

Adalah Legal Center for Arab Minority Rights in Israel

v.

1. Minister of Religious Affairs

2. Minister of Finance

The Supreme Court Sitting as the High Court of Justice

[April 18, 2000]

Before President A. Barak, Justices I. Zamir, D. Beinisch

Petition to the Supreme Court sitting as the High Court of Justice for grant of an order nisi and an interlocutory order.

Facts: The primary question raised in the petition: was whether the Ministry of Religious Affairs was violating the principle of equality in its allocation of funds for the maintenance of cemeteries. Among other claims, the petitioners claimed in their petition that the relative proportion of the Arab communities in the budget of the Ministry of Religious Affairs does not reflect their relative proportion in the population.

Held: The Court held that the Ministry of Religious Affairs is to operate in allocation of funds in the Ministry of Religious Affairs' budget for cemeteries on the basis of the principle of equality, as detailed in the judgment. The Court ordered the Ministry of Religious Affairs to allocate the money in its budget for the year 2000, for cemeteries of members of the various religions, in an equal manner. However, the court decided that under the circumstances of the present case there was not a justification to order that money be paid from the budget of the Ministry of Religious Affairs for the purpose of maintenance of Arab cemeteries for the year in which the petition was filed (1999). The Ministry of Religious Affairs was ordered to pay the petitioner court expenses in the amount of 20,000 NIS.

Basic law cited:

Basic Law: Human Dignity and Freedom.

Legislation cited:

Budget Law for the 1998 Fiscal Year

Budget Law for the 1999 Fiscal Year, First Addition, s. 22, ch. 02, ss. 02-12, 02-15, 02-17, 02-17-14, 02-17-15, 02-31, 02-32, 02-33, 02-34, ch. 08, ss. 08-13, 08-20, 08-20-12, 08-20-13, 08-20-15, 08-20-17, 08-21.

Budget Principles Law, 5745 – 1985, s. 3A.

Right to Alternative Civilian Burial Law, 5756-1996.

Jewish Religious Services Law [Consolidated Version] 5731-1971.

Council of Jewish Cemeteries in Jerusalem Regulations 5727-1967.

Israeli Supreme Court cases cited:

- [1] HCJ 240/98 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs* IsrSC 52(5)167.
- [2] HCJ 6698/95 *Ka'adan v. Israel Land Administration* [2000] (not yet reported)
- [3] HCJ 59/88 *Tzaban v. Minister of Finance*, IsrSC 42(4)705.
- [4] HCJ 205/94 *Nof v. Ministry of Defence* IsrSC 50(5)449.
- [5] 1703/92 *C.A.L. Freight Airlines Ltd v. The Prime Minister* IsrSC 52(4)193.
- [6] HCJ 1/98 MK *Eitan Cabel v. Prime Minister of Israel* (not yet reported).
- [7] HCJ 2422/98 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Labour and Social Affairs* (unreported).
- [8] HCJ 98/54 *Lazarovitch v. Jerusalem Food Inspector* [1956] IsrSC 10 40.
- [9] HCJ 200/83 *Wathad v. Minister of Finance* [1984] IsrSC 38(3)113.
- [10] HCJ 1438/98 *Conservative Movement v. Minister of Religious Affairs* (not yet reported).
- [11] HCJ 392/72 *Berger v. Haifa District Planning and Building Committee* [1973] IsrSC 27(2) 764.
- [12] HCJ 118/62 *Landau v. Minister of Agriculture*, IsrSC 17 2540.
- [13] HCJ 953/87 *Poraz v. Mayor of Tel-Aviv-Jaffa* [1988] IsrSC 42(2) 309.
- [14] HCJ 453/94 *Israel Women's Network v. Government of Israel* IsrSC [1994] 48(5)501, [1992-1994] IsrLR 425.
- [15] HCJ 528/88 *Avitan v. Israel Land Administration* [1989] IsrSC 43(4)297.
- [16] MApp 166/84 *Yeshivat Tomchei T'mimim Mercazit v. the State of Israel* IsrSC 38(2)273.
- [17] HCJ 761/86 *Miari v. Knesset Speaker* [1988] IsrSC 42(4) 868.
- [18] HCJ 1689/94 *Harrari v. Minister of the Interior* 51(1) 15.
- [19] HCJ 4146/95 *Estate of the Deceased Lily Dankner v. the Antiquities Authority* IsrSC 52(4) 774.
- [20] HCJ 4562/92 *Zandberg v. Broadcasting Authority* [1996] IsrSC 50(2)793.
- [21] CA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village* IsrSC [1995] 49(4) 221.

Israeli books cited:

- [22] I. Zamir *Administrative Power* (1996)
- [23] A. Barak, *Judicial Construction* (Vol. 3, 1994).

Israeli articles cited:

- [24] I. Zamir, M. Sobel 'Equality before the Law,' 5 *Mishpat U'Mimshal* (1999) 165).
- [25] Y. Carp, 'The Basic Law: Human Dignity and Liberty – A Biography of Power Struggles' 1 *Mishpat U'Mimshal* (1993) 323.
- [26] H. H. Cohn, 'The Values of a Jewish and Democratic State — Studies in the Basic Law: Human Dignity and Liberty' *HaPraklit — Jubilee Volume* (1993) 9.

Foreign articles cited:

- [27] Henkin, 'Human Dignity and Constitutional Rights' in M. Meyer and W. Parent, *The Constitutional Rights: Human Dignity and American Values* (1992) 210

Other

- [28] Declaration of the Establishment of the State of Israel.
- [29] Report of the State Comptroller, number 46 from the year 1995.

Jewish Law sources cited:

- [30] *Leviticus* 24, 22.

For the petitioner—Hassan Jabarin
For the respondents —Yehudah Shafer

JUDGMENT

Justice I. Zamir

1. The petitioner is an association whose purpose is to advance the rights of the Arab minority. It claims that in the budget year 1999 the Arab minority is not receiving from the Ministry of Religious Affairs funds for cemetery maintenance, which it is entitled to receive, *inter alia*, based on the principle of equality. The following is the primary issue which arises from the petition: is the Ministry of Religious Affairs violating the principle of equality in the allocation of funds for the maintenance of cemeteries?

The Background to the Petition

2. This petition developed out of a previous petition that was also filed by the petitioner along with other entities and persons from the Arab population: HCJ 240/98 *Adalah Legal Center for the Rights of the Arab Minority in Israel v. Minister of Religious Affairs* [1]. In that petition the petitioners claimed that the budget of the Ministry of Religious Affairs discriminates against the Arab population in the allocation of funds for religious purposes in general, and not just in the realm of cemetery maintenance, and therefore requested that the court declare to be void certain sections in the Budget Law of 1998. The petitioners claimed as follows (at page 173):

"The relative proportion of the Arab communities in the budget of the Ministry of Religious Affairs does not reflect their relative proportion in the population, and in any case is not sufficient to fulfill their needs. This discrimination in allocation of resources... violates the right of the Arab minority to respect, to freedom of religion and conscience, and the necessary conclusion from this is that these budget sections and others are to be declared unconstitutional, while also declaring that the Arab communities are entitled to a budget appropriate to their proportion in the population."

In the judgment that was handed down in that petition the Court agreed that it would appear that the funds that were allocated in the budget of the Ministry of Religious Affairs for the religious purposes of the Arab population are not in proper proportion to the proportion of that population in the general population. Justice Cheshin said the following on this matter (at p. 178):

". . . The Arab communities constitute about 20% of the State's population, but the Ministry of Religions only allocates 2% of its budget for their religious needs. Regarding this disparity one is to say *res ipsa loquitur*."

At the conclusion of the decision Justice Cheshin added (at p. 192):

"Reading the petition raises genuine challenges which it is proper and appropriate to try and find a way to resolve... The program that the Ministry of Religions initiated at the time was titled 'One Law.' Let us remember from where the name of the program was taken: "there shall be one law for you, for the stranger as for the citizen it shall be, as I am the Lord your G-d" (*Leviticus* 24, 22). [30]

Despite this, the Court denied the petition. The reason for the denial was that the petition was not focused on a particular matter, with a proper basis on facts, in such a manner that the court could examine the factual foundation, determine if it proves discrimination, and decide accordingly what the proper remedy should be. In the words of Justice Cheshin (at 171):

"The petitioners preferred to spread out their arguments and their complaints from one end to the other -- from the east end to the west end -- and on the basis

of these claims they have asked us to declare as void a law of the Knesset. This is not the way and this is not the Court's way of doing justice."

What then is the proper path to be taken? As one can see from the decision, it was proper for the petitioners, in their struggle for equality in the allocation of funds for the Arab population, to focus on one issue, for which they would properly prepare a factual foundation, which the Court could then properly review.

The petitioner understood one thing from another and filed this petition, which focuses on the claim of breach of equality in allocation of funds for the maintenance of Arab cemeteries. On the basis of this claim it petitions for specific sections in the Budget Law for the year 1999, relating to the allocation of funds for the maintenance of cemeteries, to be declared void.

The petition raises additional claims in support of the petitioner's position. It claims that those sections violate human dignity, as established in the Basic Law: Human Dignity and Liberty as well as other rights of Arabs, including freedom of religion and conscience. However, these arguments, in the manner put forth in the petition, are not forceful, and in any case, we have found that it is not necessary to consider them in this petition.

The first question, which must be answered in this petition, is whether the Ministry of Religious Affairs is obligated to allocate funds, from the Ministry's budget, in an equal manner to all segments of the population, without distinction as to religion or nationality.

The Principle of Equality in the State Budget

3. In the Declaration of the Establishment of the State of Israel [28] it was stated that the state "will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex." One of the expressions for the principle of equality is, as was stated in the Declaration, that the state "will safeguard the Holy Places of all religions." In that vein, the Declaration calls "to the Arab inhabitants of the state of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship." Therefore, from the State of Israel's first day, the declaration established the principle of equality as one of the basic values of the State. Over the years, the principle of equality was established and developed, via legislation and case law, and has also earned for itself, beyond the status of a basic value, the status of a basic right. (See I. Zamir, M. Sobel 'Equality before the Law' [24]).

The principle of equality binds every public entity in the State. First, it binds the State itself. The principle of equality applies to all the areas in which the State operates. It applies first and foremost to the allocation of the State's funds. The resources of the State, whether in land or money, as well as other resources, belong to all citizens, and all citizens are entitled to benefit from them in accordance with the principle of equality, without discrimination on the basis of religion, race, gender or other illegitimate consideration.

The principle of equality must also guide the legislative authority, which too, like any other authority in the State, must act as a fiduciary to the public in accord with the basic values of the State of Israel as a Jewish and democratic state, which include equality. This is the case in each and every law, and this is also the case in the Budget Law.

However it is not sufficient that the laws of the State fulfill the principle of equality, rather, it is no less important than this that the implementation of the laws be consistent with this principle. This is the case for every law, so too the Budget Law. Indeed, since the laws of the State generally fulfill the principle of equality, the primary threat to this principle stems from the implementation of the law. The threat is particularly severe in implementation of the Budget Law. From a practical standpoint, in implementing the Budget Law the relatively easy possibility exists, occasionally to the point of temptation, of discrimination in allocation of funds by state authorities, on the grounds, *inter alia*, of religion or nationality. Such

discrimination, particularly if it is methodical, may cause very severe damage, not only to a specific person or a specific entity, but also to the social fabric and the feeling of partnership which is a pre-condition for proper living in community. In any event, such discrimination is illegitimate at its core, from both a moral as well a legal perspective.

4. Recently the Court has clarified well the prohibition on discrimination on the grounds, among others, of religion or nationality, in the allocation of state funds. In HCJ 6698/95 *Ka'adan v. Israel Land Administration* [2], the claim was made of illegitimate discrimination against an Arab, because he was an Arab, in the allocation of state lands. In that instance the State allocated land to the Jewish Agency for Israel, and on that land, the Jewish Agency established a communal settlement, the settlement of Katzir, which would only enable land purchase and home construction in the settlement to Jews. In the judgment President Barak stated (in paragraphs 23, 24, 31, 34):

“The State’s obligation to act in accordance with the principle of equality applies to all of its actions. As such, it also applies to the allocation of state land . . . all agree that equality precludes different treatment on the grounds of religion or nationality. . . There is, therefore, no contradiction between the values of the State of Israel as a Jewish and democratic state and between the absolute equality of all of its citizens. Indeed, the opposite is true: the principle of equal rights for all people in Israel, irrespective of their religion or nationality, stems from the values of the State of Israel as a Jewish and democratic state. . . The State’s duty to respect equality in allocating rights in land is violated by the transfer of land to a third party that itself discriminates on the basis of nationality or religion. The State cannot escape its obligation to respect the principle of equality merely by going through a third party that acts according to a discriminatory policy. What the State cannot do directly, it cannot do indirectly.”

Therefore the Court declared that the State was prohibited from allocating the land to the Jewish Agency for the purpose of establishing the communal settlement on the basis of discrimination between Jews and those who are not Jews.

5. Discrimination on the basis of religion or nationality in allocation of state funds, which is even prohibited if it is done indirectly, certainly is a fortiori prohibited when it is done directly. A marked example is discrimination in allocation of funds from the state budget by a government office. In HCJ 59/88 *Tzaban v. Minister of Finance* (at p. 706) [3] Justice Barak stated:

"Budget funds are state funds. Government authorities authorized to use them do not have the right to do with them as they please. Government authorities are fiduciaries of the public, the expenditure and distribution of these funds must be done in a manner that is consistent with this trust... Support must be provided based on principles of reasonableness and equality."

Indeed, it is standard for budget funds not to be sufficient for all the needs and all the needy, and therefore it is necessary to allocate funds according to a list of priorities which create differences between one person and another and between one group and another. But the preferences and the differences must be based on relevant considerations which are consistent with the principle of equality, and not illegitimate considerations, such as, religion or nationality. Justice Mazza clarified this in HCJ 205/94 *Nof v. Ministry of Defence* [4] (at p. 463), and he stated as follows:

"Where the authority wishes to provide for a specific public need and the resources at its disposal are lesser than the resources that would be necessary to fully fulfill that need, the authority is obligated to establish criteria for allocation of its resources. But these criteria must be egalitarian; and under no

circumstances does the existence of budgetary constraints justify establishing criteria which cross the line of equality."

The duty incumbent on all authorities to allocate state funds in an equal manner is expressed in the Budget Principles Law, 5745 – 1985. Section 3a of this law coordinates provision of support by government offices from the state budget to public institutions operating for purposes of education, culture, religion, and more. It establishes that such support will be distributed exclusively "according to egalitarian criteria."

The principle of equality in allocation of funds from the state budget is not limited to the provision of support to public institutions, as established in section 3a of the Budget Principles Law, but it also applies, even without a law that establishes this explicitly, in allocation of funds from the state budget in another manner, and for other purposes. This was recently stated, for example, in HCJ 1703/92 *C.A.L. Freight Airlines Ltd v. The Prime Minister* [5] as to the provision of a subsidy for the funding of security expenses for airlines, and it was also so stated in HCJ 1/98 *MK Eitan Cabel v. Prime Minister of Israel* [6] (paragraph 28 of the decision of Justice Cheshin) as to provision of support for the building of rental apartments.

In HCJ 2422/98 *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Labor and Social Affairs* [7] the petitioners claimed that the Ministry of Labor and Social Affairs was acting in a discriminatory manner in the allocation of funds from the Ministry's budget for the support of the needy during the period leading up to the Passover holiday (in the framework of operation "Passover Flour"), and was not allocating funds for the Arab needy during their holiday times. The Ministry of Labor and Social Affairs acknowledged its duty to act in an equal manner in the provision of support for the needy of different religions. As a result, the parties reached an agreement according to which the Ministry of Labor and Social Affairs would amend the criteria relating to support of needy families on the occasion of the Passover holiday such that it would also apply to members of other religions. The Court granted the parties' application and granted the agreement the status of a judgment.

6. From the general to the specific. It is clear that the Ministry of Religious Affairs must act in an egalitarian manner when it allocates funds from the Ministry's budget to provide for the religious needs of members of the various religions. In fact, there are differences in the religious needs of members of the different religions: each religious community has holidays of its own, tradition of its own, institutions of its own and needs of its own. It is possible and appropriate to take these differences into consideration, in connection with the allocation of funds from the State budget, out of a desire to provide for the special religious needs of each and every community. (See for example HCJ 98/54 *Lazarovitch v. Jerusalem Food Inspector* [8] (at 55-56); HCJ 200/83 *Wathad v. Minister of Finance* [9]). Therefore, allocation of funds from the state budget for the satisfaction of religious needs does not need to be equal in the formal sense. It must be equal in the substantive sense. An unequal allocation of funds can still be equal in a substantive sense.

However, from a substantive perspective, the differences that exist between living individuals, members of different religions, are blurred for deceased individuals of those same religions. The dignity of deceased individuals, which is derived from the dignity of living individuals, requires that the cemetery where they are buried be well-kept and well-maintained, and this is one and the same whether Jews, Muslims, Christians, or Druze are buried there. Therefore, substantive equality, relating to allocation of funds from the State budget for the maintenance of cemeteries, approximates formal equality.

Indeed, counsel for the Minister of Religious Affairs wholeheartedly agreed that the equality imperative also applies to the Ministry of Religious Affairs in the allocation of funds for the maintenance of cemeteries.

The question is, and opinions differ on this, whether the Ministry of Religious Affairs breached the equality imperative in its allocation of funds for the maintenance of cemeteries. In order to answer this question, it must be ascertained first what the directives of the Budget Law are as they pertain to the support of the Ministry of Religious Affairs for the maintenance of cemeteries, and then, how the Ministry implemented the law's directives.

The Law's Directives

7. The petitioner aims its arrows at two paragraphs in the budget of the Ministry of Religions (section no. 22) in the Budget Law of 1999: the first, which is found in Chapter (02) of Religious Services, is section 02-17 that deals with cemeteries; the second, which is found in Chapter (08) of Religious Sites, is section 08-20 which also deals with cemeteries. These sections are, according to the petitioner's claim, the root of the discrimination against Arabs as relates to cemeteries. To be precise, the petitioner does not claim discrimination against the Druze, who received in a separate budget in 1999 a relatively large sum (6 million NIS) for their cemeteries. The petitioner makes claims therefore, in the name of Muslim Arabs and Christian Arabs. These Arabs, according to its claim, receive from the Ministry of Religious Affairs only a small portion of the funds allocated for cemeteries, which does not reflect the relative proportion of Arabs in the general population.

The respondents claim, in turn, that the Budget Law itself, in the sections which relate to cemeteries, including sections that were not mentioned by the petitioner, does not discriminate between Jews and those who are not Jews, and that the implementation of the law by the Ministry of Religious Affairs also does not create such discrimination. In fact, they claim, the Arabs receive for their cemeteries the full proportional share they are entitled to of funds that are allocated for these purposes.

What, then, does the Budget Law establish as pertains to cemeteries?

8. The two sections in the budget of the Ministry of Religious Affairs, on which the petition relies, state (in the expenditure page) as follows:

02--17	Cemeteries	403 NIS	Thousand
02--17—14	Contribution to the budget of cemetery councils	201 NIS	Thousand
02--17—15	Evacuation, relief, burial	202 NIS	Thousand
08—20	Cemeteries	16,457 Thousand NIS	
08--20—12	Development of cemeteries	8025 NIS	Thousand
08--20—13	Development of cemeteries for alternative burial	868 NIS	Thousand
08--20—15	Reserves for cemeteries	2508 NIS	Thousand
08--20—17	Reserve for a master plan for multi-level burial	5056 NIS	Thousand

9. The petitioner claims that these two sections allocate money for Jewish cemeteries only, and therefore it asks that the Court determine that they are unlawful. In my opinion, it is neither necessary nor appropriate to determine that these sections are unlawful and that, therefore, they are void.

First, the Budget Law is a law, and the Court, respectful of the dignity of every law, is not willing to declare a directive in the law void unless it contradicts a directive with constitutional status. Indeed, the Budget Law is a unique law, and has special status in relation to the Budget Principles Law, 5745 – 1985. Indeed, the question has come up whether or not the Court has the grounds to declare as void a directive in an annual budget law which contradicts a directive in the Budget Principles Law, 5745 – 1985. (See HCJ 1438/98 *Conservative Movement v. Minister of Religious Affairs* [10]). However, that is not the question in the case before us. In the case before us the question is more difficult. The question is, whether the Court has the grounds to declare as void a directive in an annual budget law, even when it does not contradict a directive in the Budget Principles Law, for the reason that it violates the principle of equality. As said, the Court is not willing to declare as void a directive in the law unless it contradicts a directive with constitutional status. Such are the directives of the basic laws. However, there is not a directive in the basic laws, which specifically establishes the principle of equality. Indeed, there is a view, which also includes the view of judges, that human dignity, which was established as a directive in the Basic Law: Human Dignity and Liberty, includes by deduction the principle of equality. But this view has not risen to the status of law. Therefore, it does not consist, in its status today, of enough to declare as void a directive in the Budget Law, even if that directive violates the principle of equality.

Second, even if one section or another in the Budget Law allocates money for the needs of Jews alone, such as for the cemeteries of Jews alone, this still is not sufficient to indicate that it violates the principle of equality. After all, it is possible that along with this section there will be another section that will allocate money for the needs of Muslim Arabs, or the needs of Christian Arabs, in a manner that will not violate the equality between members of different religions. For example, in the budget of the Ministry of Religious Affairs for 1999 there are to be found, in the framework of allocation for religious services (section 02), the following sections: Religious Services for Karaites (section 02 -- 31), the Druze Religious Council (section 02 -- 32), Religious Services for Muslims (section 02 -- 33), Religious services for Christians (section 02 -- 34), and more. Are there grounds to say that a section which allocates money for Karaites or for Muslims, for needs related to religion, violates the principle of equality and therefore is to be declared void? In order to determine if there has been a violation of the principle of equality the full picture must be seen, namely the full budget, and a partial picture is not sufficient, namely just one section of the budget. Accordingly, one must see whether a section in the Budget Law which explicitly allocates money to members of a specific religion, or to members of another group, is not balanced out by other sections in the Budget Law, in a manner that realizes equality. From now on it is to be said that even if it were established explicitly in section 02-17 and in section 08 – 20, that they allocate money only to Jewish cemeteries, this would still not be sufficient to indicate that they violate the principle of equality, as long as the Budget Law, in an overall manner, fulfills this principle.

This is all the more so, when these two sections, based on their wording, refer to cemeteries and not to cemeteries for members of a certain religion. It is known, that it is a broad rule that it is proper to interpret every law, where the language and context permit, in a manner that will be commensurate with the basic values of the legal system, including the principle of equality. Certainly it is proper to do so before declaring as void a directive in the law as a result of violation of such a value. Therefore, this is also the appropriate action to be

taken as to section 02 -- 17 and section 08 -- 20 in the budget of the Ministry of Religious Affairs.

The conclusion is that it is neither appropriate nor necessary for the court to determine, as per the petitioner's application, that these two sections are unlawful and therefore void.

If so, the question that needs to be clarified is whether the Ministry of Religious Affairs is implementing the Budget Law, in all that pertains to cemeteries, in a manner that fulfills the principle of equality.

Implementation of the Law

10. The Ministry of Religious Affairs claims that it distributes the funds that were allocated in the Budget Law for cemeteries in a manner that fulfills the principle of equality and does not discriminate between Jewish cemeteries and other cemeteries.

The rule is that any discrimination is illegitimate, even if it is denied. Camouflage will not salvage discrimination. The substance and not the form are determinative. As Justice Berinson has said in a different context, H CJ 98/54 *Lazarovitch v. Jerusalem Food Inspector* [8] at p. 47: "This Court examines, as usual, both the external form and the internal substance of the acts of the authorities, the peel and the insides together, and will not leave as is, acts which indeed are wrapped in kosher outer clothing but whose insides are not as their outsides." From here on in it is to be said that it is sufficient that a government office implements the Budget Law in a manner that creates prohibited discrimination, for example on the basis of religion or nationality, to invalidate the implementation, and the fact that intent to discriminate was not proven or that intent to discriminate was denied is not sufficient to validate the discrimination. Attractive words are not sufficient to validate bad acts. The illegitimacy in discrimination is embodied within the act of discrimination. (See H CJ 1/98 *MK Eitan Cable v. Prime Minister of Israel* [6] (paragraph 21 of the judgment of Justice Cheshin). See also H CJ 392/72 *Berger v. District Committee for Building and Planning, Haifa Region* [11] (at p. 770); H CJ 118/62 *Landau v. Minister of Agriculture* [12] (at p. 2544); H CJ 953/87 *Poraz v. Mayor of Tel Aviv -- Jaffa* [13] (at p. 334)).

The question, therefore, is whether the sections of the Budget Law pertaining to cemeteries have been implemented in a manner that is discriminatory.

11. The primary facts as to the implementation of the sections in the Budget law that pertain to cemeteries are not in dispute. And these are the facts:

A. Section 02 -- 17 -- 14 establishes an amount of 201,000 NIS as "participation in the budget of the cemetery councils." However, in practice, a cemetery council has only been established for Jews in Jerusalem. See the Council of Jewish Cemeteries in Jerusalem Regulations 5727-1967. Therefore the Ministry of Religious Affairs allocated the entire amount to participation in the budget of the Jewish Cemeteries in Jerusalem Council.

B. Section 02 -- 17 -- 15 allocates the amount of 202,000 NIS for removal of fatal casualties in times of emergency. It is clear that in this matter there is no difference between fatal casualties on the basis of religion or nationality. In practice, during calm times this section is used for the purchase of equipment for times of emergency. This is how it has been for the past few years. The result is that in practice this section does not serve the needs of cemeteries. However there are no grounds to say that use of this section is discriminatory.

C. Section 08 -- 20 -- 12 allocates the amount of 8,025,000 NIS to the "development of cemeteries." The Ministry of Religious Affairs has established criteria for distribution of sums according to this section, and has not limited them to Jewish cemeteries. This is so in theory. However, in practice, out of this sum, 2,000,000 NIS has been allocated by the Ministry of Religious Affairs to restore the ancient cemetery in T'zfat (which is a Jewish cemetery) and the cemetery in Mount Olives in Jerusalem (also a Jewish cemetery), the remainder of the sum is distributed among 120 religious and regional councils, all of them

Jewish. In practice there is not a single Muslim or Christian religious or local council that received money on the basis of this section.

D. Section 08 -- 20 -- 13 establishes the amount of 868,000 NIS for "the development of cemeteries for alternative burial," in accordance with the Right to Alternative Civilian Burial Law, 5756-1996. This law was intended, as was stated in the explanatory note of the Bill, "to solve the problem of the burial of Jews, those who are not Jews or members of other recognized religious communities, who desire a burial that will take place according to their principles and worldview." (See *Hatza'ot Chok*--Official Gazette-Bills No. 2520, 5756-1996 at p. 600). However, the petitioner claims that in fact, Arabs do not need and will not request for themselves alternative civilian burial. Indeed, as can be seen from the response of the Ministry of Religious Affairs, to date there has not been a request on behalf of Arab entities, and it is not known of a request by Muslims or Christians, to use alternative burial services. It appears therefore that the section will not serve, and in any event will not serve in a significant manner, the burial needs of Arabs, at least in the near future.

E. Section 08--20 -- 15 allocates the amount of 2,508,000 NIS as "reserve for cemeteries." This section is designated for general development of Jewish cemeteries only.

F. Section 08--20 -- 17 was established as "reserve for a master plan for multi-level burial" and allocates the amount of 5,056,000 NIS for this purpose. To date, this section served to implement this program in Jewish cemeteries in the large cities (Jerusalem, Tel Aviv and Haifa). The Ministry of Religious Affairs notes that "in the future expanding the program to additional communities and additional religious communities will be considered"; and is of the opinion that half of the sum that was determined in this section is to be seen as a sum that is not designated specifically for members of a certain religion. However, in response to the petitioner's questions, the Ministry stated that it does not know of an Arab community in which there will be multi-level burial in the said budget year, and that no amount of money based on this section has ever been allocated to an Arab community, and that no request has been submitted on behalf of an Arab community to implement multi-level burial. It is clear, therefore, that in said budget year this section will not serve the burial needs of Arabs at all. Moreover, the likelihood that this section will serve the burial needs of Arabs in the near future is not great, among other reasons because the land shortage, which incentivizes multi-level burial, exists primarily in the large cities, and not in Arab communities.

In conclusion, of the budget of the Ministry of Religious Affairs designated for cemeteries in the year 1999, in section 02 -- 17 and in section 08 -- 20, only the amount of 202,000 NIS, which is designated for clearing of fatal casualties in times of emergency, and which appears not to be used to maintain cemeteries, may also serve a population that is not Jewish. The remainder of the amount, namely, the amount of 16,658,000 NIS serves Jewish cemeteries entirely (or almost entirely).

What is the reason that Arab, Muslim and Christian cemeteries, which serve more than one sixth of the total population in Israel, do not receive their portion of budget sections designated to serve cemeteries? We have not heard any reason from the Ministry of Religious Affairs that would explain why it has implemented these sections in a manner that seemingly violates equality.

12. The Ministry of Religious Affairs claims that this is only seemingly so but not so in practice, as, in the budget of the Ministry there is an additional section, section 08 -- 21, which is also utilized for Arab cemeteries. This section allocates the amount of 6,375,000 NIS for "religious structures of non-Jewish communities," and out of this amount 3,009,000 NIS for Muslim religious structures, 602,000 NIS for Bedouin religious structures, and 2,006,000 NIS for religious structures of Christian communities. What constitute religious structures for purposes of this section? The Ministry of Religious Affairs responds that it

includes Mosques, Churches, Holy Places, and more, and this also includes cemeteries. What is the amount that is allocated, in the framework of this section, for cemeteries? The amount of 2,006,000 NIS, which is allocated for religious structures of Christian Communities, serves entirely for the development of religious tourist structures in anticipation of the year 2000, and is not used for cemeteries; although the Ministry of Religious Affairs notes the possibility that an additional budget will be allocated for the purpose of the Ministry's preparedness for the year 2000, and if it is received, the amount of 300,000 NIS will be set aside for Christian cemeteries. Parenthetically, it is worth noting that from the Ministry of Religious Affairs' response it appears that both in 1997 and in 1998 no funds were allocated for Christian cemeteries. And as for Muslim religious structures, the Ministry of Religious Affairs estimates that of the amount of 3,009,000 NIS allocated for these structures, the amount of approximately 1,000,000 NIS will be used for cemeteries. Similarly, the amount of 200,000 NIS will be directed to Bedouin cemeteries.

However, even so, this section does not substantively change the picture as to the allocation of funds for Muslim and Christian cemeteries. First, to the extent that this section is also used for Muslim and Christian cemeteries, it is a matter of a small sum relative to the proportion of the Muslims and Christians in the population, which is not sufficient for realizing the requisite equality.

Second, according to the criteria of the Ministry of Religious Affairs, funds from this section are not allocated to a local authority (with the exception of the local authority of Bedouins in the Negev) but rather to one type of religious structure each year. Accordingly, the local authority must choose whether to ask for funds from this section, for example, to renovate a mosque or renovate a cemetery, and cannot ask for funds for both. It appears that here too equality has been harmed, as this is not the case for Jewish religious structures. For them, separate budget sections exist: for example, section 02-15 in which the amount of 2,157,000 NIS is set for "synagogues", and section 08-13 in which the amount of 38,119,000 NIS is set for the "development of synagogues and ritual baths".

Third, in the framework of section 08-21 the Ministry of Religious Affairs does not participate in the ongoing maintenance costs of Arab cemeteries, as it does for Jewish cemeteries, but only in the costs of renovation and development of the cemeteries.

Fourth, if we turn to other sections that may be used for Arab cemeteries, such as section 08-21, it is proper to inquire whether there are also other sections which serve Jewish cemeteries. This is the petitioner's claim. According to its claim, it is also necessary to take into account the budgeting for local religious councils in accordance with the Jewish Religious Services Law [Consolidated Version] 5731-1971. According to section 02-12 in the budget of the Ministry of Religious Affairs, Jewish religious councils receive the amount of 149,827,000 NIS for 1999. As can be seen from the Ministry's response, about 10% of this amount is used for burial services. It appears that there is no equivalent or similar financing for burial services of Arabs. Therefore, if the budget of the Jewish religious councils is also taken into account, it appears that the inequality in the allocation of funds for Arab cemeteries is only exacerbated.

13. I would like to add a comment to all this. After I turned the Ministry of Religious Affairs' budget over and over, as would an interpreter of dreams, for the purpose of answering the question what amount was allocated to Jewish cemeteries and what amount to other cemeteries, I felt as though I was getting lost in the midst of the sections and numbers. One can't see the answer for the sections. Because of the structure and the dispersion of the sections it can be argued one way, as the petitioner does, or otherwise, as the Ministry does, and we don't have a clear answer.

This is not how a government ministry's budget should be constructed. The Ministry's budget should be clear as is to the average person outside the Ministry, including a judge, and

not just to those who are in the know in the Ministry of Religious Affairs, or Ministry of Finance. As, after all, the budget is the law of the State, and this is why it benefits from the status and immunity of a law, and this is the law that determines what will be done with the State's assets, which are the assets of all the citizens. And so, is it not obvious that the law should be clear? The law, including the budget law, should be clear, not only so that any person can read and understand the law, as is the imperative of democracy, but also so that a path will not be opened before the employees of the Ministry, of any ministry, to make inappropriate manipulations of the budget.

Why for example, does section 08 -- 20 refer to "cemeteries" generally, and in its framework section 08 -- 20 -- 12 refers to "development of cemeteries" generally, and seemingly it relates to cemeteries for members of all religions, but the Ministry of Religious Affairs states that development of cemeteries for Muslims is included in section 08 -- 21, which refers to "religious structures for non-Jewish communities"? If section 08 -- 20 is intended to serve only Jewish cemeteries, as is in fact the case, it is appropriate to state this explicitly, and then it is appropriate to establish a separate section for other cemeteries; but the Ministry does not say this, rather it says in its response that section 08 -- 20 also partially serves cemeteries that are not Jewish; if that is the case, why is it necessary to hide Muslim cemeteries also in section 08 -- 21 which deals with religious structures?

It would be proper for the Ministry's employees who prepare the budget proposal, and no less so for employees of the Ministry of Finance, to take diligent care that the budget law is clearer and more methodical.

14. In any event, there is no need to state specific amounts in order to conclude that the petitioner has shown that inequality exists in the allocation of funds from the budget of the Ministry of Religious Affairs for Jewish cemeteries on the one hand and Arab cemeteries (excluding Druze cemeteries) on the other. The petitioner has shown this with dual significance. First, it has shown this in numerical data from the Budget Law. Second, it has also shown this in descriptions and pictures that were attached to the petition, as to the difficult situation that prevails in Arab cemeteries. The Ministry of Religious Affairs claims in its response that the pictures and descriptions relate to deserted cemeteries, which the Ministry no longer deals with. However, the picture arises from the petition of severe neglect also of Arab cemeteries that are not deserted, if only some of them, and does not give respect neither to the dead nor to the living.

This picture is in line with the picture that arises from a letter of the Attorney General, dated 1.26.95, to the Prime Minister and the Minister of Religious Affairs in which he alerted that "the non-Jewish population [receives] a low proportion of the support budget [of the Ministry of Religious Affairs] without any proportion to its segment in the general population in Israel," and raised a proposal for "more balanced budgeting for the religious needs and the religious judicial services of the non-Jewish communities in the State." Similar things were also said in the Report of the State Comptroller, number 46 from the year 1995 [29], and the following was stated (at p. 287) in it: "in the opinion of the office of the State Comptroller, the Ministry of Religious Affairs is to operate to increase the equality among the various segments of the population, and to ensure that the portion the Muslims have in the budget of the Ministry will match their relative proportion in the population." This Court received a similar impression in the previous petition submitted by the petitioner: HCJ 240/98. See *supra* paragraph 2.

This being the case, and after the petitioner has shown that the Ministry of Religious Affairs did not fulfill its duty of equality in allocation of funds for cemeteries in the year 1999, the question arises what is the remedy that may and that should be awarded under the circumstances.

The Remedy

15. Seemingly, it would be appropriate for the Court to make a declaration that the Ministry of Religious Affairs is to operate in an equal manner with Jewish cemeteries and other cemeteries in all that relates to allocation of funds for cemeteries. However, such a declaration is superfluous, not only because the matter is clear and obvious on its own, but also because the Ministry Of Religious Affairs takes upon itself, and in its response to the court even glorifies, the principle of equality.

The problem does not lie with the principle but with the implementation. The question is, first of all, what is the implementation that is dictated by the principle. Therefore, it is appropriate for the court to explain, in order to remove any obstacles down the road, what the implementation is that is dictated by the principle of equality in the above matter.

Since the Ministry of Religious Affairs, like any public entity, is obligated by the principle of equality in all that it does, it must fulfill this principle already at the phase of the preparation of the proposed budget for the next year. At that phase, the employees of the Ministry, together with the employees of the Ministry of Finance, can act in one of two primary ways. In the first way, the Ministry of Religious Affairs can establish in the budget bill one sum for the cemeteries of all the religions, in order for this amount to be distributed later by the Ministry of Religious Affairs amongst the cemeteries of the various religions, of course in an equal manner. In the second way, the Ministry of Religious Affairs can allocate in the budget bill various amounts to cemeteries according to the various religions, for each religion a set sum.

16. According to the second way, the Ministry of Religious Affairs needs to fulfill the duty of equality already at the bill phase. This means that that the amounts that will be allocated to the cemeteries of the various religions, according to religious affiliation, will match the relative proportion of members of each religion within the population in Israel. And why? Because this proportionality is, in relation to cemeteries, the primary criterion, even if not the only criterion, on the path to equality.

It is appropriate to add, in order to avoid error, several comments as road markers. First, according to the proportionality criterion, the goal for distribution of the money among the cemeteries must be allocation according to the relative proportion of members of each religion in the population, and the result of the distribution of the money must match the said proportion closely. What does this mean? In distributing the money significant deviation from the relative proportion must be avoided; with that, it is doubtful whether it is possible to be exacting as in a mathematical formula, and whether it is necessary to be accurate to the hair's breath, in dividing the money. A slight deviation from the relative partiality does not necessarily mean discrimination.

Second, the criterion of proportionality is not necessarily the only criterion. It is possible to knowingly deviate from this criterion, *inter alia*, for purposes of affirmative action. Affirmative action of a specific public or specific group, that seemingly violates equality, in fact advances equality. See, for example, H CJ 453/94 *Israel Women's Network v. Government of Israel* [14]. It is permitted, and may be appropriate, when it is directed at compensating a weak public or a weak group, which suffers from a situation of sub-equality, in particular if this situation stems from ongoing deprivation, knowing or unknowing, intentional or unintentional. This court so decided, for example, regarding government support for the establishment of permanent settlements for Bedouins: H CJ 528/88 *Avitan v. Israel Land Administration* [15]. The court determined that it is not illegitimate for such support to be given to Bedouins alone. And this is what Justice Or said (at page 299):

"The principle of equality comes to serve the purpose of achieving a just result. It is neither the 'technical' nor 'the formal' equality that is to be protected, but rather substantive equality. Meaning, equality among equals. People, or groups of people, differ in more ways than one in their conditions, characteristics, and

needs, and at times it is necessary to discriminate between those that are not equal in order to protect the weak person or the needy person, to encourage him and advance him. Equality among those that are not equal is not, at times, anything other than mockery of the poor.”

We need not go far to attest to this. The Ministry of Religious Affairs adopted a five-year plan for advancing the Druze community, and in the framework of this program allocated in said budget year the amount of 6,000,000 NIS for Druze cemeteries. That is an amount that is relatively high compared to the amount allocated to Muslim and Christian cemeteries. It turns out that this is affirmative action that came to compensate the Druze community for lesser support in the past and to advance equality. Therefore, this is not prohibited, as long as such preference is not done at the expense of equality among the other communities. Meaning, affirmative action which benefits the Druze community is not meant to come at the expense, for example, of the Muslim community, in a manner that will create inequality or exacerbate inequality, for example, between Muslims and Jews. In other words, affirmative action toward the Druze does not justify inequality between Muslims and Jews.

Third, the proportionality criterion, in the context of cemeteries, is built primarily on religious affiliation, as burial in Israel is primarily religious burial. However there are exceptions to this. These exceptions have recently received legitimacy in the law: the Right to Alternative Civilian Burial Law, 5756-1996. According to this law every person has a right to be buried in a civilian cemetery in which the burial is done according to their worldview, and for this purpose the law determines that there will be cemeteries for alternative civilian burial in various regions of the country with reasonable distances between them. Therefore, at the time that money allocated for cemeteries is distributed, the need to allocate money in an appropriate measure for alternative civilian burial cemeteries is also to be taken into account, in accordance with the proportionality criterion.

Finally, even though the Ministry of Religious Affairs must fulfill the duty of equality already at the phase in which it prepares the bill, the question remains what is the possible appropriate remedy if the Ministry does not fulfill the duty of equality at that phase. It is known that there is a difference, as to every administrative authority, between the realm of the duty of the authority and the realm of the judicial remedy. The remedy the court sees fit to award is dependent on the circumstances of the case, including the substance of the administrative act. Accordingly, it is possible that an administrative authority will breach a duty, and despite this the court will not find it proper under the circumstances, to grant a remedy for the breach, for example, if the petition was delayed in its filing or the act is not justiciable. *Inter alia*, the court will not see fit to award a remedy in the case of a defect in the legislative process, from the stage of the bill proposal to the stage of the Knesset vote, with the exception perhaps of rare and unusual cases. (See MApp 166/84 *Yeshivat Tomchei T'mimim Mercazit v State of Israel* [16]; HCJ 761/86 *Miari v. Knesset Speaker* [17]). What will the appropriate remedy be, then, at the phase of preparation of an annual budget law which clearly violates the principle of equality? There is no need to answer this question in this petition. However, without connection to the question of the judicial remedy, it is to be hoped that employees of the Ministry preparing the bill, as well as employees of the Ministry of Finance and the legal advisors that guide them in legal questions, fulfill the duty of equality lawfully.

17. And what if the budget law takes the first path, and allocates one sum for all cemeteries, without distinction based on religious affiliation? In such a case, it is the duty of the Ministry of Religious Affairs to follow the appropriate path such that this sum will be distributed in an equal manner. The appropriate path is to determine egalitarian, clear and transparent criteria. Indeed section 3a of the Budget Principles Law, which requires the establishment of egalitarian criteria for the purpose of providing support from the state budget for public institutions, does not apply to support from the state budget for local authorities.

But there are situations or matters in which distribution of the resources of the State or award of certain rights requires the establishment of egalitarian criteria. Such was decided regarding support of public institutions even before the Budget Principles Law required the establishment of egalitarian criteria. (See, for example HCJ 59/88 *Tzaban v. Minister of Finance* [17] (at p. 706)). This has also been decided in other contexts. (See HCJ 205/94 *Nof v. Ministry of Defence* [4] at p. 463; HCJ 1689/94 *Harrari v. Minister of the Interior* [18] at p. 19; HCJ 4146/95 *Estate of the Deceased Lily Dankner v. Antiquities Authority* [19] at pp. 790-791. See also I. Zamir *Administrative Power* (1996) [22] at pp. 780-782.) This is also appropriate in this context.

18. The petitioner who requested that egalitarian criteria be established for distribution of the amount that was allocated for cemeteries, does not suffice with this. It requests, in addition, that the Minister of Religious Affairs give a reason "as to why sums of money designated for the maintenance, expansion and renovation of cemeteries of the Arab communities in Israel are not to be allocated."

Indeed, as arises from this decision, the amount of money that was allocated to cemeteries in the budget of the Ministry of Religious Affairs for the year 1999 was not distributed in an equal manner, and from a substantive perspective it would have been appropriate to order the Ministry of Religious Affairs to change the distribution for that year in such a manner that the equality between cemeteries belonging to different religions would be fulfilled. However, as occurs more than once in petitions of this type, in particular when there is a need to discuss facts or make determinations as to a substantive question, the discussion goes past a given budget year. Indeed, even in such a case the court still can, if it is justified by the circumstances of the case, provide a remedy that will relate retroactively to a budget year that has already ended. But in every such case the difficulty involved in granting an order that will obligate a government ministry to allocate money from the current year's budget for purposes of a matter that was not included in this budget, such as, for purposes of support that should have been given from the budget of the last year, is not to be ignored.

In order to overcome a difficulty of this type the Court may, if in its opinion the circumstances of the case justify it, issue an interlocutory order that will secure a specific amount from the budget of the said year until the petition is decided, or take other steps in order not to frustrate the granting of an appropriate remedy. But in the circumstances of the present case, the Court did not find it appropriate to issue this or any other interlocutory order.

In my opinion in the circumstances of the present case there is no justification to order the payment of money from this year's budget of the Ministry of Religious Affairs for the purpose of maintenance of Arab cemeteries for the year that has passed. The money is needed to a great extent for ongoing expenses, such as cleaning work, gardening, security and the like. It is proper to assume that the money for these and other expenses that was not available last year was not spent. If this is the case, what is the justification for paying money for expenses that were not spent? So too, it is not possible to pay money without detailed and well grounded requests as to last year, which we do not have. Who is to be paid and how much is to be paid? Indeed the local Arab authorities or other Arab entities, which maintain the cemeteries, are not even represented before the Court, and the court does not know what their needs and requests are. And finally, the primary purpose of the petition is not to be found in the receipt of money for the year in which the petition was filed, but rather, the purpose of the petition is primarily to change the situation from here on in, in a manner that will fulfill the principal of equality.

Therefore, in my opinion the balance of considerations which relate to the issue leads to the conclusion not to order the Ministry of Religious Affairs to pay the local authorities or other unknown entities unknown sums for the past year.

19. The situation is different as to the present budget year: the year 2000. In the present year it is still possible to distribute the money from the budget of the Ministry of Religious Affairs in a manner that realizes equality between the cemeteries of the different religions, and it is still possible to order and to receive requests for financial support on behalf of authorities and entities which maintain the cemeteries of members of the various religions.

The Ministry of Religious Affairs, that last year did not fulfill the duty of equality between cemeteries, can and must prepare to fulfill the duty this year, and from here on in, as is required by this judgment.

Indeed, it is possible that the Ministry of Religious Affairs has already decided how to allocate the amount that was determined in the budget of the Ministry for cemeteries this year; it is possible that it has already notified the entities that are to receive the money, and they have certainly made plans to operate this year in accordance with the notification; and it is also possible that it has already transferred part of this money to these entities. However, and despite a possible difficulty, the Ministry still can and needs to get ready, at this stage in the year, in a manner that will realize equality among the cemeteries, even if this entails administrative effort and even if it entails adding to the budget for cemeteries. If indeed there is a need for additional budget, the Ministry will need to operate (with the assistance of the Ministry of Finance, if the assistance is needed) in order to obtain the necessary additional budget by means of savings on the Ministry's other budget sections, or from the Ministry's reserve budget section, or by another way

20. In conclusion, the Ministry of Religious Affairs is to operate based on the principle of equality, as stated in this judgment, as relates to the allocation of money that was determined in the Ministry's budget for cemeteries.

In accordance with this principle, we order the Ministry of Religious Affairs to allocate the money that was determined in the budget of the Ministry of Religious Affairs for the year 2000, for the purpose of the cemeteries of members of the various religions, in an equal manner.

The Ministry of Religious Affairs will pay the petitioner court expenses in the total amount of 20,000 NIS.

Justice D. Beinisch

I agree with the judgment of my colleague Justice Zamir. In light of the conclusion which my colleague reached relative to the breach of the principle of equality by the Ministry of Religious Affairs in the implementation of the Budget Law, I do not see a need to relate to the weighty question as to whether the principle of equality is part of human dignity.

President A. Barak

I agree with the judgment of my colleague, Justice Zamir. I wish only to add the following: my fundamental position is that equality constitutes a right possessing constitutional status (see A. Barak, *Judicial Construction* (Vol. 3, 1994) [23] at p. 423). It is contained within the right to dignity. Indeed, the principle of equality is derived from human dignity and is bound to it by an unseverable bond (see Y. Carp, 'The Basic Law: Human Dignity and Liberty – A Biography of Power Struggles' [25] at p. 352, and Henkin, 'Human Dignity and Constitutional Rights' [27] at p. 212).

H. Cohn expressed this well when he noted:

“The dignity which may not be violated and which is entitled to protection is not just a person's good name, but also his status as equal among equals. The damage to his dignity is not just in slander or insults and curses, but also in

discrimination and deprivation, unequal treatment and treatment that is racist or degrading. The protection of human dignity is not just the prohibition of defamation, but also the assurance of equality of rights and chances, and the prevention of any discrimination for reasons of gender, religion, race, language, opinion, political or social association, family affiliation, ethnic origins, property or education" (H. H. Cohn, 'The Values of a Jewish and Democratic State — Studies in the Basic Law: Human Dignity and Liberty' [26] at 32).

Therefore, I am prepared -- if called upon -- to examine whether a regular law violates the principle of equality unlawfully (meaning, without fulfilling the directives of the limitations clause). In this framework it would be appropriate to examine whether the Budget Law has a problematic aspect that is unique to it. This examination is not necessary in the petition before us -- and my comments therefore are obiter dicta -- since my colleague's interpretation of the Budget Law -- an interpretation that is agreeable to me -- leads to the conclusion that the allocation of funds established in it must be undertaken in an egalitarian manner. Indeed, of two possible interpretations one must choose the interpretation that is consistent with the Basic Law (see HCJ 4562/92 *Zandberg v. Broadcasting Authority* [20] (at p. 810)). The accepted approach today is thereby expressed, according to which "the Court will not decide a constitutional problem... if there is another reason on the basis of which it is possible to determine the matter under consideration" (President Shamgar in CA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village* [21] (at p. 350)).

Therefore, it has been decided as per the judgment of Justice I. Zamir.

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April 18, 2000