu/opinions/miller-v-minister-defence>) we ruled that women could participate in the Air Force pilot training course. This trend was bolstered with the enactment of section 16A of the Defence Service Law (Consolidated Version), 5746-1986, as amended in 2000 to read:

16A. *Equality in Service*

- (a) Any female person of military age has an equal right as a male person of military age to fill any role within the military service.
- (b) The right of a female person of military age to fill any role shall not be deemed to have been infringed if the nature and character of the role demand it.
- (c) A female person of military age who serves, by choice, in one of the roles determined by the Minister of Defence with the approval of the Knesset's Foreign Affairs and Defence Committee is subject to the same rules as a male person of military age.

An amendment in the same vein was introduced into the Equal Rights for Women Law, 5711-1951, in that same period, as follows:

6D. *Service in the Defence Forces*

- (1) Any woman who is a candidate for service in the Defence Forces, or who serves in them, has a right equal

to the right of any man to fill any role or be assigned to any position; this right shall not be deemed to have been infringed if that is required by the nature or character of the role.

(2) In this section, "Defence Forces" – the Israel Defence Forces, the Israel Police, the Israel Prison Service and the State's other security organizations.

(See also Defence Service Regulations (Determining Volunteer Roles for Women's Service), 5761-2001, which followed later).

Moreover, given modern methods of warfare, contribution to security is not limited to the combatant's physical effort on the battlefield. The needs of the armed forces are numerous and varied, and the human contribution required to ensure security outside the battlefield does not fall short of that required on the battlefield itself. Furthermore, the serious security threats the country faces require different means of dealing with the dangers, including sophisticated means of information, skills, and operating state of the art systems far from the battlefield. As regards many of these tools, there is no real difference between men and women in terms of their ability to handle the task and share the burden.

The absence of any direct relationship between the gender identity of recruits and their contribution to the army has occasioned extensive writing on the existing distinctions regarding the duty of combat service and the burden of reserve service in connection to questions of wrongful discrimination between men and women within the armed forces (see Raday, *ibid.*, p. 204 ff.; S. Almog, *On Women, Army and Equality, Following HCJ 4541/94 Miller v. Minister of Defense et al.*, Mishpat Umimshal 3 (1995-1996) (Hebrew), p. 631; D. Friedmann, *Women's Service in Combat Professions and Equal Sharing of the Burden*, Hamishpat 4 (1998), p. 27 (Hebrew); Y. Nechushtan, *Discrimination of Men in the IDF*, Hamishpat 4 (1998), p. 115 (Hebrew); K. Shalev, *On Equality, Difference and Sexual Discrimination*, ESSAYS IN HONOR OF MOSHE LANDAU, vol. 2, 1995, p. 893, at pp. 900-902 (Hebrew); N. Chazan, *Women's Service in the IDF*, WOMEN IN ISRAEL, 1998 (Hebrew). And in the US, see Dean, *Women in Combat—The Duty of the Citizen-Soldier*, 1994, 2 San

Diego Justice J., p. 429). Thus, facts and values come together to counter the view that women's army service contributes less overall than that of men. By the look of things, we seem to be headed toward essential equality between men and women of military age in the pertinent areas, while making proper, balanced allowance for differentiating features (Shalev, *ibid.* p. 893; HCJ 260, 246/81 *Agudat Derekh Eretz v. Broadcasting Authority*, IsrSC 35(1) 4, pp. 7-8; F.H. *Boronovski v. Chief Rabbis of Israel*, IsrSC 25(1) 7, p. 35).

The potential negative impact of such selective objection — whether of a male or female person of military age — on the public interest is not limited to its effect on the army's manpower. It might have an adverse morale effect on social cohesion within army ranks, and impinge on the necessary principle of separating between the duty to shoulder the burden of military service and obey orders, on the one hand, and, on the other hand, the political debate and the contrasting ideas, opinions and beliefs that characterize Israel's pluralistic society. Making military service dependent on the extent to which a male or female soldier identifies ideologically with the actions of the political and military echelon could dangerously erode the democratic process, which requires submitting to the authority of the majority and an equal sharing of the burden of economic, social and security duties, which is essential to the existence and proper functioning of society and the state. Undermining this conception by more broadly recognizing an exemption for women on grounds of selective objection might affect the army's cohesion and deal a hard blow to motivation to serve in the army, to the point of seriously and concretely affecting the way it functions (Justice Beinisch in the *Zonshein* case; HCJ 1532/00 *De Bremaeker v. Minister of Defence*, IsrSC 54(2) 297, 302). This might also have a devastating effect on the overall fabric of society beyond the ranks of the army, by upsetting society's internal balances, and particularly, by impairing the implementation of the value of the equal sharing of burdens and opportunities vital to the functioning of a sound society.

The value of substantive equality thus justifies an egalitarian approach to men and women in exercising the Minister of Defence's power under sec. 36 of the Law to exempt a person of military age from service for reasons of conscience. This holds true in applying the exemption to general conscientious objection, as it does to not applying the exemption to selective objection. This seems to be the competent

authority's actual modus operandi. (For the application of similar criteria to the discharge of a woman in active military service who was not under obligation to enlist, and the discharge of a man from service on conscientious grounds, see the U.S. case of *Allison v. U.S. Army* (1992) U.S. Dist. Lexis 12429).

Special statutory exemption from service for women by virtue of sec. 39 of the Law

13. Against the background of the nature of the General Power of Exemption given to the Minister of Defence under sec. 36 of the Law, the question arises concerning the implications of the Special Exemption provision accorded to a female person of military age by virtue of sec. 39(c) of the Law, where she has proven in the manner prescribed by the regulations "that reasons of conscience or reasons connected with her family's religious way of life prevent her from serving in defence service". What are those reasons of conscience that, once established, grant a woman a statutory right to be exempt from military service? How does the Power of Exemption under sec. 36, which applies to women as well, stand in relation to the Special Exemption applicable to women under sec. 39?

The content of the Special Exemption for women under sec. 39 can be learned in two ways, as follows: first, by examining the General Power of Exemption under sec. 36, equally applicable to women and men, in relation to the statutory exemption provision under sec. 39, applicable to women alone; second, by examining the special exemption for women in light of its purpose, and in light of the legislative history that led to its enactment. Analysis along these lines yields the following conclusions:

First, the reasons elaborated above lead one to conclude that the General Power of Exemption given to the Minister of Defence under sec. 36 of the Law applies to men and women alike, including the policy distinguishing between general conscientious objection and selective objection. Hence, it stands to reason that "reasons of conscience" that warrant exemption from service for women under sec. 39 differ in nature from those over which the Power of Exemption under sec. 36 extends, unless we admit of an overlap between the provisions, which the legislature is unlikely to have intended. It can therefore be assumed that the statutory exemption for women is concerned with matters of a different character to those

falling within the Minister's General Power of Exemption. This conclusion is, indeed, reinforced when one examines the purpose of the Special Exemption for women in light of the historical background that led to its enactment.

The exemption from military service accorded to a woman under sec. 39 for reasons of conscience or a religious family life is essentially meant to recognize and honor the preclusion of women from army service based on the religious beliefs, customs and traditions of the religious community to which they belong. Exemption "for reasons of conscience" within the special context of this provision is closely related to reasons of religious, traditional or customary communal convictions preventing a woman from defence service as such. This is clear from David Ben-Gurion's presentation of the Defence Service Bill (DIVREI HAKNESSET, 1949, Vol. 2, p. 1339), in stating:

As regards women, we have exempted four types from this duty: married women, women who have a child, pregnant women or religiously-observant women, whether Jewish, Christian or Muslim, whose religious conviction prevents them from serving in defence service. These shall be relieved of this service. But I wish to express my hope that not all religious women in Israel will exercise this right of exemption (see also his statement, *ibid.*, p. 1626).

The statutory exemption on grounds of conscience granted to women was meant to protect the status of women in traditionally observant subgroups within the population, whose service in the army, according to the group's perceptions, is incompatible with preserving their dignity and modesty, and sometimes even contrary to explicit imperatives applicable to them as decreed by their religion. Thus, when the Knesset debated the Defence Service Bill, the representatives of religious Judaism voiced reservations over women's service in the army, seeing it as a moral and religious question of the utmost importance. Some particularly emphasized concern that values of family morals, family honor and family integrity would be seriously corrupted (speeches by MKs Kahana, Rabbi Levin, Unna, Shag, Minister of Religion Maimon, and MK Zerach Warhaftig, *ibid.*, pp. 1445 and 1446-7, 1522, 1524, 1556, and 1559). Others emphasized the religious imperatives expressly forbidding

women from carrying weapons of war and taking part in war (Responsa *Igrot Moshe, Orach Hayim* part IV, 75; Responsa *Yabi'a Omer*, part VIII, *Orach Hayim* 54; for a discussion, see also R. S. Min-Hahar, *Involving Women in War*, 4 Tehumin 68; R. Y. Shaviv, *Women in an Obligatory War*: 4 Tehumin 79. See, also, the speech by MK Kahana, DIVREI HAKNESST, *ibid.*, p. 1445). Also worthy of mention in this context is the declaration issued by the Chief Rabbinate of Israel on 21 Adar 1951, which strictly prohibited the enlistment of women, even if single, into a military unit, in whatever form. This declaration was signed by Rabbis Herzog and Uziel, who served as Israel's Chief Rabbis at the time. The special exemption for reasons of conscience specific to women was indeed interpreted in view of prohibitions based on religion and tradition (see HCJ 456/71 *Barzani v. Minister of Defence*, IsrSC 26(2) 543):

When the Rabbinate issues a Halachic ruling that a given act is forbidden under Jewish Law, a secular authority does not have the power to determine that it is allowed under Jewish Law. The state's secular authorities do not lay down religious norms and, on the other hand, religious norms, as such, are not binding upon the secular authority unless there is some reason for it.

Opposition to women's service in the IDF on grounds of tradition was not restricted to religious Judaism alone. Similar opposition was voiced by representatives of the Arab-Muslim community, who expressed reservations about the induction of Muslim women into the army on account of it being contradictory to the customs, tradition and religion of the Muslim community (MKs E-Zoubi and Jarjora, DIVREI HAKNESSET, *ibid.*, p. 1525, p. 1528).

Exemption from military service for women for reasons related to religion and tradition was for years an object of legislative action. Section 11(d) of the Defence Service Law, 5709-1949, originally established an exemption for a woman for reasons of conscience or religious conviction, subject to a declaration to that effect on her part. This arrangement was amended in 1952 such that a declaration alone was no longer sufficient, and proof was required of said religious or conscientious reasons (Defence Service Law (Amendment), 5712-1952; and DIVREI HAKNESSET, Vol. 9, pp. 1558ff.). This section, which became sec. 30(c) in the 1959 consolidated

version of the Law, was amended in 1978 to read reasons connected with the family's religious way of life instead of reasons of religious conviction, with the addition of sec. 30A that allowed women seeking exemption on grounds of religious conviction to be exempted on the sole basis of a declaration, subject to meeting certain conditions (these provisions became secs. 39(c) and 40 in the 1986 consolidated version). This amendment was introduced on the strength of a political consensus born of coalition agreements with the religious parties, preceded by considerable public debate (DIVREI HAKNESSET, Vol. 82, pp. 2136-2139; 2369-2400 (first reading), and Vol. 83, pp. 3583-3665 (2nd and 3rd readings)). The question underlying these discussions throughout was that of imposing a duty of alternative national service on religious women.

The above reveals that the exemption for women for reasons of religious conviction based on their own declaration (sec. 40), and the exemption for reasons of conscience or the family's religious way of life based on proof (sec. 39) are primarily meant to reflect social tolerance toward religious groups and traditional communities that, in accordance with their value system, see a fundamental difference between men and women, and according to which a woman's status as such is inconsistent with military service. What distinguishes these exemptions is that, *first*, they relate to a woman as such. *Second*, they originate in conceptions of morality, religion and customs prevailing in different communities. *Third*, these conceptions preclude women from military service *as such*. Therefore, grounds for exemption that are not directly related to reasons of conscience rooted in tradition and customs, a religious family life or religious conviction have no relevance to the special statutory exemption from service under sec. 39 of the Law. They might be considered within the General Power of Exemption under sec. 36 of the Law. Thus, for example, in HCJ 269/51 *Horowitz v. General Shimon Mazeh* (IsrSC 5, 1656), the Court ruled that a woman's claim for exemption on the grounds that, being married, she was obligated to maintain her family and hence instructed by her conscience to avoid serving in the army, was not controlled by the Special Exemption provision available to women. According to the Court:

The exemption provided in that section refers to women whose very participation in defence service goes against their conscience or religious conviction. The idea is by no

means to exempt women who object to defence service for family reasons. In fact, the Petitioner is not at all opposed to defence service, but rather claims that, given her own situation, i.e. her being married to a man, her conscience instructs and tells her that she should not serve. The question here is not one of conscience, but of convenience and preference. It is the Petitioner's opinion, as we understand her words, that a married woman's duty to her husband takes precedence over her duty to serve the country. This was not the kind of conscience that the legislature had in mind. If her objection truly rests on reasons of family ties, she may request her exemption under sec. 12. Section 11 has no relevance to this case.

On the idea behind having a Special Exemption provision for women, see also CrimA 5/51 *Steinberg v. Attorney General* (IsrSC 5, 1061).

The conclusion from the above is that the statutory exemption from service granted to women by reason of conscience differs in origin, substance and content from the General Power of Exemption given to the Minister of Defence with respect to any person of military age, whether man or woman. While the General Power of Exemption under sec. 36 of the Law covers situations of absolute or selective objection for reasons *common* to men and women without distinction, characterized by ideological, political, or social elements, or reasons of personal moral obligation, the statutory exemption for women under sec. 39 is characterized by being specific *to women as such*. It is concerned with reasons related to religious tradition, customs, beliefs, and the religious way of life specific to different communities. It stems from recognition of the need to understand and respect the religious and traditional conceptions of different communities in Israeli society as regards the status of women within the community and the family. This Special Exemption is therefore concerned with reasons of conscience of specific, defined content. This Special Exemption therefore concerns reasons of conscience of a particular content. This special content is not consistent, as a rule, with selective objection. It concerns preclusion from defence service in general, which also clearly transpires from the language of sec. 39(c) of the Law, that speaks of reasons of conscience "*that...*

prevent her from serving in defence service', i.e. defence service *in toto*, as opposed to defence service based on certain conditions. The different conception of the nature of the exemptions given under secs. 36 and 39 of the Law also explains the difference in how they are granted. The General Power of Exemption by virtue of sec. 36, which applies equally to women and men, consists of the discretion given to the Minister of Defence, who is authorized to weigh various considerations of public interest and the individual's interest in making the exemption decision. On the other hand, exemption on grounds of conscience given to a woman as a woman under sec. 39 is granted *by law* to whomever has discharged the burden of proof placed upon her, and is not subject to the authority's discretion (*cf.* Regs. 10 and 15 of the Defence Service Regulations (Exemption of Women from Defence Service for Reasons of Conscience or Reasons connected with their Family's Religious Way of Life), 5738-1978). This is a necessary outcome of recognizing the conscientious imperative dictated by tradition and customs, which seldom admits of compromises, conditions or restrictions. This likewise flows from the nature of this objection, devoid as it is of a political-ideological dimension, which means that recognizing it does not entail the same risks to the army's proper functioning as might arise from recognizing selective objection as grounds for exemption.

Conclusion

14. Conscientious objection is a real human phenomenon. It reflects internal dissent from the majority's doings — be it in law or in social policy. It expresses a different position of a minority or an individual. While individual freedom of conscience is a fundamental value of democracy, in order to be respected it must be weighed against other fundamental values, first and foremost the rule of law, without which normal social order cannot prevail. The margin of legal recognition granted to the individual's freedom of conscience, as an exception to the general order, is, by nature, extremely narrow, and depends on the boundaries within which the law allows it. This holds particularly true in a country that has been engaged for many years in a struggle for its life and security, every hour of every day. This holds particularly true when the conscientious conviction of the individual, the one that makes that individual an exception, pertains to service in the army and implies unwillingness to take part in a universal national duty falling to all citizens. Objection to military service harbors a seed that could endanger the integrity of the military

system and sow dissent within its ranks. Recognizing it might import the political debate into the military, and in so doing undermine its internal discipline, dedication, and ability to carry out difficult military tasks meant to protect human life. It might undermine the status of the national leadership and its ability to lead the military forces. It might affect social cohesion and general social morale, whose strength depends, *inter alia*, on equal bearing of the burden of social duties and equal enjoyment of civil rights.

As an exception to the general order, conscientious objection thus depends on the margin of recognition and legitimacy afforded it by the Law, and on strict compliance with the restrictions imposed for this purpose by the Law. Such recognition is inherently narrow and limited. It is also liable to changes in accordance with changing circumstances and needs. It is a recognized phenomenon solely within that framework and in those boundaries that do not pose real harm to the fabric of society and the army.

In the framework of the balances required between the underpinnings of the democratic process, the needs of society and the army, and recognition of the value of individual autonomy, sec. 36 of the Law gives the Minister of Defence broad power to exempt persons of military age — male or female — from military service, a power that might extend, *inter alia*, to reasons of conscience. Currently, under the Minister's policy, these reasons have been limited to exceptional cases involving all-inclusive reasons of conscience, as opposed to selective reasons based, for the most part, on political opinion and political, social ideology. Alongside this power, sec. 39 of the Law grants statutory exemption from service to women prevented from serving in the army by proven reasons of conscience grounded in tradition, religion and community custom. Such reasons relate to women as such, and are inapplicable to male persons of military age. Neither do they extend to reasons of conscience *common* to men and women that are rooted in socio-political ideology, or in personal moral views unrelated to religion and community custom. The latter cluster of reasons falls within the General Power of Exemption under sec. 36 of the Law. To conclude otherwise would be to create a state of unjustified inequality and discrimination between women and men facing conscription, and would violate the principle of equality as a distinct characteristic of military service (HCJ 585/01 *Klachman v. Chief of Staff*; HCJ 1532/00 *De Braemeker v. Minister of Defence*, IsrSC

54(2) 297). Concluding otherwise might be inappropriately harmful to the interest of state security, as well as to general public, social values. Thus, applying the General Power of Exemption to both men and women for reasons common to both, while granting special status to a woman's reasons of conscience rooted in considerations of tradition, religion and customs, promotes the notion of substantive equality between male and female persons of military age in those areas where no relevant difference exists between them.

From the general to the individual

15. The Petitioner argues that reasons of conscience justify granting her an exemption from military service. She attributes her objection to military service to the IDF's wrongful policy as an occupation army, claiming that the occupation contravenes her moral and conscientious belief. She criticizes government policy in the territories and says that, for reasons of conscience, she will not be part of an entity that carries out a wrongful policy (copy of her letter P/3A). When she appeared before the Exemption Committee, the Petitioner argued that she was not a pacifist, and that if the IDF were to leave the regions of Judea, Samaria and the Gaza Strip, she would be ready to serve within it (protocol of the hearing before the Exemption Committee, R/1).

Judging by their nature, the Petitioner's reasons for objection are grounded in socio-political ideology, which predicates her military service on the fulfilment of certain conditions — withdrawal from the Administered Territories and a change in government policy in this regard. These reasons for objection carry distinct marks of civil disobedience in their public message as regards the change of policy and the implementation of change in the nature of the army's activity. And, indeed, the Exemption Committee and the statutory Appeals Committee were not convinced that the Petitioner's refusal to serve in the IDF was motivated by reasons of personal conscience.

Still, the Petitioner claims that reasons of personal conscience and inner moral obligation also prevent her from serving in the army. It might be possible to say that the Petitioner's ideological objection is accompanied by reasons of conscience and personal morality that intertwine with her ideological objection,

ordering her, as a matter of personal moral necessity, to refrain from serving in the army. But even then, given the circumstances of the case, there are no grounds for intervening in the competent authority's conclusion not to recognize her right to an exemption from military service. Even if we classify the Petitioner's objection as one motivated, among other things, by reasons of personal conscience, it still remains outside the purview of both the statutory exemption accorded to women under sec. 39 of the Law and the exemption policy exercised by virtue of the power vested in the Minister of Defence under sec. 36 of the Law. As for the statutory exemption, it is evident that the reasons underlying the Petitioner's objection are not reasons of conscience grounded in tradition, religion, or community lifestyle and customs specific to a woman as such, as addressed by sec. 39 of the Law. As for the General Power of Exemption exercised by virtue of sec. 36 of the Law, the Petitioner's objection is essentially of the selective kind, one that is not recognized by the competent authority at this time as grounds for exemption from service. This policy of the public authority has been deemed proper over the years, and there is no reason to intervene in it.

Given these circumstances, it is not possible to accept the petition, and there are no grounds for intervening in the decisions of the Exemption Committees acting under law, that there are no grounds for exempting the Petitioner from military service.

Epilogue

16. It has been our assumption that the Petitioner's beliefs and political, social views are sincere and true. The moral, personal conscientious imperative bound together with her general ideological outlook is likewise an expression of freedom of conscience that should be respected, appreciated, and accorded weight. With that said, given the conditions of Israeli society in view of the country's security needs, and considering the fundamental principles of equality, a shared fate and equal sharing in the burden of the duty of military service underlying the operation of the army, we cannot intervene in a policy that denies the selective conscientious objector exemption from military service. This policy is consistent with the conceptions of governance in a democratic society, with the obligation to honor the decisions of the majority as established through proper governance procedures, and with each

citizen's duty to bear the burden of economic, social and security duties together with the equal enjoyment of civil rights. The duty to serve in the army is among the basic national civic duties. Disagreement with government policies and military actions derived therefrom, and even conscientious objection to participation therein, are not grounds for exemption from military service. The Petitioner must contribute her share to the overall security effort, despite her critique and her ideological view of what constitutes proper national policy. Her integration into the army and the contribution of her obvious capabilities toward achieving important goals and objectives would express recognition of the democratic values upon which the state is founded, and by virtue of and in accordance with which the army, too, operates. These values primarily rest on the rule of law as it applies to the majority, the minority and the individual.

I propose that the petition be denied, and that the interlocutory order be revoked hereby.

Deputy President E. Mazza:

I concur.

Justice E. E. Levy:

I concur.

Decided as stated in the opinion of Justice Procaccia.

Given this day, 22 Av 5764 (August 9, 2004).

