CrimA 5338/17

Appellants:
1. Moshe Abutbul – Mayor of Beit Shemesh
2. Beit Shemesh Municipality

v.

Respondents:
1. Nili Phillip
2. Eve Finkelstein
3. Miriam Sussman
4. Rachelli Shluss
5. Miri Shalem
6. The Israel Religious Action Center – Israel Movement for Reform and Progressive Judaism
7. Attorney General

Appeal on the decision of the Jerusalem District Administrative Affairs Court (Judge Y. Merzel) of June 7, 2017 in AP 049319-05-15

Israeli Supreme Court cases cited:

[1] LCA 6897/14 *Radio Kol Barama Ltd. v. Kolech – Religious Women's Forum* (Dec. 9, 2015) [https://versa.cardozo.yu.edu/opinions/radio-kol-baramah-v-kolech-%E2%80%93-religious-women%E2%80%99s-forum]

[2] HCJ 746/07 *Ragen v. Ministry of Transport* (Jan. 5, 2011) [https://versa.cardozo.yu.edu/opinions/ragen-v-ministry-transport]

[3] HCJ 153/87 *Shakdiel v. Minister for Religious Affairs* [1988] IsrSC 42(2) 221 [https://versa.cardozo.yu.edu/opinions/shakdiel-v-minister-religious-affairs]

[4] HCJ 4541/94 *Miller v. Minister of Defense* [1995] IsrSC 49(4) 94 [https://versa.cardozo.yu.edu/opinions/miller-v-minister-defence]

[5] HCJ 2671/98 *Israel Women's Network v. Minister of Labor and Welfare* [1998] IsrSC 52(3) 630 [https://versa.cardozo.yu.edu/opinions/israel-womens-network-v-minister-labor-social-affairs]

[6] CrimA 517/06 *Boaz Manor v. KPMG Inc.* (July 24, 2007)

[7] CrimA 126/62 *Dissenchik v. Attorney General* [1963] IsrSC 17(1) 169 [https://versa.cardozo.yu.edu/opinions/dissenchick-v-attorney-general]

[8] CrimA 519/82 *Greenberg v. State of Israel* [1983] IsrSC 37(2) 187

[9] CrimApp 4445/01 *Gal v. Katzovshvili*, [2001] IsrSC 56(1) 210

[10] LCrimA 3888/04 *Sharbat v. Sharbat* [2004] IsrSC 59(4) 49

[11] CrimA 1160/98 *SHIZAF Marketing, Promotion and Construction Projects v. Ashkenazi* [2000] IsrSC 54(1) 230

[12] LCrimA 48/98 *Ezra v. Zelezniak* [1999] IsrSC 53(3) 337

[13] CA 371/78 *Hadar Lod Taxis v. Biton* [1980] IsrSC 34(4) 232

The Supreme Court sitting as the High Court of Justice

(*Before: Deputy President H. Melcer, Justice (emer.) U. Shoham, Justice D. Mintz*)

Judgment

(Nov. 1, 2018)

Deputy President H. Melcer

1. This is an appeal on the decision of the Jerusalem District Court, sitting as a Court for Administrative Affairs (Judge Y. Merzel) in AP 49319-05015 of June 7, 2017, in the matter of a request filed by Respondents 1-6 (hereinafter: the Respondents), in the framework of which an order was issued against the Appellants under the Contempt of Court Ordinance (hereinafter: the Ordinance), as explained below.

I will now present the information necessary for deciding the entire matter.

Factual Background

2. On April 26, 2015, the Respondents filed an administrative petition with the Administrative Affairs Court (hereinafter: the administrative petition), concerning the removal of signs placed at various locations throughout the city of Beit Shemesh containing offensive demands, requests and statements concerning women (hereinafter: the signs). The petition was directed against the Appellants – the Beit Shemesh Municipality (Appellant 2), and the Mayor, Mr. Moshe Abutbul (Appellant 1).

To complete the picture, we would note that in June 2012, the Respondents approached the Appellants by various means, demanding that the signs be removed, and on Feb. 20, 2013, Respondents 1-4 even sued the Appellants in the Beit Shemesh Magistrates Court (CC 41269-02-13), claiming that they must compensate them for the humiliation and the offense caused to them due to the Appellants' failure to remove the signs as required.

3. On Jan. 25, 2015, the Magistrates Court (Judge D. Gidoni) ruled that the signs that were the subject of the claim convey an offensive, discriminatory message, and that the Appellants bear a conceptual and concrete duty of care to act to remove them. This ruling also determined that the Appellants were negligent in not taking reasonable action to remove the signs, putting them in breach of their duty of care. The Magistrates Court awarded each of the four plaintiffs in that proceeding compensation in the amount of NIS 15,000, as well as legal costs.

4. After a long period during which the Respondents waited for the signs to be removed by the Appellants, the Respondents filed the said administrative petition. On June 19, 2016, at the conclusion of the deliberations on the administrative petition, the agreements arrived at by the parties were given the force of a judgment (hereinafter: the consent judgment), with the following determinations:

> a. The Respondents [in the present case – the Appellants – H.M.] once again inform the Court that signs of the type that are the subject of the petition are illegal.
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> b. The Respondents [in the present case – the Appellants – H.M.] have the authority to exercise enforcement measures in respect of the violation of the law by the placement of signs of this type.
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> c. The Respondents [in the present case – the Appellants – H.M.] will exercise all powers of enforcement at their disposal under law (including imposition of fines) in order to bring about the removal of the signs that are the subject of the petition, as well as other signs that bear the same illegality. Effective enforcement measures will be implemented immediately and continuously, and this matter will be accorded importance in the framework of the enforcement and budgetary priorities of the Municipality.
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> d. In particular, and in relation to the sign marked "A", a request will be filed with the Beit Shemesh Court for Local Affairs to enter into courtyards within 15 days from today, in order to obtain from the Court an order like the order that was issued in the past, following which the Respondents [in the present case – the Appellants – H.M.] themselves will remove the signs. This will not be deemed to exhaust any other enforcement measures that are available to the Respondents [in the present case – the Appellants – H.M.] under any law, including the imposition of fines.
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> e. The signs that were marked B and G will be removed by the authorized bodies on behalf of the Respondents [in the present case – the

> Appellants – H.M.] within 21 days of today. This will not be deemed to exhaust any other enforcement measures that are available to the Respondents [in the present case – the Appellants – H.M.] according to any law (including the imposition of fines). The Respondents [in the present case – the Appellants – H.M.] undertake to remove these signs, if they are put up again, as soon as possible, subject to effective enforcement constraints.
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> f. Within 15 days from today, an official request (complaint, if necessary) will be made by the Respondents [in the present case – the Appellants – H.M.] to the Beit Shemesh precinct of the Israel Police in regard to the specific investigation of the placement of the signs marked A, B and G. A copy of the request will be sent to the Attorney General's representative.
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> g. I once again notify the Court [this refers to counsel for the Municipality, Adv. Gastwirth – H.M.] that the Municipality requested (some 50) cameras from the Ministry of Public Security as part of the "City Without Violence" program, with a recommendation to place them, *inter alia*, on Nahar Hayarden Street, at the corner of Yehuda Hanasi (sign A) [additions mine – H.M.].

5. On Feb. 20, 2017, some eight months after the consent judgment was handed down, the Respondents filed a request with the Administrative Affairs Court, pursuant to the Ordinance, asking the Court to compel the Appellants to comply with the provisions of the consent judgment granted in the framework of the administrative petition. In the framework of the request, it was argued that despite the long string of events that preceded the filing of the administrative petition, and despite the ongoing harm to women in the city of Beit Shemesh, the Appellants are not exercising significant, effective enforcement measures in accordance with their undertakings in the consent judgment.

6. On June 7, 2017, the Administrative Affairs Court granted the request in part, and ruled that the consent judgment had indeed been violated with respect to the sign marked "A" in the administrative petition, which was placed on the corner of Nahar Hayarden and Yehuda Hanasi Streets, and the signs that had been placed on Hazon Ish Street in place of the signs marked "G". It ruled that this breach constitutes sufficient grounds for imposing a conditional fine upon the Appellants. The Court ruled that if all the said signs are not removed by July 6, 2017, the Appellants will pay a fine of NIS 5,000 for each day of delay in their removal. At the same time, the Court ruled that the part of the request concerning new signs placed after the consent judgment, regarding which no concrete order had been issued in that judgment, could not be granted, in light of the procedural framework of contempt of court proceedings.

7. The present appeal was filed against this decision of the Administrative Affairs Court, together with a request to stay execution of fine. At the conclusion of the hearing before me on the request to stay execution, on July 6, 2017, I ordered that the decision of the Administrative Affairs Court, which was the subject of the appeal, be stayed in part, until such time as a different decision be handed down and subject thereto, provided that the following conditions be met:

a. The two signs placed on Hazon Ish St. in Beit Shemesh, which call for the banishment of women from the sidewalk on the said street (a photograph of one of these two signs was submitted to the Court file and marked "G"), will be removed by inspectors on behalf of the Respondents [in the present case – the Appellants – H.M.], with the help of the Israel Police, within 14 days of today.

b. Within fourteen days of today, cameras will be installed by the Municipality, and funded by it, on Hazon Ish St. for the purpose of identifying those attempting to replace such prohibited signs on the street, or of those spraying graffiti with similar content.

c. The Respondents [in the present case – the Appellants – H.M.] will submit, by July 24,2017, a report on the execution of the instructions in ss. (a) and (b) above, and on all the legal actions and steps that they have taken in order to implement the removal order that was issued by the lower court in respect to the sign placed on Nahar Hayarden St., corner Yehuda Hanasi, in Beit Shemesh, in which women were exhorted to appear in the neighborhood, and in the Hareidi (ultra-Orthodox) shopping center there, in modest dress (a photograph of the sign was submitted to the Court file and marked "A") (additions mine – H.M.).

8. Subsequent to the above decision, counsel for the Appellants provided an update in their report of July 20, 2017 as follows:

a) The two signs that were placed on Hazon Ish St. in Beit Shemesh, which call for banishing women from the sidewalk of the said street, were removed by inspectors on behalf of the Appellants, with the help of the Israel Police, on July 19, 2017 in the afternoon, but the signs were replaced during the night.

b) On July 11, 2017, Appellant 2 installed wireless cameras, but on July 12, 2017, unknown persons damaged the cameras, rendering them inoperable.

c) The Appellants concluded that the most effective way to remove the sign (marked "A") was not by means of the order to enter courtyards and remove the sign forcibly, but by imposing fines on the owners and residents of the building on which the sign was hung.

Accordingly, the Appellants once again requested a stay of execution of the decision of the Administrative Affairs Court until the decision on the appeal.

9. In her response, counsel for the Respondents stated that the Appellants "continue to drag their feet unceasingly in all their handling of the signs." She argued that reasonable conduct on the part of the Appellants would be to remove the signs on Hazon Ish St. at night, in order to reduce opposition and friction, but Appellant no. 2 chose to remove them in the afternoon; the Appellants did nothing to repair the cameras; imposition of fines had not as yet brought about the removal of the signs, and in any case, under the circumstances, the conditions for staying execution have not been met.

10. Counsel for Respondent 7 explained in his response that from the report of the Appellants and from the response of the police it emerges that the Appellants did not act in complete coordination with the Israel Police, and it is possible that had there been such coordination, the result would have been different with respect to the signs that were removed and replaced on July 19, 2017. Counsel for Respondent 7 further argued that the measures taken by the Appellants were insufficient, and that the Appellants are not fulfilling their obligations under the consent judgment. In this context, it was argued that limiting action to the imposition of fines does not amount to fulfilment of the consent judgment, and once the Appellants made it clear both in the oral hearing and in their response that they do not intend to take action to remove the sign (marked "A") – there is no justification for staying execution of the decision of the lower court.

11. On Sept. 4, 2017, I denied the request to stay execution, and ruled that the partial stay of execution that I ordered on July 6, 2017 will lapse on Sept. 10, 2017 (hereinafter: commencement date). I also ruled that the Appellants will pay the costs imposed upon by the Administrative Affairs Court as of the commencement date, unless the consent judgment is fully and irrevocably carried out prior to the commencement date.

12. I shall now turn to the arguments of the parties to the appeal.

Arguments of the Parties to the Appeal

13. According to the Appellants, the District Court erred in its ruling that they were in breach of the consent judgment, and alternatively, even if there had been a breach, in the special circumstances of the case at hand there was no justification for invoking the extreme, exceptional tool of contempt of court proceedings against them. They also argued that the consent judgment could be interpreted in more than one way, and that under the circumstances, there had not been a clear, unequivocal breach – which would have been a fundamental condition for invoking the mechanism of contempt of court proceedings.

In this context it was argued that the District Court did indeed rule that the Appellants had been in breach of the consent judgment in relation to the sign marked "A", but the consent judgment did not set a time for removing the sign. Therefore, the Appellants were authorized, so they say, to exercise their discretion in regard to the enforcement policy to be adopted in relation to the said sign. Accordingly, after weighing all the relevant considerations, including the fact that the said sign had already been removed in the past, but replaced a few days later, the Appellants concluded that the most effective way of handling this sign was by imposing fines on the owners and residents of the building on which the sign was placed, and enforcing the said fines.

It was further argued that the signs marked "G" were indeed removed by the Beit Shemesh Municipality on July12, 2016, but were replaced on August 8, 2016. The District Court ruled that the Appellants were in breach of the consent judgment in regard to the new signs that were put up, but as opposed to the signs marked "G", no date had been set for the removal of the new signs, and all that had been decided was that they should be removed "as soon as possible, subject to constraints upon effective enforcement". Therefore, the

Appellants argue that the obligation to remove them in the framework of the consent judgment had no time limitation, but was subject to their discretion. In this context, and after the Appellants weighed all the relevant considerations, including the fact that the signs concerned had been removed several times in the past but replaced each time, the Appellants concluded that the most effective way of handling these signs was not by removing them, but by surveillance of those responsible for posting them.

14. The Appellants further argue that the caution that must be exercised in relation to invoking the extreme and exceptional tool of contempt of court is even more necessary when, as in our case, the matter concerns enforcement of the policy of an administrative authority. This, according to the Appellants, is because the court will not interfere in the discretion of the competent authorities in determining enforcement policy, other than in the most exceptional cases in which there is a total disregard for enforcement of the law, or unreasonable avoidance thereof on the part of the authorities. The Appellants claim that this is not the situation in the present case. In their view, despite the difficult situation that exists in Beit Shemesh, which includes, *inter alia*, violence towards municipal workers and inspectors, the Municipality has acted and continues to act to enforce the law in the matter of the signs. Under these circumstances, and bearing in mind that, in any case, the local police take extensive action against all acts of violence, the responsibility for all that concerns the removal of the signs should fall, according to the Appellants, on the police as well, and not only on the Beit Shemesh Municipality. Furthermore, examination of the breach of the consent judgment and the conducting of contempt of court proceedings should be carried out against the backdrop of the harsh reality that pertains in the city with respect to enforcement of the law in general, and with respect to handling the matter of the modesty signs in the city in particular. The Appellants also argue that the rulings of the District Court did not give due weight to the fact that the Appellants invested, and are still investing, great efforts in dealing with the matter of the signs, and these efforts have indeed brought about the removal of some of the signs, even though new ones have replaced them.

15. As opposed to this, the Respondents argue that although their arguments were accepted in all the legal proceedings, and despite the fact that the Appellants were ordered to remove the signs, the situation today is that signs are still hanging throughout the city. They argue that the Appellants have displayed a consistent and continuous attitude of contempt for the rights of the women in the city, as well as for the principle of the rule of law, throughout the entire legal proceedings. They say that the Beit Shemesh Municipality takes great pains to avoid enforcing the by-law that it itself enacted, and that the Mayor even declared in the past that he supports the hanging of signs. As such, the Respondents further argue that the Appellants are in clear breach of the consent judgment, deliberately and by virtue of an intentional decision, and that they ignore the fact that this is a final judgment that includes clear obligations, and now they wish to reopen their arguments with respect to the means that they should adopt for the purpose of dealing with the signs.

The Respondents also claim that the Appellants are acting with a total lack of good faith, and that they never removed even a single sign without a legal action having been initiated in court. The Respondents add that the Appellants are in contempt not only of the consent

judgment, but also of the decision of this Court of July 6, 2017, because new cameras were not installed after the damaging of the cameras, and no additional attempt was made to remove the signs marked with the letters "A" and "G". The Respondents further note that the obligation to pay the fine is imposed on the Appellants up until such time as the signs are removed permanently, whereas a one-time removal, following which the sign is hung again within a few hours, does not exempt the Appellants from their obligation under the consent judgment to pay the fine and to exercise effective means of enforcement to again remove the signs that were replaced, as well as the other signs hanging in the city.

16. According to Respondent 7 – the Attorney General – Appellant 2 did not fully fulfill its obligation under the consent judgment to exercise its powers in relation to signs that are hung within its boundaries in an effective, satisfactory manner. Respondent 7 emphasized that the signs are an extreme violation of human rights, including the right to equality, to freedom of movement, to dignity and to autonomy. It was also contended that the conduct of Appellant 2 in implementing the consent judgment is inconsistent with the decision of this Court of Sept. 4, 2017, in the framework of which it was explained that the obligation to pay the fine imposed on the Appellants in the contempt proceedings applies to the Appellants up until such time as the signs are completely removed. Clearly, pinpoint removal, following which the signs are immediately replaced, does not relieve the Appellants of their obligation. In this context, it was argued that the Beit Shemesh Municipality did not adopt all the requisite measures to remove the signs, and that it almost entirely refrains from enlisting the aid of the Israel Police for this purpose. The Appellants did indeed attempt to comply with the consent judgment, but according to the Attorney General, they did not make the requisite effort, given their obligation to comply with the judgment, and in view of the extreme offensiveness of the signs. It is further claimed that following the action taken by the Municipality to remove the signs on Sept. 10, 2017, and given that the Appellants knew that new signs had been hung, the Municipality has confined itself merely to imposing fines. Clearly, since the Appellants refrained from implementing effective enforcement measures that would lead to the permanent removal of the signs addressed in the consent judgment for more than two months after the time of their pinpoint action, their one-time action cannot be regarded as implementation of the judgment, but rather, as disregard of the duty it imposes on them. Respondent 7 explained that the Israel Police is prepared to extend to the Municipality whatever assistance is necessary, but the burden of initiating and executing enforcement measures lies with the Beit Shemesh Municipality and not with the Israel Police. In addition, regarding the Appellants' claim that the measure that they adopted is the most effective, it was argued that the approach adopted by the Beit Shemesh Municipality is effective to a certain degree, but it cannot replace the primary action of removing the signs.

Unfolding of Events since the filing of the Appeal

17. On Dec. 4, 2017, a hearing on the appeal was held before this Court, in the course of which the parties repeated their main arguments. In the course of the hearing, the Appellants stated that the signs – the subjects of the contempt motion – as well as other signs that had been hung in the meanwhile, with similar wording, would be removed by Dec. 18, 2017. The representative of the State Attorney, with the knowledge of the Israel Police, declared that the

Israel Police would help the Appellants remove the signs, and would increase its presence in the relevant areas. We granted these declarations the force of a judgment, and ordered that counsel for the parties provide an updating report on implementation of the above by Dec. 21, 2017.

18. On Dec. 14, 2017, the Appellants provided an update in which they notified the Court that on Dec. 11, 2017 a widespread operation had been conducted by the Appellants, accompanied by the Police, to remove all the signs placed throughout the city. In the framework of this operation, which was met by riots and disturbances of the peace, six of the eight existing signs were removed by municipal inspectors. The Appellants claimed that the two remaining signs were not removed due to the decision of the Police to stop the operation for fear of matters getting out of control. Several hours after the end of the operation, a number of small signs were hung, and later, the large sign, marked "A" was once again replaced. Subsequently, on the night of Dec. 12, 2017, the Appellants began another extensive operation to remove the signs in the city, removing no less than 15 signs throughout the city, including the sign marked "A". In addition to the above operations, the Appellants said in their updating report that they will continue to impose fines on the owners and residents of the properties on which the signs appear, and they will examine how and when it will be possible to install a camera at the corner of Yehuda Hanasi and Nahar Hayarden streets, where the large sign marked "A" appeared.

In light of the above, the Appellants asked the Court to rule that there is not, nor was there, reason to pursue contempt of court proceedings against them, and accordingly to grant the appeal and reverse the decision of the District Court on the matter.

19. From the response of counsel for Respondent 7 that was submitted to this Court on Dec. 22, 2017, it emerges that on Dec. 14, 2017, extensive action was indeed taken, in which additional signs were removed. It was also reported that the Israel Police increased its presence in the streets of Beit Shemesh, with emphasis on those streets where trouble was likely, and that it is dealing with events that occurred in response to the removals, providing a response to developing events and helping the Beit Shemesh Municipality in carrying out its duty to remove the signs. It was also noted that the Israel Police attempted to initiate additional actions to remove the signs, and to this end it approached certain people in the Municipality, but the cooperation on the part of the Beit Shemesh Municipality, so it was claimed, was limited. In this context, the response of Respondent 7 described four cases in which police officers from the Beit Shemesh station contacted various people in the Municipality in order to initiate action, but either there was no response to their request, or the response was negative.

20. On Dec. 28, 2017, the Respondents filed their response to the Appellants' report. According to the Respondents, as opposed to the picture of the situation that the Appellants sought to paint, there were no widespread, violent riots and disturbances of public order, but gatherings of several dozen citizens at most, against whom no measures were taken to disperse the demonstrations. The Respondents also claimed that, as emerges from the response of Respondent 7, the Appellants are again dragging their feet and refraining from

seeking police help for the purpose of further removal of the signs. It was also explained that there are currently more signs hanging throughout the city of Beit Shemesh than were hanging at the time that the proceedings were conducted in this Court on Dec. 4, 2017. The Respondents also said that in addition to the many signs, graffiti had been spayed, and a great number of stickers calling for modest dress affixed (and not removed by the municipal inspectors). The Respondents also said that to the best of their knowledge, to this day no suspects have been arrested for placing signs or for spraying the offending graffiti. It was further noted that on Dec. 15, 2017, a notice calling upon people to harass Respondents 1-5 was distributed, aimed at causing them to desist from their legal battle against the modesty signs. The notice contained the personal details of Respondents 1-5, and after its distribution, Respondents 1-5 began receiving threatening calls.

The Respondents further contended that neither the Appellants nor the police are doing what they ought to be doing to put an end to the shameful phenomenon that has made its appearance, according to them, throughout Beit Shemesh. They said that despite the Appellants' declaration that they are pursuing the process of imposing fines on the residents of the buildings on which the signs are placed, from an investigation conducted by the Respondents it emerges that hundreds of hearings that had been scheduled for arraignments in cases in which those accused of placing the signs opted for a trial had been postponed at the request of the Municipality. Furthermore, despite the fines having been imposed many months ago, the Municipality has not taken any steps to collect them. In addition, it was stressed that the cameras that the Appellants were supposed to install at the main points of friction have not yet been installed either. The Respondents also noted in their response that following the hearing that was held in this Court on Dec. 4, 2017, Appellant 1, the mayor of Beit Shemesh, was interviewed on the Reshet Beit radio station, and he stated that Respondents 1-5 must respect the sensibilities of the residents and desist from acts of provocation.

21. In their response dated Jan. 1, 2018, the Appellants argued that they had proved, time after time, that they are committed to an uncompromising war on the phenomenon of the signs, and that even if some of the signs are replaced before being removed again, there is no real justification for pursuing the contempt proceedings against them. The Appellants argued that in the course of a period of two weeks, they conducted three operations to remove the signs. Each such operation imposed a heavy financial burden on the Beit Shemesh Municipality, and it is therefore not able to carry out such operations on a daily basis. In this context it was further argued that it is the police that have failed time after time to eradicate the phenomenon of the signs, and in an attempt to hide its failures it seeks to lay the full responsibility on the shoulders of the Appellants. In all that concerns the installation of cameras, it was explained that the Municipality acquired "a camera with face-recognition technology and real-time transmission […] but as of the present time, the police have not yet decided on the place and time for installation of the camera."

22. After a careful reading of the updating reports from the parties, on Jan. 15, 2018 I ordered that a further hearing be conducted on the appeal. The parties would be allowed to

submit additional updates on their behalf until three days before the date of the hearing, which was set for Feb. 18, 2018.

23. On Feb. 15, 2018, the parties submitted updating reports in accordance with the order to do so. In the framework of the report submitted on behalf of the Appellants, it was claimed that they continue in their consistent, vigorous activity against the phenomenon of the signs in the city, which they say has led to a significant decline in the dimensions of the phenomenon. The report also mentioned that on Jan. 15, 2018, the Municipality embarked on an additional, extensive operation, accompanied by the police, to remove the signs. The Appellants claimed that the said operation was met by violence and disturbances, and that 18 signs were removed in the operation, including large signs that had been hung on buildings. These were removed by means of a crane. It was argued that following the above operation, no large signs remain on buildings. The few remaining signs are small, or stickers that call for maintaining modest dress, and their contents are not, according to them, offensive, as were the contents of the large signs that were posted in the past. It was also mentioned that the signs marked "G", which call to refrain from using the sidewalk, were removed by the Appellants on the evening of Feb. 14, 2018, and that it is their intention to continue to take action against all the signs throughout the city, including the small signs and the stickers that call for maintaining modest dress. It was further mentioned that together with removing the signs, the Appellants are taking legal action against the owners of the apartments in the buildings on which the signs were hung. In this framework, and following the fines imposed on the owners and their request to be tried for the said fines, the Appellants said that of late, plea bargains have been made with some of the residents, which include payment of the fines and an undertaking to refrain from committing offenses under the Beit Shemesh (Notices and Signs) By-Law, 5715-1955. On the subject of the cameras, it was argued that the Appellants are acting to install the cameras throughout the city, but in order to decide on the place and time, serious, systematic groundwork is being done by the city in cooperation with the police.

24. The updating report submitted by Respondent 7 stated that the Israel Police is continuing to take various steps to provide assistance and security support to the Beit Shemesh Municipality in its actions to remove the signs and to prevent their replacement with new signs. It was also stated that the Israel Police holds frequent discussions with various entities in the Beit Shemesh Municipality, with the aim of initiating additional action to remove the signs. In this framework, on Dec. 26, 2017 the Beit Shemesh Municipality took action to remove signs, with the help of police forces, and 15 signs were removed. As was also stated in the updating report submitted by the Appellants, additional, similar action was taken on Jan. 15, 2018, in the framework of which 18 signs were removed. According to the report, this action was met by various provocations and disturbances, and only the police presence made it possible for the Municipality inspectors to continue carrying out their job as planned. It was also stated in the report that the police and the Municipality carried out an advance reconnaissance to remove the graffiti, and that the Municipality is waiting for a quote to carry out the removal.

25. The Respondents' updating report stated that since the hearing held on Dec. 4, 2017, there had indeed been several operations to remove the signs, but some of the signs had been

replaced. In addition, many stickers calling for modest dress had been affixed, and nothing came of calls to the municipal inspectors to have them removed. In this context, the Respondents noted that most of the signs and the stickers are located in the public domain at a low level, and therefore, it is not physically difficult to remove them. According to the Respondents, the fact that the signs and the stickers are still evident throughout the city means that both the Municipality and the police are not doing enough to eradicate the phenomenon. The Respondents emphasized in their report that to date, cameras have not been installed at the friction points in the city, despite the fact that in the consent judgment, the Appellants declared that they had applied to the Ministry of Public Security to receive cameras as part of the "City Without Violence" project. It was stated that the Ministry of Public Security approved a budget for the Municipality for seven security cameras, but contrary to its undertaking, the Municipality chose not to install these cameras in the areas that were the main friction points. It was further stated that despite the willingness of the Ministry of Public Security to authorize municipal inspectors in Beit Shemesh as support inspectors, the Municipality refuses to ask the Ministry of Public Security to authorize the inspectors, thereby preventing, in effect, the reinforcement of the security set-up in the city, in a way that would help in enforcing the law and eradicating the phenomenon of the signs.

26. On Feb. 18, 2018, at the end of the additional hearing before us, in which we learned of a degree of progress that had been made in carrying out the provisions of the consent judgment, we made it clear in our decision that this progress is still insufficient in the circumstances, and that the Appellants must act, within 30 days –

a. *To install seven cameras* in the neighborhood in which there are violations, the budget for which has been approved for the Municipality by the Ministry of Public Security and the Israel Police (in the framework of the "City Without Violence" project).

b. *To remove the large offending sign* that is still in place – at the corner of Nahar Hayarden St. and Yehuda Hanasi St. (45 Rabbi Elazer St.) [the sign marked "A" – H.M.].

c. *To remove the offending signs* that were hung in the city, and to erase or cover the graffiti relating to the exclusion of women.

d. *To move forward with the proceedings that were initiated* against owners or residents of the buildings who aided in hanging the offending signs/notices.

e. *To remove immediately any new sign or notice* that is hung.

(Emphases added – H.M.)

It was also ruled that the Appellants must report by March 20, 2018 on the actions taken by the Municipality, and the other parties must respond to their report by March 26, 2018.

27. On March 20, 2018, the Appellants submitted their updating report. The report stated that after the hearing, three dates were set for operations to remove the signs. Accordingly, on Feb. 27, 2018, the Municipality carried out an extensive operation, with police support, to

remove the signs. It was argued that in the course of this operation, hundreds of stickers, dozens of graffiti inscriptions and a number of signs, including the large sign marked "A", were removed. The operation was met by disturbances of the peace, and there was even one incident of stone-throwing at a municipal vehicle which had municipal employees inside. After the operation, several graffiti inscriptions reappeared, including at the location of the sign marked "A", and the report stated that these will again be removed in the course of the operation planned for the near future.

As for legal proceedings against the residents of the buildings on which the signs were hung, the Appellants said in their report that subsequent to the fines that were imposed on the residents and their requests to go to trial, plea bargains were signed and approved in respect of all the residents. These plea bargains included payment of the fines and an undertaking to refrain from committing offenses of this type, and most of the residents have already paid the fines that were imposed on them in the framework of the agreements.

Concerning the installation of the cameras, the Appellants said that this was a complex matter, and that it was not possible to complete the task within 30 days of the decision of this Court. They said that for the purpose of installing the cameras, the Ministry of Public Security allocated a budget of NIS 318,000, and that the Municipality intended to use this budget, and even to add to it, in order to install as many cameras as possible, but that this was likely to take up to 150 days (note: in the meanwhile, 150 days have passed and the Appellants have not reported that the installation has been carried out).

28. On March 29, 2018, the Respondents submitted their response to the above report. Concerning the installation of the cameras, they said that the Municipality has been declaring its intention to install cameras in the sensitive areas for a long time, but these intentions have remained on paper, and in fact, not even one camera has been installed in those areas. The Respondents claim that although there is a budget, and although the Municipality has been saying for years that it intends to install cameras in the areas that are the main centers of dispute, it continues to refrain from installing the cameras, and it thus continues to disregard the decisions of this Court. In this context, the Respondents explained that there are dozens of cameras in every neighborhood in Beit Shemesh – except for those neighborhoods that are the main trouble-spots. It was also claimed that the proceedings conducted by the Municipality involved residents who were not involved in hanging signs, and only by installing cameras will it be possible to locate and initiate proceedings against those responsible for hanging the signs and violating the by-law.

The Respondents further maintain that the Appellants' claim that "there are no longer any large signs on buildings throughout the city" is not true. They say that the large sign, marked "A", was indeed removed, but that the same building now bears graffiti with identical wording to that of the sign that was there, and despite several actions by the Municipality to remove the signs, the city is still festooned with signs, stickers and graffiti calling for modest dress.

29. The updating report from Respondent 7, submitted on March 29, 2018, states that the Israel Police continues taking various steps to provide help and security support to the Beit Shemesh Municipality in its activity to remove the offending signs and prevent additional signs being hung. It also mentions that together with the various operations that took place on Feb. 15, 2018, Feb. 27, 2018, March 6, 2018 and March 21, 2018, in coordination with the Beit Shemesh Municipality, in which signs, stickers and graffiti were removed, the Israel Police reinforced its presence in the relevant areas within the boundaries of the city of Beit Shemesh.

As for the of installation of cameras, the claim was that the Israel Police did indeed recommend that the Municipality erect high poles in order to cover a wide area and prevent vandalization of the cameras. However, a letter sent by the Chief of Police in Beit Shemesh to municipal officials explained that this was only a recommendation. Therefore, the delay in installing the cameras was not caused by the Israel Police, and the responsibility for their installation lies with the Beit Shemesh Municipality alone.

30. On April 24, 2018, the Respondents reported in writing to the Court that in the month since the responses were submitted, the situation in Beit Shemesh in relation to the signs had deteriorated significantly. They noted that as of the date of writing the notice, there had been no progress on the installation of cameras. Moreover, graffiti was spreading, and the serious harassment of girls and women in the city in regard to modesty was continuing.

31. On May 6, 2018, the Appellants submitted their response, in the framework of which they denied outright the assertions of the Respondents that they are disregarding the decisions of this Court. It was further emphasized that the present concern is an appeal of the decision of the District Court according to the Ordinance, on the matter of the consent judgment. The Appellants claim to have already fulfilled all the provisions of the consent judgment, and everything that is being carried out in accordance with the decisions of this Court is well beyond the scope of the consent judgment. They also claimed that, as is evident from the many updating reports that were submitted to this Court both by the Appellants and by Respondent 7, over the last year the Municipality conducted many operations with police support to remove the signs and the graffiti throughout the city. It was also argued that the consistent, vigorous actions of the Municipality, both on the physical level of removing the signs and on the legal level of taking action against the residents of the buildings, has led to the almost total eradication of the phenomenon of signs in the city. However, alongside the gradual eradication of the phenomenon of the signs, the phenomenon of stickers and graffiti has grown. The Appellants declared that in accordance with the decisions of this Court, they acted and will continue to act to remove the stickers and the graffiti, as well. At the same time, they argued that hanging the signs, affixing the stickers and painting graffiti in the public domain constitute criminal offenses, and the responsibility for preventing them lies primarily with the police, which alone has the tools to find and arrest the perpetrators.

As for installing cameras, the Appellants notified the Court that the Municipality had issued a tender to the suppliers of the Ministry of Public Security for the installation of seven cameras, but the budget allocated by the Ministry of Public Security is much lower than the

one bid that was tendered, and therefore a meeting of the Municipality was called for the purpose of approving the bid and attempting to lower the price.

Deliberation and Decision

32. After studying the arguments of the parties, reviewing all the material that was submitted to us, and hearing the arguments of counsel for the parties, my position is that the appeal must be denied, and I will suggest to my colleagues that we decide accordingly. I shall explain below the reasons for this conclusion. However, before I address the questions that must be decided in this appeal, I will say a few words about the general phenomenon of the exclusion of women from the public domain.

Exclusion of Women from the Public Domain

The term "exclusion of women" refers to sweeping discrimination on the basis of sex, the main characteristic of which is withholding from women, due to the fact that they are women, the possibility of receiving public services, of participating in public activity, or of maintaining a presence in the public sphere. The exclusion of women is liable to manifest itself in several ways. One expression of it, for example, is gender separation, whereby certain public services are in fact provided to women, but in a separate manner. The exclusion of women may express itself in another form when women are prevented or categorically restricted from receiving services or from active participation in activity that takes place in the public domain.

34. The practices that are suspect as being exclusionary of women give rise, by their very nature, to different questions in a variety of legal spheres, the central one of which is the constitutional-public sphere. These practices emphasize the tensions surrounding the rights of women to equality, dignity, freedom of expression, autonomy, and freedom of occupation, as against opposing rights and interests deriving from the principles of multi-culturalism, freedom of religion and the desire to prevent offense to religious sensibilities (see: LCA 6897/14 *Radio Kol Barama Ltd. v. Kolech – Religious Women's Forum* [1] (hereinafter: *Kol Barama*); HCJ 746/07 *Ragen v. Ministry of Transport* [2] (hereinafter: *Ragen*); Ruth Halperin-Kaddari, *Women, Religion and Multiculturalism in Israel*, 5 UCLA J. INT'L & FOR. AFF. 339, 362-66 (2000); Susan M. Okin, *Is Multiculturalism Bad for Women?* in IS MULTICULTURALISM BAD FOR WOMEN? 9-24 (Joshua Cohen, Matthew Howard & Martha C. Nussbaum, eds., 1999)).

35. The exclusion of women in Israel sometimes involves a unique element that includes religious considerations, due to which we must ask whether, in special circumstances, it is possible to justify separate, or limited, treatment of women in the public domain, in view of the whole array of relevant interests (see, *inter alia*: *Kol Barama* case [1]; Alon Harel and Aaron Shenrech, *The Separation Between the Sexes on Public Transport*, 3 ALEI MISHPAT 71 (2003) (Heb.); Noya Rimmelt, *Separation Between Men and Woman as Sexual Discrimination*, 3 ALEI MISHPAT 99 (2003) (Heb.); Zvi Traeger, *Separation Between Men and Women as Sexual Harassment*, 35 *Iyyunei Mishpat* 703, 709-13 (2013) (Heb.); Alon Harel, *Regulating Modesty Related Practices*, 1 LAW AND ETHICS OF HUMAN RIGHTS 211 (2007)).

36. The Report of the Ministry Team for Investigation of the Phenomenon of Exclusion of Women in the Public Domain (Jan. 5, 2012) (hereinafter: the Ministry Report), whose conclusions were adopted by the Attorney General in May 2013, examined in depth the phenomenon of the exclusion of women in this context. Gender separation and distinction in cemeteries, in state ceremonies, on public transport and in regard to the freedom of movement of women as pedestrians in ultra-Orthodox neighborhoods were all examined, including the various cultural and religious (halakhic) interests. As mentioned in the Ministry Report, the criterion that was adopted for considering the constitutionality of each occurrence that was suspect of being exclusionary of women was the criterion that was formulated in the case law of this Court regarding discrimination, namely, the question to be asked is whether there is a "relevant difference" that stems from the nature and the substance of the public services that are provided that would justify gender separation. At the same time, it was noted that in the framework of this examination, the unique cultural aspects of the ultra-Orthodox community must also be considered, including the question of how to relate to the fact that the women in the ultra-Orthodox community are a group that constitutes a "sub-minority" within the ultra-Orthodox minority (paras. 13, 25 and 242 of the Ministry Report; *Kol Berama* case [1]).

37. At this point it should be noted that not every activity or policy that is said to constitute "exclusion of women" will necessarily be classified ultimately as prohibited discrimination, since the reality of life in these contexts is complex, and it does not permit the adoption of a simplistic, extreme approach with all its implications. Indeed, a practice that is suspect as being exclusionary of women will be examined on its substance, in accordance with its nature and characteristics, and according to the norms established in the case law (see, *inter alia*: AHARON BARAK, HUMAN DIGNITY: THE CONSTITUTIONAL RIGHT AND ITS DAUGHTER-RIGHTS, vol. 2, 703-05 (2014) (Heb.); HCJ 153/87 *Shakdiel v. Minister for Religious Affairs* [3], 242-43; HCJ 4541/94 *Miller v. Minister of Defense* [4], 109-10; HCJ 2671/98 *Israel Women's Network v. Minister of Labor and Welfare* [5], 652-60 (hereinafter: *Israel Women's Network*).

38. "Modesty signs" are part of the disturbing phenomenon of excluding women from the public domain. Chapter 17 of the Ministry Report deals with the specific subject of the signs, and states that a local authority must refrain, insofar as possible, from allowing such exclusionary signs to be hung within its bounds, certainly in the public domain, in that they restrict the ability of women to move freely in that domain. The Ministry report makes it clear that placing signs in the public domain that call for women to dress in a modest manner, or to refrain from being in a certain place, expresses an illegitimate message whereby women are not free to use any part of the public space that they wish, or that their presence in that space is conditional upon being dressed in a certain way, even though the sign does not constitute an actual physical barrier limiting the public domain (see: p. 9 of the Ministry Report).

39. The signs under discussion, which are displayed in the public domain, apparently announce the rules governing that location, and they instruct women to dress in accordance with certain norms, and not to be present in certain places. These rules receive written

approval from the local people, institutions and city officials. The requirement is addressed to women only, and relates to the external appearance that is required of them, or to the place in which they may not be present. The signs present an explicit demand that imposes upon women the obligation to dress in accordance with a particular dress code as a condition for permission to pass through the places in which they are located. It may, in fact, be said that they constitute an expropriation of the public domain from women, converting it into private domain, while applying social pressure and infringing the autonomy and security of women. In such cases, therefore, the local authority has a duty to consider the said harm, act diligently to remove the signs, and also take action in accordance with the existing law against those who are responsible for their placement.

Moreover, to the extent that there is a concern about violence and disturbance of the peace due to action to remove the signs, the authority has a duty to ask the Israel Police for help with security, and to act in "real time" to restore order while exercising its relevant powers of enforcement. Indeed, the local authority may set an order of enforcement priorities, and as a rule, there is no room to interfere in its discretion when it has considered the benefit as opposed to the harm in certain enforcement activity, and decided ultimately to take other effective steps to achieve the appropriate purpose. At the same time, the action of the local authority must accord suitable weight to the severe breach of human rights caused by the placement of the signs described in the Ministry Report.

And now, a few preliminary words about the need for compliance with judicial orders.

The Rule of Law and Compliance with Judicial Orders

40. The courts have ruled that the effectiveness of the rule of law is tested, *inter alia*, by the ability of the governing authorities to enforce judicial decisions and orders. Non-compliance with the orders of the court is a violation of the rule of law, and undermines the democratic foundations upon which society is built. For the purpose of dealing with the possibility of such violation, the courts were given power to employ certain means in order to ensure that the non-complier would eventually comply with the orders of the court that had been violated (see: CrimA 517/06 *Boaz Manor v. KPMG Inc.* [6] (hereinafter: *Manor*)). The process of preventing contempt of court is therefore essential to instill in society an awareness of the duty to respect the law and the orders of the judicial system in order to protect the status of the judiciary. From a broad perspective, the duty to enforce judicial orders is one of the distinguishing features of a free and democratic regime (*Manor* case; CrimA 126/62 *Dissenchik v. Attorney General* [7] , 179).

41. In a different vein: the contempt of court process under sec. 6 of the Ordinance is a special one, which belongs in the "twilight zone between civil procedure and criminal procedure" (CrimA 519/82 *Greenberg v. State of Israel* [8](hereinafter: *Greenberg*); *Manor* case). The purpose of this process is to bring about compliance with the judicial order, and take it from the potential to the actual by means of a fine or imprisonment (CrimApp 4445/01 *Gal v. Katzovshvili* [9]). At this point it should be stressed that the contempt of court process is not essentially a punitive one; the measure that is applied by virtue of this process is in the

nature of compulsion to perform an act, or to desist from an act, and it is not concerned with attaching a punitive taint to the person violating the order (LCrimA 3888/04 *Sharbat v. Sharbat* [10], 57-58; CrimA 1160/98 *SHIZAF Marketing, Promotion and Construction Projects v. Ashkenazi* [11]; LCrimA 48/98 *Ezra v. Zelezniak* [12], 346; CA 371/78 *Hadar Lod Taxis v. Biton* [13], 239-40).

Thus, the contempt of court process is a harsh enforcement process, whose ramifications, by way of imposition of an ongoing fine or imprisonment, may cause harm. The ongoing fine is liable to cause serious harm to the pockets and the property of a person, and imprisonment constitutes real harm to a person's liberty – basic rights that are anchored in Basic Law: Human Dignity and Liberty. As such, enforcement measures under the Ordinance must be exercised with moderation, as the exception, and they must be confined to situations in which all other measures have been exhausted and have not helped, and all that remains is recourse to the process of contempt of court in order to ensure the enforcement of a judicial order (see: *Manor* case [6]; *Greenberg* case [8], at 192).

We shall now proceed from a review of the relevant normative rules to their application in the present case.

From the General to the Specific

42. In the agreed judgment, the Appellants undertook, *inter alia*, to exercise **all the enforcement powers available to them by law** for the purpose of removing the signs that are the subject of the appeal, as well as other signs that are similarly unlawful. In addition, the Appellants agreed to ensure that enforcement measures would be adopted in a continuous and immediate manner, **and that they would be repeated if the signs that had been removed were replaced**. Moreover, this would be given high priority by the Municipality (see: secs. 3 and 5 of the consent judgment).

From the picture that emerges in the present matter, it is evident that the Appellants did not fully comply with the consent judgment, and **they did not exercise all the enforcement powers available to them in order to remove the signs**. In this regard, it should be stressed that at the end of the hearing held before us on Feb. 18, 2018, we ruled, further to the consent judgment, that the Appellants must "*install seven cameras in the neighborhood in which there are violations, the budget for which was approved for the Municipality by the Ministry for Public Security and the Israel Police* (*in the framework of the project "City Without Violence"*)." Clearly, installation of the cameras at the friction points constitutes an effective means of enforcement that allows for the identification of those violating the law in order to bring them to justice. As stated, the Ministry approved a budget for the Municipality for installing seven security cameras, but this has not yet been executed. From the updating reports submitted by counsel for the parties after the said decision was handed down it transpires that despite the undertakings to which the Appellants committed themselves with respect to installation of the cameras, *no camera has been installed in the trouble-prone areas*. As such, no option remains but to resort to the process of contempt of court in order to ensure enforcement of the said undertakings.

Summary

43. In exercising the powers of enforcement that it has been given, a local authority, like every governmental body, must bear in mind the need to protect the basic rights of every person, and to do all that is possible to put an end to the infringement of these rights (see: secs. 4, 11 of Basic Law: Human Dignity and Liberty). In the present case, beyond the expectation from the Appellants to act to eradicate the phenomenon of the signs, the Appellants also committed to do so several times, both in the framework of the consent judgment and in the hearings in the Court, as well as in the decisions that followed.

Regrettably, despite the serious violation of the basic rights of women, and despite the undertakings to which the Appellants committed themselves and which were given binding force of a consent judgment or of judicial decisions, the city of Beit Shemesh is still rife with unlawful signs, stickers and inscriptions. We cannot accept this grave state of affairs. The words of our colleague Justice Danziger in the *Kol Barama* case [1] are apt here:

> This is an illegitimate, unworthy phenomenon that has been describes as one that "delivers a mortal blow to human dignity" (HCJ 2671/98 *Israel Women's Network v. Minister of Labor and Welfare* [5], at 658-659), and it is a gross violation of the basic, fundamental rights of women. Moreover, the exclusion of women also has the potential of instilling a conception that the public domain belongs to "men only", and consequently, of perpetuating gender-driven gaps in status and behaviors that by their very nature humiliate, degrade and debase women. This is particularly evident when women are forced to turn to the authorities and the courts for a declaration that they are "permitted" to execute *basic* acts in the public sphere, and clearly the harm that this involves is not limited only to their individual matter, but involves injury to society as a whole… [at para. 25].

44. It is indeed evident that the Appellants took partial action in various ways in their attempt to comply with the court orders, but the reality proves that the measures that they adopted were insufficient. Since the Appellants have refrained to date from installing the seven cameras in the neighborhood in which there have been disturbances, and from again removing the signs that were taken down but replaced, the action that they have taken cannot be regarded as full implementation of the consent judgment and of the undertakings that followed, which were anchored in the decisions of this Court.

45. Thus, in the event that the seven cameras are not installed in the neighborhoods in which there are breaches by Dec. 31, 2018, and in the event that the prohibited signs are not taken down by that date, I propose to my colleagues that the appeal before us be deemed as denied from that date on. On the other hand, if the Appellants act as stated by the above date, then bearing in mind the efforts made by the Appellants to date, and taking into account their compliance with the commitments they undertook (even if belatedly), the fines that were

imposed upon them and that accumulated as of Feb. 18, 2018 and thereafter will be cancelled retroactively.

In addition, should the Appellants not comply with what is demanded of them here by Dec. 31, 2018, the Respondents will be permitted to renew the contempt proceedings in the Jerusalem District Court, and demand enforcement of the orders that were imposed by additional means, together with the fines.

46. In conclusion, I would express the hope that the exclusion of women in the city of Beit Shemesh, the concern of these proceedings, will cease, and that the signs and the events described in this judgment will become a thing of the past.

Justice (emer.) U. Shoham

I concur.

Justice D. Mintz

I concur.

Decided in accordance with the opinion of Deputy President H. Melcer

23 Heshvan 5779 (Nov. 1, 2018)