HCJ 5492/07
HCJ 7677/07
HCJ 4820/08

Petitioner in 5492/07: **Smadar Boaron**
Petitioner in 7677/07: **Noah Kariv**
Petitioners in 4820/08: **1. Malka Stier**
2. Shulamit Gabay Galoni
3. Cheli Juliet

v.

National Labour Court
National Insurance Institute

The Supreme Court sitting as the High Court of Justice
[21 July 2009]

Before President D. Beinisch, Deputy President E. Rivlin, and Justices A. Procaccia, E. Levy, E. Arbel, E. Hayut, H. Melcer

Petitions for an order *nisi* and for an interim order.

Facts: Four widows who had each been receiving either a dependents allowance or a survivors allowance in accordance with the provisions of the National Insurance Law [Consolidated Version], 5755-1995, received notices from the National Insurance Institute indicating that their allowances had been discontinued — as of the time that the Institute had determined that each had begun living together with a new partner in a common-law marriage. After the relevant regional labour courts ruled in favor of the petitioners, the National Labour Court upheld the discontinuation of the allowances for all of them.

Held: The National Labour Court's decision involved no substantive legal error requiring the intervention of the High Court of Justice. Sections 255 and 262 of the National Insurance Law refer to the discontinuation of a survivor's allowance to a widow who has remarried; s. 135 refers to the discontinuation

of a dependents allowance to a widow who has remarried. Neither section refers specifically to remarriage in the context of a common-law relationship. However, the statute's definitional section specifically defines a wife as including a common-law wife, and it is this definition that entitles a woman whose common-law husband has died in either a work accident or of natural causes to receive the relevant type of allowance on the same ground that an "official" widow receives such an allowance. The question to be decided, therefore, is whether the provisions relating to the discontinuation of the allowance upon remarriage, as outlined in the above-mentioned sections, apply to widows or widowers who have entered into common-law relationships as well as to those who have officially remarried.

The statute must be interpreted in light of its purpose and in light of its specific language. The purpose of both allowances is to provide financial support to a person after the death of his or her partner whose income had provided support; this support is discontinued at the time of a remarriage under the assumption that the new couple will be pooling income and sharing expenses and that the support from the National Insurance Institute is no longer necessary. This is also why the allowance is generally renewed if the second marriage ends within a certain period of time. This purpose supports the cancellation of benefits to widows and widowers who have entered into common-law relationships, as they too are benefiting from the financial aspects of a shared household, given that the existence of such a shared household is a prerequisite for a determination that a relationship reaches the level of a common-law marriage.

The petitioners had argued that common-law relationships and official marriages should not be deemed comparable in terms of the level of support provided, due to the relative instability of a common-law relationship which has not been formalized through a wedding ceremony. This argument fails because the statutory provisions regarding the renewal of allowances upon the conclusion of a remarriage would also apply to the termination of a common-law relationship, so that the supposed relative instability of the latter form of relationship is not a relevant consideration.

The statutory language also supports the determination that a common-law wife should lose her entitlement to a survivors or dependents allowance. The definition of a wife in the definitional section expressly refers to a common-law wife, and nothing else in the text of the statute contradicts the inclusion of a common-law relationship within the definition of remarriage. The fact

that the provisions pertaining to the cancellation of a right to an allowance refer to specific dates such as the date of a marriage or of the dissolution of a marriage does not conflict with this interpretation; the National Insurance Institute is able to make determinations regarding the beginning and ending of a common-law relationship as well, albeit not as easily as in the case of an official marriage.

Petitions denied.

Legislation cited:

Basic Law: Human Dignity and Liberty.
Civil Wrongs Ordinance [New Version], 5728-1968.
Families of Soldiers Killed in Action Law (Pensions and Rehabilitation), 5710-1950.
Income Support Law, 5741-1980.
Inheritance Law, 5725-1965.
Interpretation Law, 5741-1981, s. 2.
Names Law, 5716-1956.
National Insurance Law [Consolidated Version], 5755-1995, ss. 1, 130(b), 135(a)-(c), 238, 255(b)-(d), 262.
National Insurance Regulations (Dependents allowance for Remarried Widows), 5737-1976.
Public Service Law (Pensions) [Consolidated Version], 5730-1970.

Israeli Supreme Court cases cited:

[1] HCJ 6522/06 *Kochavi v. the Jerusalem Labour Court* (2009) (not yet reported).
[2] HCJ 8929/08 *Ben Nun v. National Labour Court* (2009) (not yet reported).
[3] HCJ 525/84 *Hatib v. National Labour Court* [1986] IsrSC 40(1) 673.
[4] HCJ 840/03 *Israel Professional Firefighters Union — Firefighters Committee v. Jerusalem Labour Court* [2003] IsrSC 57(6) 810.
[5] HCJ 5666/03 *Kav LaOved Organization v. National Labour Court* (2007) (not yet reported).
[6] MApp 67/84 *Hadad v. Paz* [1985] IsrSC 39(1) 667.
[7] CA 2000/97 *Lindorn v. Kranit Fund for Compensation of Road Accident Victims* [1999] IsrSC 55(1) 12.

[8] CA 8569/06 *Director of Land Taxation, Haifa Office v. Polity* (2008) (not yet reported).
[9] CA 3622/96 *Hacham v. Kupat Holim "Maccabi"* [1998] IsrSC 52(2) 638.
[10] FH 40/80 *Kenig v. Cohen*, [1982] IsrSC 36(3) 701.
[11] LCA 3899/04 *State of Israel v. Even Zohar* (2006) (unreported).
[12] HCJ 6247/04 *Gorodetzki v. Minister of Interior* [12],(2010) (not yet reported).
[13] AAA 4614/05 *State of Israel v. Oren* (2006) (unreported).
[14] CA 1966/07 *Ariel v. Egged Members Pension Fund Ltd* (2010) (unreported).
[15] HCJ 2316/05 *A v. National Labour Court* (2005) (unreported).
[16] HCJ 4193/04 *Gartner-Goldschmidt v. National Labour Court* (2010) (not yet reported).
[17] HCJ 953/87 *Poraz v. Mayor of Tel Aviv Shlomo Lahat* [1988] IsrSC42(2) 309.
[18] HCJ 6427/02 *Movement for Quality Government v. Knesset* (2006) (unreported).
[19] HCJ 4124/00 *Yekutieli v. Minister of Religion* (2010) (not yet reported).
[20] HCJFH 4191/97 *Recanat v. National Labour Court* [2000] IsrSC 54(5) 330.
[21] CrimA 4341/99 *Vidal v. State of Israel* [1999] IsrSC 54(3) 329.
[22] CA 2622/01 *Director of Land Appreciation Tax v. Levanon* [2002] IsrSC 57(5) 309.
[23] CA 165/82 *Kibbutz Hatzor v. Rehovot Assessment Officer* [1985] IsrSC 39(2) 70.
[24] CA 1186/93 *State of Israel, Minister of Justice v. Israel Discount Bank Ltd* [1994] IsrSC 48(5) 353.
[25] HCJ 5304/02 *Israel Association of Victims of Work Accidents and Widows of Victims of Work Accidents v. State of Israel, Knesset* [2004] IsrSC 59(2) 134.
[26] HCJ 8487/03 *IDF Disabled Veterans Organization v. Minister of Defense* (2006) (unreported).
[27] HCJ 9863/06 *Karan - Society of Combat Veteran Quadriplegics v. State of Israel - Minister of Health* (2008) (not yet reported).
[28] HCJ 693/91 *Efrat v. Director of the Population Registry* [1993] IsrSC 47(1) 749.
[29] HCJ 6304/09 *Lahav v. Attorney General* (2010) (not yet reported).
[30] CA 233/98 *Katz v. Keren Makefet* [2000] IsrSC 54(5) 493.

Labour Court cases cited:
[31] NLC 54/85-0 *Ornan v. National Insurance Institute* [1994] ILC 27 400.
[32] NIIApp1407/04 *NII v. Friman* (2006) (not yet reported).
[33] NIIApp 731/07 *Kirshner v. NII* (2009) (not yet reported).
[34] NIIApp 1212/04 *Apter v. NII* [2005] ILC 40 461.

[35] NLC 30/19-0 *NII v. Mano* [1970] ILC 2 (1) 72.
[36] NLC 52/69-0 *Leon v. NII* [1992] ILC 24(1) 458.
[37] NLC 53/6-7 *Batar v. Central Pension Fund of Histradrut Workers, Ltd* [1994] ILC 27(1) 135.
[38] NLC 57/6-2 *Central Pension Fund of Histradrut Workers, Ltd v. Kochavi* (1997) (unreported).
[39] NIIApp 1169/01 *Avital v. NII* (2004) (unreported).
[40] NIIApp 779/06 *NII v. Wolkowitz* (2008) (not yet reported).
[41] NLC 56/255-0 *Atar v. NII* [1997] ILC 32 385.

For the petitioner in HCJ 5492/07 — T. Shilo.
For the petitioner in HCJ 7677/07 — N. Ashar; N. Weinberg-Eyal.
For the petitioners in HCJ 4820/08 — Y. Sirota; O Turner-Sternberg.
For respondent 2 — O. Rosen-Amir; T. Kazari.

JUDGMENT

Justice E. Hayut

Is a widow, who has not officially remarried but who is living as a common-law wife, to be treated as a widow who has remarried and is therefore no longer entitled to a survivors or a dependents allowance? This is the main question we face in the petitions that have been joined here for the purpose of deliberation.

The petitioners

1. The petitioner in HCJ 5492/07, Ms. Smadar Boaron (hereinafter: "Boaron"), was widowed on 27 October 1996 and began receiving a dependents allowance from respondent 2 (hereinafter: "the NII" or "the Institute"). In 1998, Boaron began to live with her current partner, Mr. Tzachi Fink (hereinafter: "Fink"), first in a rented apartment and later in an apartment that the two purchased together in Rishon LeZion. Boaron and Fink never married (Boaron has stated that she did not feel confident regarding a marriage to Fink because he is five years younger than she is), but approximately eight years ago, she attached the name Fink to her family name. Two children were born to the couple — a son on 14 July 1999, and a

daughter on 21 August 2003. On 16 May 2004, the NII informed Boaron that in light of information it received regarding her case, it considered her to be a "married woman" as of 14 July 1999 (the date on which the couple's son was born), that her entitlement to a dependents allowance had therefore expired and that she was instead entitled to a one-time grant. After delivering this notice, the NII stopped paying Boaron a dependents allowance, and it deducted, from the one-time grant it paid to her, the amount of the allowances paid to her since the day as of which, as stated, the NII considered her to be a married woman.

2. The petitioner in HCJ 7677/07, Ms. Noah Kariv (hereinafter: "Kariv"), was widowed on 15 July 1998 and began receiving a survivors allowance from the NII. Kariv lives with her life partner, Mr. Eliezer Lavie (hereinafter: "Lavie"), in his home on Kibbutz Ein Hashofet (hereinafter: "the Kibbutz"). On 1 August 2002, in order to arrange the mutual rights and obligations resulting from Kariv's residence on the Kibbutz, the couple signed an agreement with the Kibbutz, according to which all of Kariv's financial affairs would be conducted through Lavie's personal budget, and he would be responsible to the Kibbutz for all her obligations. In a letter dated 24 February 2005, the NII informed Kariv that her survivors allowance had been revoked retroactively, from 1 August 2002, the date on which the said agreement with the Kibbutz was signed. The letter also informed her that she was entitled to a one-time grant instead of the allowance.

3. Petitioner 1 in HCJ 4820/08, Ms. Malka Steir (hereinafter: "Steir"), was widowed on 8 March 1981 and began receiving a dependents allowance from the NII. Steir's husband was killed in a work accident when serving as first mate on the ship Masada, which sank, and their son was born after his death (on 9 November 1981). At some point, Steir began to live with Mr. Eli Tasman, and their daughter was born on 10 April 1989. In March 2004, the NII informed Steir that it would no longer pay her a dependents allowance because it considered her to be a "married woman" as of 18 September 1994 (the date on which the National Labour Court rendered a decision in NLC 54/85-0 *Ornan v. National Insurance Institute* [31], to which I will refer below).

4. Petitioner 2 in HCJ 4820/08, Ms. Shulamit Gabay Galoni (hereinafter: "Gabay Galoni"), was widowed in February of 1980 and began receiving a dependents allowance from the NII for herself and for her two daughters. After her daughters grew up, Gabay Galoni continued to receive a dependents allowance for herself only. Gabay Galoni has been living with

Mr. Meir Galoni since 1991 and two children have been born to them — a son on 10 September 1991 and a daughter on 1 February 1993. The couple has no agreement between them. In May of 2003, the NII stopped paying the dependents allowance to Gabay Galoni, and a month later they informed her that the payment had been discontinued because the NII considered her to be a "married woman" as of 18 September 1994 (the date on which, as stated, the said decision was rendered in *Ornan v. National Insurance Institute* [31]).

5. Petitioner 3 in HCJ 4280/08, Ms. Cheli Juliet (hereinafter: "Juliet"), was widowed in 1991 and began receiving a survivors allowance from the NII. Juliet has lived with Mr. Yigal Erez (hereinafter: "Erez") since 1998. On 18 October 2004, the NII informed Juliet that her entitlement to a survivors allowance had ended as of 1 February 1998, the date on which she became Erez' common-law wife. The NII also informed Juliet that because the payment of the allowance had been discontinued, she owed a debt in the amount of NIS 54,231; however, on 28 June 2005 it notified her that this debt had been cancelled. In any event, the NII discontinued its payment of a survivors allowance to Juliet as of 1 March 2004.

In light of the NII's decision to discontinue its payments of survivors allowances and dependents allowances to these petitioners, they filed claims in the regional labour courts that focused on the question of whether a widow who has not remarried but who lives as a common-law wife is entitled to continue receiving a survivors allowance or a dependents allowance from the NII.

The judgments in the regional labour courts

6. On 10 October 2005 the Nazareth Regional Labour Court allowed Kariv's claim, and held that ss. 255 and 262 of the National Insurance Law prescribe the circumstances under which a remarried widow's entitlement to a dependents allowance ends and those under which a remarried widow's entitlement is reinstated. The court also held that the legislature had chosen to use "phrases that refer only to the world of marriage, in its original and narrow meaning." The Nazareth Regional Labour Court also held that the denial of a spouse's rights was not possible without an express statutory provision and that —

> '… the application of the provisions of s. 255 of the [National Insurance] Law to a "common-law wife/husband" requires additional changes in the section, apart from changing the word "married woman" wherever it appears to "common-law wife"; therefore, and in view of the case-law rule regarding a common-law wife/husband, it cannot be that this obstacle can simply be removed in some way other than a legislative change.'

On 20 May 2007, the Haifa Regional Labour Court joined in this holding and ruled in favor of Juliet. The court held that since the legislature had used clear language, according to which only a remarried widow would lose her entitlement to an allowance —

> 'We cannot accept the argument that a widow who has begun a relationship with a new partner without formally marrying him is no longer entitled to a survivors allowance. Since the legislature determined that entitlement to an allowance lapses only upon the widow's remarriage, only the act of marriage can cancel her right to an allowance, and no other act — including her becoming the common-law wife of another man — can do so.'

The court referred in its judgment to the decision of Vice President Elisheva Barak Ososkin in NIIApp 1407/04 *National Insurance Institute v. Friman* [32], and held that "when there is no commitment by way of marriage, a person who has a common-law husband should not lose entitlement to a survivors allowance, because the institution of common-law marriage is not a stable one."

7. Regarding s. 135 of the National Insurance Law, the Tel Aviv-Jaffa Regional Labour Court granted Boaron's claim against the NII, and held that according to the National Insurance Law [Consolidated Version] 5755-1995 (hereinafter: "the National Insurance Law"), entitlement to a dependents allowance expires only upon a widow's remarriage and that "only the act of marriage will cancel [the widow's] entitlement to the allowance, and no other act will do this, including her becoming another person's 'common-law wife'". The Regional Labour Court held further that in light of the statutory language, s. 135 of the National Insurance Law cannot be applied to a widow who has become the common-law wife of another man, and noted that the section deals with the "specific dates on which a widow's entitlement to a dependents allowance lapses or is renewed, and all those dates refer to the date of the marriage"; furthermore, "regarding a person who is a common-

law wife, it is clear that the dates of the beginning of the relationship, as well as its end, are not formal and clear, and therefore they cannot fall within the framework of the said section." The Regional Labour Court rejected the NII's claims that the National Labour Court's holding in *Ornan v. National Insurance Institute* [31] supports the said interpretation of s. 135 of the National Insurance Law, and held that in the case before it, "the terms that are repeated, and under which the expiration of entitlement to an allowance, and the entitlement to a grant, are tied to specific dates, which are connected to the marriage process — all these lead me to the conclusion that the legislature's intention regarding this section, given that it used the term "married", was to refer to official marriage, and not to the institution of "common-law spouses". In the end, the Regional Labour Court held that the same result will be reached upon a comparison to the Families of Soldiers Killed in Action Law (Pensions and Rehabilitation), 5710-1950 (hereinafter: the "Families of Soldiers Killed in Action Law").

On 7 February 2006, the Haifa Regional Labour Court granted Gabay Galoni's claim, referring, *inter alia*, to the judgment rendered in Boaron's case. On 10 May 2006, the Tel Aviv-Jaffa Regional Labour Court also adopted this position in granting Steir's claim against the NII.

The NII appealed all these decisions to the National Labour Court.

The judgments in the National Labour Court

8. On 28 March 2007, the National Labour Court (President S. Adler, Judge Y. Plitman and S. Tzur, and public representatives Mr. A. Ben Gera and Y. Ben Yehuda) allowed the appeal brought by the NII against the decisions of the Regional Labour Courts in the matters of Boaron and Kariv, and held that the two should be viewed as remarried widows and that the provisions of ss. 135 and 255 of the National Insurance Law should be applied to each of them respectively (hereinafter: the "Boaron case"). The National Labour Court noted that under s. 1 of the National Insurance Law, the term "his wife" is defined as "including his common-law wife who lives with him," and held that the Law equates the common-law wife to a married woman "and in any event it equates a widow with a common-law widow [sic]." The National Labour Court referred to Judge Plitman's decision in *NII v. Friman* [32], in which he held as follows:

'The question that arises is whether it may be concluded from the use of the expression, "a widow who has remarried" that the intention was to exclude a widow who conducts a full family life with a partner but has not been officially married . . .

[This question] should be answered in the negative for three reasons:

First, because of the reason underlying the objective of the law. The dependents allowance is an allowance which replaces the income brought by the spouse into the household — because the widow runs the household by herself after her husband's death. Since the widow has now returned to sharing a household and family life with a life partner, she is again receiving support for the household finances, and therefore, in light of the purpose of the payment of the allowance as stated, she is no longer entitled to receive a dependents allowance.

This objective calls for a legal rule that does not distinguish between the law as it is applied to a widow who has officially remarried, and a widow who is a common-law wife. If we were to interpret the statutory language differently, there would be unjustified discrimination against the officially remarried widow whose financial support is discontinued, as opposed to the widow who has established a new family unit without anchoring it through participation in a marriage ceremony, whose allowance does not expire.

Secondly — the non-expiration of entitlement to a dependents allowance for a widow who has established a new home with a common-law husband would create an absurd situation in which, on the one hand, the legislature does not recognize the institution of common-law spouses and a widow therefore does not lose her entitlement to a dependents allowance even if she has reestablished a home with a common-law husband, and on the other hand, it does recognize the concept of a common-law spouse and grants a dependents allowance to a woman whose life partner, the common-law husband, passes away . . .

Thirdly — the absurdity arising from the non-expiration of the entitlement to a dependents allowance for a widow who has established a new home with a common-law husband is

> exacerbated in the case in which her common-law husband dies as a result of a work accident. In such a case, according to my colleague the Vice President, the widow would enjoy, in theory, a simultaneous double entitlement to two dependents allowances: one due to the death of her [non-common-law] husband and another due to the death of her common-law husband.
>
> The legislature's objective in establishing entitlement to a dependents allowance for a common-law wife whose life partner died is the same objective as we face here — a perception of the status of the common-law wife as being equal to that of a married woman, at least for the purpose of entitlement to a dependents allowance through which a widow is paid an allowance after the death of her life partner' (*ibid.*, at paras. 9-12).

The National Labour Court further held that a widow who is a common-law wife should also be viewed as a remarried widow with regard to the conversion of a survivors allowance to a survivors grant, noting that in the same way that a common-law wife is viewed as a married woman, a widow who has become a common-law wife should be considered as having married. The National Labour Court emphasized that this was not only a matter of denial of entitlement to an allowance; it also involved the creation of an equivalence in relation to entitlement to an allowance while providing grants to a remarried widow, and it therefore rejected the argument that there was a violation of the Basic Law: Human Dignity and Liberty. The National Labour Court also held that the date on which a common-law wife was deemed to have married is not determined arbitrarily, and that her entitlement to a grant (and the suspension of her allowance) begins "on the day on which it can be determined that she meets the definition in s. 1 of the National Insurance Law — 'his common-law wife who lives with him' — on the basis of an established factual foundation." For all of the above-mentioned reasons, the National Labour Court held that Boaron and Kariv were to be treated as remarried widows. As the court wrote:

> 'What reason is there for distinguishing between these two women whose cases are before us, who have lived with their partners for several years, and who are raising children with them, conducting a joint household, a new family unit, and following a mutual declaration of their relationship in the form of a financial agreement — and those women who have anchored their relationships with their partners through a religious ceremony? Any distinction that is made between the two cases is basically discriminatory and misses the legislative intent to anchor the status of the common-law wife in the definitional section of the National Insurance Law by defining the term "his wife" as "including his common-law wife who lives with him," thus viewing the status of the common-law wife as being equivalent to that of a married woman' (para. 14).

Finally, the National Labour Court held that the fact that a couple did not have joint ownership of any assets would not change its ruling, and that the date of expiration of the entitlement to an allowance should be established in each case on the basis of the particular factual circumstances.

9. On 19 March 2008, the National Labour Court (President S. Adler, Judges J. Plitman and V. Virt-Livne and public representatives S. Habshush and J. Deutsch) also allowed the NII's appeals of the judgments rendered by the regional labour courts in the suits brought by Gabay Galoni, Juliet and Steir, and held that they should be viewed as remarried widows (hereinafter: the "Gabay Galoni case"). The court repeated its holding that "a narrow interpretation of the term 'remarried' whereby it applies only to a widow who has undergone a marriage ceremony and not to a widow who has become a common-law wife leads to an unjustified favoring of the common-law wife over a woman who has been married in a formal ceremony, when the purpose of the law is to create an equivalence between the two." The National Labour Court further held that the relevant provisions of the National Insurance Law should be interpreted in accordance with the other provisions of that Law, and not in accordance with the interpretation of the Families of Soldiers Killed in Action Law.

The petitions before us relate to these judgments, and following a hearing held in this Court on 3 November 2008, we issued an order *nisi* on 4 November 2008 ordering the NII to explain why the National Labour Court's holding, that the meaning of the term "a widow who has remarried" is not

limited to widows who have actually remarried but also applies to widows who are living as common-law wives, should not be reversed.

The parties' arguments

10. The petitioners argue that this Court must intervene in the National Labour Court's judgments in the Boaron and Gabay Galoni cases, in view of a substantive legal error made in reaching them. Specifically, the petitioners argue that the National Labour Court's judgments are inconsistent with the express language of ss. 135, 255(b), (d) and 262 of the National Insurance Law, which relate to a widow who has "remarried", and that the language does not support an interpretation according to which these provisions relate to widows who are living as common-law wives — women who, by definition, have not remarried but are instead living with a partner. The petitioners argue in this context that the objective that the National Labour Court attributed to ss. 135, 255(b), (d) and 262 of the National Insurance Law — the creation of an equivalence not only in terms of the rights enjoyed by married couples as compared to the rights of couples living together, but also in terms of the obligations that both types of couple bear — deviates from the various possible linguistic interpretations of the section. They emphasize that the provisions establish specific dates on which the widow's right to a dependents or survivors allowance either expires or is renewed. The petitioners note that the National Insurance Law refers to the concept of common-law marriage, and from this they infer that the legislature chose to apply ss. 135, 255(b), (d) and 262 to widows who have been formally remarried. The petitioners are of the opinion that the National Labour Court's interpretation of the terms "married" and "date of marriage" will have "sweeping ramifications — without there having been a systemic, comprehensive, in-depth and methodical examination" of the other pieces of legislation dealing with marriage, and that such an examination can and should be carried out by the legislature alone.

As to the purpose of the National Insurance Law, the petitioners argue that it was intended to ensure the social security of Israel's citizens, and that the level of social security enjoyed by common-law wives is less than that of married women due to the absence of a substantive financial anchor and to the unwillingness of the parties to make a commitment to each other through

marriage. On this matter, the petitioners further argue that the ties between individuals who live as common-law spouses are characterized by varying levels of stability, and that clear criteria are therefore required in order to determine when the allowance given to a widow who has become another man's common-law wife will be discontinued. The petitioners also argue that while the criteria for determining who falls within the definition of a common-law wife for the purpose of granting rights should be lenient, the criteria for making the same determination for the purpose of denying rights should be strict.

The petitioners argue that the National Labour Court has cancelled a right that is granted to a widow by primary legislation, and that in light of the complexity of the subject and its public importance, such a cancellation of rights should be left in the hands of the legislature. They further argue that the National Labour Court's interpretation of the term "a widow who has remarried" violates the principle of equality with regard to the treatment of widows under the Families of Soldiers Killed in Action Law. In this context, they argue for the rejection of the NII's position that a justifiable distinction may be made between the two groups of widows. The petitioners argue that the circumstances of a husband's death are irrelevant, and that the purpose of both laws is to ensure that a widow who has been left without an additional provider can support herself with dignity. The petitioners also argue that the denial of their rights to an allowance due to their having become common-law wives violates their basic property rights; they argue that a statute which deprives citizens of their rights, or which reduces such rights, must be construed literally.

The petitioners further argue that the application of the provisions of ss. 135, 255(b), (d) and 262 of the National Insurance Law to widows who are living as common-law wives involves a degree of arbitrariness in terms of the determination of the date as of which the widow loses her entitlement to an allowance. Finally, the petitioners argue that the widowers have relied on their monthly allowances from the NII for their support and that their partners do not provide them with financial assistance, and do not support them — nor are they obligated to do so.

11. The NII argues that the National Labour Court was correct in holding that the term a "widow who has remarried" also includes widows who are living as common-law wives, and that the position that the term "married" relates only to women who have had an actual wedding and not to common-law wives was already been rejected in *Ornan v. NII* [31]. The NII further

argues, in this context, that because the term "wife" is defined in s. 1 of the National Insurance Law as including "his common-law wife who lives with him," the term wife "who has married" applies as well to a woman who has connected her life to a partner as a common-law wife, even if she has not married her partner. According to the NII, a woman who is officially married has no advantage over the woman who is living as a common-law wife, and it is not reasonable that a widow who is the common-law wife of another man should have an advantage over a person who has officially married another person. Regarding this matter, the NII stresses that both a widow who has officially remarried and a widow who is a common-law wife would be entitled to an allowance by virtue of the second "spouse", if that "spouse" should also pass away.

The NII also argues that the objective of the National Insurance Law is to assist a family unit when it has lost one of the heads of the household who had contributed to its economic maintenance. In accordance with this objective, when the surviving spouse establishes a new relationship, the need for this continued public support becomes irrelevant. The NII therefore believes that the language of the National Insurance Law, its objective, and its structure, as well as the quest for legislative harmony, do not justify any distinction between a widow who has remarried and a widow who is living as a common-law wife. On the contrary: according to the NII, allowing the appeal would mean unfair discrimination between the treatment of two groups of widows when there is no relevant difference between them with regard to entitlement to an allowance. The NII argues for the rejection of the petitioners' argument that the National Labour Court's interpretation establishes a primary legislative arrangement and an *ultra vires* act; it stresses that a court does have the authority to interpret acts of legislation — noting that this Court has in the past recognized the rights of common-law wives who had not been expressly included in relevant legislation. The NII also argues that identical terms appearing in different statutes are to be interpreted in accordance with each statute's objective, and that the petitioners' argument — that the National Labour Court's interpretation will have sweeping consequences, even though there has not been any in-depth or methodical examination of the interpretation's effect on other pieces of legislation dealing with marriage — should not be accepted.

Regarding the dates prescribed in the provisions of ss. 135, 255(b), (d) and 262 of the National Insurance Law, the NII argues that even if it is difficult to identify the "correct" date, this does not change the legal interpretation regarding the substantive right, and that insofar as implementation of the provisions is the issue, such implementation is a matter for the competent authorities, to be determined on the basis of appropriate proof, and these determinations will be subject to judicial review by the Regional Labour Court.

The NII argues that the proper interpretation of the term a "widow who has remarried" should not be inferred from the rules that apply to widows under the Families of Soldiers Killed in Action Law, due to the different frameworks and to the relevant difference between these two groups of widows. The NII further argues that the petitioners could also seek an amendment of the law (as was done in the case of the Families of Soldiers Killed in Action Law). The NII thus argues that there is no violation of the principle of equality here, and it further argues that the constitutional right to property does not apply to pension rights under the National Insurance Law. Finally, the NII contends that the petitioners' argument concerning their reliance on their allowances should not be accepted, and that in any event this reliance neither adds nor detracts from the need to decide on the very existence of the right to an allowance. In this context, the NII also argues that neither the survivors allowance nor the dependents allowance is intended to secure basic living conditions: that objective is achieved through the income support allowance.

Deliberation

12. This Court, sitting as the High Court of Justice, acts with considerable restraint regarding any intervention in the decisions of the National Labour Court (see HCJ 6522/06 *Kochavi v. Jerusalem Labour Court* [1], at para. 17; HCJ 8929/08 *Ben Nun v. National Labour Court* [2], at para. 18) and it will intervene in that court's judgment only in those cases in which two conditions have been met, cumulatively: first, that the judgment is tainted by a substantive legal error; and second, that justice requires its correction. In examining the existence of a "substantive legal error", this Court will consider whether, *inter alia*, the subject under discussion is of public importance and to what extent it is a general and widespread issue (see HCJ 525/84 *Hatib v. National Labour Court* [3], at pp. 693-694; HCJ 840/03 *Israel Professional Firefighters Union — Firefighters Committee v. National Labour Court* [4], at pp. 814-815; HCJ 5666/03 *Kav LaOved Organization v.*

National Labour Court [5], at para. 28). There is no dispute that the subject before us is an important one. Nevertheless, I will already state that in my view, the National Labour Court's decisions in the present matter are not tainted by any substantive legal error that would justify our intervention.

13. Section 135 of the National Insurance Law, relating to dependents allowances, and ss. 255(b), (d) and 262 of that Law, relating to survivors allowances, stands at the heart of the discussion and it is therefore appropriate to cite them in full.

Section 135 of the National Insurance Law refers to a widow who receives a dependents allowance pursuant to Chapter E, which deals with work accident victim insurance. It provides as follows:

> 135. *A widow who has remarried*
>
> (a) If a widow remarries, her right to an allowance expires and the Institute will pay her a grant in two installments as follows:
>
> (1) After the date of her remarriage — an amount equal to the dependents allowance, which is calculated on the basis of the amount of the allowance as stated in s. 132(1) (hereinafter: "the allowance amount") that was paid for the month in which she remarried, multiplied by eighteen;
>
> (2) At the end of two years from the date of her remarriage — an amount equal to the allowance amount as it would have been paid to her, had she not remarried, for the last month of the said two years, multiplied by eighteen;
>
> However, if she is no longer married ten years after the date on which she remarried, or if, within this period, divorce proceedings between her and her spouse have been initiated in a religious or a civil court, she will again be entitled to an allowance beginning on the date she ceased to be married, as stated, and a grant or a first installment thereof, which was paid to her pursuant to this sub-section, will be credited against the allowance, according to the provisions of paras. (1) – (4) of s. 262(a).

> (b) If a widow's husband from her new marriage passes away and she receives a dependents allowance or a survivors allowance because of him, she will receive the second installment of the grant, even if less than two years have passed from the date of her remarriage; the grant will be calculated on the basis of the allowance amount that would have been paid to her for the month in which her husband passed away as stated, had she not remarried.
>
> (c) Notwithstanding the provisions of sub-section (a), the Minister may prescribe certain conditions and situations in which the right of a widow who has remarried to receive an allowance will not expire.

Section 130(b)(1) of the National Insurance Law provides that the provisions that apply to a widow regarding these matters will also apply to a widower.

Sections 255(b), (d) and 262 of the National Insurance Law refer to a widow who receives a survivor's allowance pursuant to Chapter K, dealing with Old Age Insurance and Survivors Insurance, and they provide as follows:

> 255. *Payment of a grant*
>
> . . .
>
> (b) If a widow who is entitled to a survivors allowance remarries, her right to the survivors allowance will expire and the Institute will pay her a grant in two installments as follows:
>
> (1) After the date of her remarriage — an amount equal to the survivors allowance which is calculated on the basis of the amount of the allowance as described in s. 252(a)(1) (hereinafter: "the allowance amount") which had been paid for the month in which she had remarried, multiplied by eighteen;
>
> (2) At the end of two years from the date of her remarriage — an amount equal to the allowance amount as it would have been paid to her, had she not remarried, for the last month of the said two years, multiplied by eighteen;
>
> (c) If a widow's husband from her new marriage passes away and she receives a survivors allowance or a dependents

allowance because of him, she will receive the second installment of the grant, even if less than two years have passed from the date of her remarriage; the grant will be calculated on the basis of the allowance amount that would have been paid to her for the month in which her husband passed away as stated.

(d) A widower, for the purpose of this section, will be treated in the same manner as a widow.

262. *A widow or widow who has remarried*

(b) A widow who is entitled to a grant pursuant to this Part due to her marriage will lose her entitlement to an allowance; however, if she is no longer married ten years after the date on which she remarried, or if, within this period, divorce proceedings between her and her spouse have been initiated in a religious or a civil court, she will again be entitled to an allowance beginning on the date she ceased to be married, as stated, and a grant or a first installment thereof, which was paid to her pursuant to this sub-section will be credited against the allowance, subject to the following provisions:

(1) If the widow's entitlement to an allowance is renewed within 18 months from the date on which her entitlement to an allowance expired pursuant to her marriage, the amount to be credited against her allowance will be one eighteenth of the first installment, multiplied by the number of months for which she is entitled to an allowance during the said eighteen months;

(2) If the widow's entitlement to an allowance is renewed later than 18 months from the date on which her entitlement to an allowance expired pursuant to her marriage, the first installment of the grant will not be credited against her allowance;

(3) If the widow's entitlement to an allowance is renewed later than two years and earlier than three years after the date on which her entitlement to an allowance expired pursuant to

her marriage, the amount to be credited against her allowance will be one eighteenth of the second installment, multiplied by the number of months for which she is entitled to an allowance during the last eighteen months of the said three years;

(4) If the widow's entitlement to an allowance is renewed later than three years after the date on which her entitlement to an allowance expired pursuant to her marriage, the second installment of the grant will not be credited against her allowance;

(b) Notwithstanding the provisions of sub-section (a), the Minister may specify certain situations and conditions in which the right of a widow who has remarried to receive an allowance will not expire.

(c) The provisions of this section will apply to a widower as well, *mutatis mutandis*.

14. The question we face is, as stated, whether the provisions of ss. 135, 255(b) – (d) and 262 of the National Insurance Law are also properly applied to a widow or widower who subsequent to being widowed has become the common-law wife or husband of another partner.

The starting point of any process of statutory interpretation is the statutory language, and that language will set the limits of the interpretation, in the sense that the words of the statute may not be given a meaning that they cannot support (see MApp 67/84 *Hadad v. Paz* [6], at p. 670; CA 2000/97 *Lindorn v. Kranit Fund for Compensation of Road Accident Victims* [7], at p. 25; CA 8569/06 *Director of Land Taxation, Haifa Office v. Polity* [8], at para. 26). This Court has therefore held on several occasions that "the language component is not a sufficient condition for a particular interpretation, but it is a necessary condition" (CA 3622/96 *Hacham v. Kupat Holim "Maccabi"* [9], at pp. 646-647) and that "the judge may not . . . realize an objective unless it has some basis — even a weak one — in the statutory language" (FH 40/80 *Koenig v. Cohen* [10], at p. 715; see also LCA 3899/04 *State of Israel v. Even Zohar* [11], at para. 14; *Director of Land Taxation v. Polity* [8], at para. 26; A. Barak, *Legal Interpretation* (vol. 2, 'Statutory Interpretation,' 1993), at pp. 81-84, 97-100).

15. Can the language in ss. 135, 255(b), (d) and 262 of the National Insurance Law support a legal interpretation that also applies these provisions to a widow or widower who is living as a common-law spouse?

In order to answer this question, we must examine, *inter alia*, the definitional section of the statute, which is designed to establish the scope of the linguistic significance of the terms that are the subject of each definition (see *Director of Land Taxation v. Polity* [8], at paras. 29-30; Barak, *Legal Interpretation*, *supra*, at pp. 137-138). The definitional section of the National Insurance Law (s. 1) provides as follows: "'his wife' — including his common-law wife who lives with him." The term "including" generally expands the scope of the literal meaning that may be attributed to the defined term (see Barak, *Legal Interpretation*, *supra*, at p. 138) and in *Ornan v. NII* [31], the National Labour Court, in reliance, *inter alia*, on the definitional section, held that the term "a married woman" also includes a common-law wife. In that case, the National Labour Court rejected the NII's argument (the opposite argument to the argument it makes here) that the term "married woman" means only an officially married woman, and held that the term "his wife" in the definitional section "means a 'married woman', because were this not the case, why would it have been necessary for the legislature to add at the end, 'including his common-law wife'?" (*Ibid.*, [31], at p. 407.) The National Labour Court also noted in that case that "there is nothing in that section [which was the subject of the dispute there], either in its substance or in its context, that contradicts the definition of the term 'his wife' in s. 1 of the statute, and that the rule applying to a 'married woman' [in that section] is the same as that applying to 'his wife' in s. 1 of the statute" (*ibid.*, [31], at p. 408). This holding was reached in light of the provision in s. 2 of the Interpretation Law, 5741-1981, under which "a term that is defined in legislation will have the meaning assigned to it by the definition . . . unless otherwise stated with regard to the particular matter, and provided that nothing in the subject-matter or context is inconsistent with the definition."

16. We accept the position that the term "married woman" can, in linguistic terms, support a legal meaning that includes "a woman living as a common-law wife." But the petitioners claim that the language in the sections under discussion in this case — unlike the section which was the

subject of *Ornan v. NII* [31] — indicates only a narrow range for possible interpretation, one which does not include a widow who is a common-law wife. This is because the provisions of ss. 135, 255(b), (d) and 262 of the National Insurance Law relate to defined dates that are, in their view, relevant only to widows who have remarried officially, particularly the date on which the widow remarried and the date as of which she was no longer remarried.

I cannot accept the petitioners' argument in this matter.

Indeed, the assumption is that "the legislature is using regular language and the language cannot be interpreted other than according to its plain meaning" (HCJ 6247/04 *Gorodetzki v. Minister of Interior* [12]); occasionally, however, and to the extent justified by the objective that the statute is intended to achieve, the interpreter may attribute a unique and unusual meaning to particular words, if that meaning falls within the linguistic range delineated by the statutory language (see Barak, *Legal Interpretation*, *supra*, at pp. 117-118). In this case, and as I will describe below, it appears to me that from a linguistic perspective, the dates specified in ss. 135, 255(b), (d) and 262 of the National Insurance Law (the date on which a widow remarried or the date as of which she was no longer married) can be interpreted in a manner that applies them also to the dates on which a widow began or ceased to be a common-law wife, whichever is relevant. Indeed, while it is a simple matter to identify the establishment of a marital connection by virtue of a formal and constitutive act, the identification of a date on which a couple began to live together as common-law spouses or the date on which a couple ceased to live as such is less clear-cut, and requires a factual examination of the nature and circumstances of the relationship. In my view, however, this fact does not rule out an interpretation that applies the provisions to which the petitions before us relate to common-law spouses as well, in view of the standard criteria for determining these matters, according to which a couple will be recognized as common-law spouses if they have a conjugal relationship and a shared household (see AAA 4614/05 *State of Israel v. Oren* [13]; CA 1966/07 *Ariel v. Egged Members Pension Fund Ltd.* [14], at para. 25). Similar tests are applied by the NII with regard to the granting of allowances (see, for example, NIIApp 731/07 *Kirshner v. NII* [33]), and there is nothing to prevent their application where required with respect to the expiration of the right to an allowance. In any event, a party who believes that he or she has been harmed by a decision of the NII regarding this matter is free to initiate the appeal procedures prescribed by

law (see and compare: HCJ 2316/05 *A v. National Labour Court* [15]; NIIApp1212/04 *Apter v. NII* [34], at p. 469).

Since my conclusion is that the language of the relevant statutory sections does not negate any of the interpretations that the parties wish to give to the provisions of ss. 135, 255(b), (d) and 262 of the National Insurance Law, we must now proceed to determine what is the objective that underlies the legislation that we are required to interpret.

17. The objective of the National Insurance Law with respect to survivors allowances and work accident victim insurance is "to protect against economic shortages that are liable to follow the curtailing of income as a result of a provider's work accident, old age or death. Its purpose is not to grant rights to a person by reason of his being the relative of another person, but rather, to prevent a defined group of persons from suffering from financial shortages because they are no longer receiving their own income or the income of their provider" (NLC 30/19-0 *NII v. Mano* [35], at p. 77; see also: NLC 52/69-0 *Leon v. NII* [36], at p. 464; NLC 53/6-7 *Batar v. Central Pension Fund of Histradrut Workers, Ltd* [37], at p. 140; NLC 57/6-2 *Central Pension Fund of Histradrut Workers, Ltd v. Kochavi* [38], at para. 6; see and compare HCJ 4193/04 *Gartner-Goldschmidt v. National Labour Court* [16]).Thus, the survivors and dependents allowances that are paid pursuant to the National Insurance Law are intended to compensate for the loss of financial support that a person had been receiving from his or her partner as a dependent of that partner in connection with such support, and to preserve a roughly similar standard of living to that which the survivor enjoyed prior to the provider's death (see *Gorodetzki v. Minister of Interior* [12], at para. 23; NIIApp 1169/01 *Avital v. NII* [39]; *Kirshner v. NII* [33], at para. 8(e)).

In light of these objectives, the right of a widow or widower to an allowance expires upon remarriage, according to the provisions of ss. 135, 255(b), (d) and 262 of the National Insurance Law. This is due to the assumption that the new familial unit that has been established will be sufficient to replace the loss of income that ensued from the death of the previous partner (see NIIApp 779/06 *NII v. Wolkowitz* [40], *per* President S. Adler, at para. 3). At the same time, and in order to enable a widow or widower to adapt to the expiration of the right to an allowance pursuant to

the above-mentioned sections, the statute provides that they will be entitled to a grant which is equal to thirty-six months of the allowance. (The two installments of the grant are paid within a period of two years from the date of the remarriage.) The Minister of Labour and Welfare is also authorized, by virtue of ss. 135(c), and 262(d) of the National Insurance Law, to prescribe certain circumstances and conditions under which the right of a remarried widower or widow to an allowance will not expire. The regulations that the Minister enacted pursuant to this authorization (see National Insurance Regulations (Dependents Allowance for Remarried Widows), 5737-1976) provide that a remarried widow's right to a dependents allowance will not expire if the new husband is unable to support himself or if he is over 60 years old, provided that the new husband's income does not exceed one twelfth of the amount specified in Item 1 of Table B of the National Insurance Law. Similar regulations have not been enacted with respect to a survivors allowance.

The objective of the provisions that cancel the right to an allowance in the event of an official remarriage, and the above-mentioned rationales which underlie that objective, are also applicable with respect to a widow or widower who has begun to live with a new partner in a common-law marriage. Indeed, a widow or widower who lives as a common-law spouse will benefit from shared income with the new partner and from a shared bearing of expenses — assuming that there is a shared household, which is a condition for the couple being classified as common-law spouses. Under these circumstances, there is no justification for the widow or widower to continue to receive a survivors allowance or a dependents allowance; such allowances are intended to provide protection from the financial shortage that the death of a provider is expected to entail.

18. Together with the search for the specific objective of the legislation that we wish to interpret, we ought to examine the extent to which the legislation expresses the basic values of the legal system, in light of the accepted principle that these values must find expression in every piece of legislation. One of the basic values of the legal system in Israel, relating directly to the matter under discussion here, is the principle of equality, a value which has been accorded constitutional status (see HCJ 953/87 *Poraz v. Mayor of Tel Aviv Shlomo Lahat* [17], at pp. 329-332; *Lindorn v. Kranit Fund* [7], at pp. 29-30; HCJ 6427/02 *Movement for Quality Government v. The Knesset* [18], (*per* President Barak, at paras. 36-40); HCJ 4124/00 *Yekutieli v. Minister of Religion* [19], at para. 35). The significance of this is

that when there is no relevant difference between individuals, they are entitled to equal treatment, *inter alia* in terms of the legal rules that apply to them. A claim of discrimination can therefore arise when a different legal rule is applied to individuals or groups between whom there is no relevant difference (see HCJFH 4191/97 *Recanat v. National Labour Court* [20], at pp. 343-345). The complexity involved in the implementation of the principle of equality was noted by President Beinisch in *Yekutieli v. Minister of Religion* [19] as follows:

> 'It is not a simple matter to determine whether a particular norm violates the principle of equality. By its very nature, the question calls for a discussion of the characteristics and purposes of the norm, and a determination of the "peer group" relevant to the matter at hand. The peer group is the group of individuals or entities to which the obligation to act in accordance with the principle of equality applies . . . and it is derived, inter alia, from the norm's purpose and from the scope of its application. Sometimes the legislature determines the peer group as a part of the norm itself, and sometimes the court must define, by means of a number of variables, what the peer group is in each specific case' (*ibid.*, at para. 36).

Here, the petitioners and the NII do not dispute the fact that there is a difference between the group comprising widows who have remarried by virtue of a wedding ceremony which is recognized by law, and the group comprising widows who are living as common-law wives. The parties' disagreement relates to the matter of whether, for the purposes of ss. 135, 255(b), (d) and 262 of the National Insurance Law, the difference between these groups is a *relevant* one. The NII argues that an interpretation of the above-mentioned sections which excludes widowers and widows who are living as common-law spouses from coverage by those sections will create a situation whereby two groups between whom there is no relevant difference are treated differently. This argument, which the National Labour Court accepted, is a strong one, and I also believe that there is no relevant difference between the widowers and widows who have been officially remarried and those who are living as common-law spouses — no difference

that justifies the application of a different legal rule to the two groups with regard to the expiration of the right to an allowance. Indeed, the members of both of these groups lost a source of income when their partners passed away, and the members of both groups have established new family units, and in relation to both groups, there is a presumption that the new partners share income and expenses. The petitioners argue in this regard that the relationship between partners who are living in a common-law marriage is less stable than the relationship between partners who were married officially, and that this creates a relevant distinction that justifies different treatment with regard to the expiration of the right to an allowance. This argument cannot be accepted, for even if we presume — in concert with the petitioners — that the relationship between partners who are living in a common-law marriage is indeed less stable than the relationship between partners who are officially married, this does not create a relevant distinction between the two groups with respect to the present matter. This is because the arrangement prescribed in ss. 135, 255(b), (d) and 262 of the National Insurance Law, which cancels the right to an allowance, also foresees the possibility that the new relationship will not last, and ss. 135(b)(2) and 262(a) of the statute therefore include a provision that a widow who remarries will regain her entitlement to an allowance —

> ‘ . . . if she is no longer married ten years after the date on which she was remarried, or if, within this period, divorce proceedings between her and her spouse have been initiated . . .’

It is understood, however, that if the provision that cancels the right to an allowance also applies to widows or widowers who are living as common-law spouses, the provision that re-entitles them to an allowance if the new common-law relationship ceases to exist before ten years have elapsed since its inception will also apply to them. Thus, the alleged distinction based on the difference in the level of the stability of the relationship is also insufficient to justify the application of a different legal rule to the petitioners as widows who are now living as common-law wives, on the one hand, and to widows who have been officially remarried, on the other hand.

19. In *Ornan v. National Insurance Institute* [31], the National Labour Court, in a different context pertaining to the National Insurance Law, noted the implications of a discriminatory rule that involves an improper favoring of common-law wives, stating as follows:

> 'We should not attribute to the legislature an intention to grant the common-law wife only benefits, and to spare her the disadvantages. The aim of the Law is to create an equivalence for all purposes — with respect to both the good and the bad — between the common-law wife and the married woman' (*ibid.*, at p. 408).

I find this approach to be acceptable, and it provides an appropriate response to the contention that the provisions of the National Insurance Law can be extended through interpretation when they grant benefits, but cannot be extended when the extension involves a negation of rights. Indeed, it is hard to imagine that for the purpose of granting a survivors allowance (pursuant to s. 252 of the Law) and a dependents allowance (pursuant to s. 131 of the Law), a common-law wife will be considered a "widow" due to having been the "wife" (under the definition in s. 1 of the Law) of her deceased partner (see: NLC 56/255-0 *Atar v. NII* [41], at p. 387; *Kirshner v. NII* [33], at para. 8(a)), but that she will not be considered to be the "wife" of her new partner with whom she is living as a common-law spouse with regard to the expiration of the entitlement to these rights (pursuant to ss. 135, 255(b) and (d) of the Law).

It appears to me that the same question arises regarding both the granting of rights and their expiration, i.e., whether there is a relevant distinction, with respect to either issue, between couples who are officially married and couples who are living together in a common-law marriage (see and compare 4341/99 CrimA *Vidal v. State of Israel* [21], at p. 334; CA 2622/01 *Director of Land Appreciation Tax v. Levanon* [22], at p. 326).

Professor Shahar Lifshitz' comments are also pertinent here:

> 'When, as the result of the attempt to equate the support given to the institution of common-law marriages and the institution of official marriage, a situation is created that favors the common-law partners, the result is untenable . . . in light of the proclivity to equate the rights of common-law spouses to those of married people, a parallel reform is required that will equate the duties imposed in the two cases . . . ' (S. Lifshitz, *Common-Law*

> *Partners From the Perspective of the Civil Theory of Family Law* (2005), at pp. 235-236).

The degree to which different treatment of widows and widowers in common-law marriages (as compared to the treatment of widows and widowers who have officially remarried) is liable to create a discriminatory and even absurd situation regarding the expiration of entitlement to survivors allowances or for dependents allowances, was demonstrated in the National Labour Court's decision, when it noted the following among the reasons for its ruling:

> 'The absurdity with respect to the non-expiration of the entitlement to a dependents allowance of a widow who has established a new home with her common-law husband is exacerbated in the case in which her common-law husband dies as a result of a work accident. In such a case, according to my colleague the Vice President (in *Friman*), the widow will in theory be entitled, simultaneously, to two dependents allowances: one arising from the death of her official husband and one arising from the death of her common-law husband.'

This discriminatory result does indeed reach the level of absurdity and it must be avoided, not only because of the harm done to the principle of equality but also because of the rule that requires us to avoid, to the extent possible, an interpretation of statutory provisions that leads to an absurd result (see and compare, CA 165/82 *Kibbutz Hatzor v. Rehovot Tax Assessor* [23], at p. 74; CA 1186/93 *State of Israel, Minister of Justice v. Israel Discount Bank Ltd* [24], at p. 361*;* Barak, *Legal Interpretation*, *supra*, at pp. 280-283).

In light of the above, I believe that with respect to the expiration of entitlement to a survivors or a dependents allowance pursuant to ss. 135, 255(b), (d) or 255(b), (d) and 262 of the National Insurance Law, the widows who are living as common-law wives should be subject to the same rule as widows who have been officially remarried, as the purpose of the legislation justifies this interpretation, and as it is also an interpretation that the statutory language will support.

20. We must still consider the petitioners' argument that the adoption of the National Labour Court's interpretation of the provisions of ss. 135, 255(b), (d) and 262 of the National Insurance Law, i.e., that rights to allowances will expire for widows who are living with their partners as

common-law wives, unfairly discriminates against them, as compared to widows who live as common-law wives and who are entitled to pensions pursuant to the Families of Soldiers Killed in Action Law. This argument must also be rejected. First, Amendment 30 of the Families of Soldiers Killed in Action Law changed that Law's definition of a widow to "a person who was the wife of the decedent at the time of his death, including a woman who prior to the decedent's death was living with him and who, on the date of his death, was his common-law wife — *even if she has married another person"* (emphasis added), and s. 12A of that Law, whereby the widow of a decedent who remarried lost her entitlement to a pension pursuant to the Law, was cancelled (see the Families of Soldiers Killed in Action Law (Amendment 30), 5770-3009, SH 252). In enacting these measures, the legislature demonstrated that with respect to the widows of soldiers who were killed in action, the intention was to continue the payment of a pension even after they remarried, and, in any event, if they were living as the common-law wives of other men. Second, it has been held several times that in enacting a series of laws relating to those who were wounded or who sacrificed their lives for the country, or to their families, the legislature wished to give expression to the moral obligation owed by the state, and that these laws should therefore not be viewed as intended only to provide social security, as the National Insurance Law does. This explains the difference that appears in some contexts between the language in the National Insurance Law and the language in these other laws (see: HCJ 5304/02 *Israel Association of Victims of Work Accidents and Widows of Victims of Work Accidents v. State of Israel, Knesset* [25], at pp. 141-142; HCJ 8487/03 *IDF Disabled Veterans Organization v. Minister of Defense* [26], at paras. 21-23; HCJ 9863/06 *Karan - Society of Combat Veteran Quadriplegics v. State of Israel - Minister of Health* [27], at paras. 11-14).

For all the reasons mentioned above, I propose to my colleagues that the petitions be denied without any order regarding costs.

Justice E. E. Levy

I concur.

President D. Beinisch

I concur in the decision of my colleague, Justice E. Hayut, and I also agree with her reasoning. Indeed, Israeli legislation and case law have recognized the status of the common-law spouse; this has certainly been the case with respect to social support and rights (see, among others, the Inheritance Law, 5725-1965; Names Law, 5716-1956; Families of Soldiers Killed in Action Law. And see, for example HCJ 693/91 *Efrat v. Director of the Population Registry* [28]; *Lindorn v. Kranit Fund* [7]; *Director of Land Appreciation Taxation v. Levanon* [22]). The professional literature, it is true, contains various views relating to the possibility of applying to common-law couples arrangements that are similar to those applying to married couples. For example, the argument is made that the various arrangements that apply to married couples should not be applied equally to couples living together in common-law relationships, so as not to frustrate the wishes of those who have chosen, knowingly, to refrain from entering into official marriages (see, for example, the arguments made in S. Lifshitz, *Common-Law Partners*, *supra*, at pp. 199-216). In any event, this question does not arise in the case before us, since it appears to me that even those who believe that only some of the arrangements that apply to married couples should be applied to common-law couples would agree that the arrangements arising out of social legislation should be applied to common-law couples as well (see, for example, the distinction drawn by Lifshitz between "responsive" rules and "directed" rules, *supra*, at p. 217).

Although the concept of common-law relationships is not a new one in our system, not all the relevant legislative arrangements have been adjusted to the changes that have occurred in modern times in the structure of the family unit. With respect to certain laws, the legislature has not responded to this issue at all (see, for example, *Director of Land Appreciation Taxation v. Levanon* [22], *per* Justice Strassberg-Cohen, at pp. 315-316: "The laws in relation to which the question arises as to whether or not they grant rights to a common-law wife do not have uniform language. Some of them make express use of the term 'common-law wife'or a similar term, while defining that term clearly and explicitly. Some of them . . . use the term 'partner' without defining it"). In the absence of any express reference by the legislature to the application of a law to common-law partners, there are courts which, in interpreting the relevant legislation, have applied various provisions and arrangements to common-law partners as well. This was the case, for example, in *Lindorn v. Kranit Fund* [7], in which the court held that

for the purpose of paying compensation to dependents pursuant to the Civil Wrongs Ordinance [New Version], 5728-1968, both the linguistic and the legal meanings of the phrase "partner" includes, necessarily, the concept of common-law partners.

Regarding the petition before us, as elucidated in my colleague's opinion, s. 1 of the National Insurance Law — the definitional section — provides that the term "his wife" will "include his common-law wife who lives with him." The definitional section applies to the entire statute, and it therefore indicates that the legislature saw the relationship between common-law partners as a framework that is covered by the statute. Furthermore, common-law wives who become widowed *are not denied* survivors allowances or dependents allowances — the allowances which are the focus of the discussion in this petition — and common-law wives are therefore entitled to such allowances, as are married women who have been widowed. In other words, while the situation of married women and common-law wives are completely identical with regard to entitlement to survivors allowances and dependents allowances if such married women or common-law wives should unfortunately be widowed, the same exact pension would later be cancelled only for those women who have chosen to remarry through an official marriage. This result is especially problematic, as my colleague has noted, in situations in which the widow who becomes a common-law wife is widowed again when her common-law husband passes away. In such a situation, she would be entitled to the original allowance and to another allowance by virtue of the common-law husband. The absence of symmetry between the recognition of an affirmative right and the denial of that right creates, as stated, a distortion which is likely to lead to absurd results.

I therefore agree with the conclusion reached by my colleague, Justice Hayut, that the interpretation of ss. 135, 255 and 262 of the Law necessitates the denial of the allowance to widows who acquire common-law partners, in the same way that the allowance would be denied to widows who have remarried. First, I too believe that the statutory language can support this meaning, especially given the definition of the term "his wife" in the definitional section. As is known, "the main purpose of the definitions is to establish the scope of the (express or implied) meaning of the text of the

terms" (Barak, *Legal Interpretation*, *supra*, at p. 138). Additionally, the linguistic context of a piece of legislation is interpreted in relation to the statute as a complete unit, which helps determine the legal meaning of a term or section within the statute (*ibid*., pp. 106-107). Here, the complete unit of the National Insurance Law, in its entirety, indicates that the legislature intended to include common-law partners within the statute's coverage, and to apply to them all the relevant rights and obligations. Secondly, this conclusion is also supported by a purposive interpretation of the Law, the purpose of which is to provide compensation for the loss of the economic support that a person received from a partner in the past, as long as the person being compensated is not in a new relationship through which such support has been renewed.

I am aware that the practical meaning of this interpretation, in the petition before us, is that the petitioners will lose their entitlement to an allowance; and that when an interpretation leads to a denial of rights, we generally lean towards construing the relevant language narrowly and literally. However, in the case before us, even though according to a purposive interpretation, as my colleague Justice Hayut noted, the widows who have common-law husbands will lose their survivors allowances or dependents allowances, this result is consistent with the purpose of the legislation and promotes the basic right of equality, in a situation in which there is no reason for making a distinction between the two groups. Regarding this matter, I accept that the petitioners have not presented persuasive reasons for recognizing a distinction between them and widows who have remarried. Even if the argument that there is a difference between these groups due to the lack of obligation and stability in the common-law relationships were to be accepted — and I am not persuaded that by itself this is a well-founded argument — it would still be insufficient to justify a different interpretation than that being proposed, since in any event, the provisions of the National Insurance Law foresee the possibility that the relationship between the partners, in either an official or common-law marriage, may come to an end, and the Law provides a solution in the form of a renewal of the allowance. The same applies to the petitioners' contention with respect to the determination of the date on which the relationship with the common-law partner is to be recognized (and thus, the date on which the allowance is terminated). In actuality, the NII is accustomed to determining such dates for various purposes listed in the National Insurance Law. Therefore, just as it is possible to establish the date on which a relationship begins for the purpose of recognizing rights, it is also

possible to determine the date on which the entitlement to an allowance will come to an end.

I also agree with the position that a distinction should be drawn between the right of an IDF widow to receive a survivors allowance, on the one hand, and the rights of other injured parties to whom the legislature wished to provide social security, on the other hand. The distinction, which is anchored in primary legislation, results from the different objectives of the support provided to the different categories of injured parties. This is in no way an expression of a desire to harm injured parties who have experienced general misfortune; the intention is only to recognize the special status of those to whom the state and Israeli society owe a special moral debt. The degree to which a distinction is to be drawn and the expression given to that distinction is a matter to be determined by the legislature.

Needless to say, even though the interpretation of the National Insurance Law does lead to a conclusion that survivors allowances and dependents allowances should be eliminated for widows who have common-law husbands, it may be that the legislature should make express provision for this in the National Insurance Law, as it has done with respect to other pieces of legislation (see, for example, the amendment to the definition of "spouse" in the Income Support Law, 5741-1980, in which it was established that the term "spouses" will "include a man and women who are a common-law couple and who live together." The practical significance of the amendment is that common-law partners are not considered to be "singles", entitled to the allowance paid to singles). It is further noted that we do not, in our decision, take a position regarding the appropriate interpretation with respect to other arrangements established in statutes that are not the subject of this judgment.

This interpretation conforms to the need to recognize the changes that are taking place regarding the family unit model, and displays a willingness to adjust the legal arrangements applying to traditional families to other family structures as well, subject to the changes necessitated by the differences in the relationships among these alternative family structures. Naturally, a just and egalitarian application of these arrangements requires that there be symmetry between rights and obligations, in a manner that fully realizes the purpose of the legislation. Therefore, I too see no grounds, everything

considered, for intervening in the decision of the National Labour Court, and in my opinion the petitions should be denied.

Vice President E. Rivlin

I concur in the decision of my colleague Justice E. Hayut, and in the comments of my colleague President D. Beinisch.

Justice A. Proccacia

I agree with the decision of my colleague Justice E. Hayut, including with her reasoning and with her conclusions. I also agree with the additional comments made by my colleague, President Beinisch.

Social security in Israel, as reflected in the National Insurance Law, is founded on the concept of solidarity and mutual assistance. The funding for this comes from the payment of mandatory National Insurance contributions, which are collected according to the economic means of those insured, and from government funds; payments from the NII, on the other hand, are intended to provide basic-level assistance to those in need, necessary for life with dignity (see HCJ 6304/09 *Lahav v. Attorney General* [29], at paras. 42-59). The NII's resources are, by their nature, limited; the realization of its objectives, in terms of providing assistance for life with dignity for the needy members of society, therefore requires that maximum care be taken so that its resources are allocated only in a manner that serves the true objectives for which they have been designated. The realization of the main objective of the National Insurance therefore requires that a good look be taken at a person's true needs and at true neediness, and that formats and frameworks that exist only as formalities should be avoided, because they do not necessarily reflect the actual reality. The National Insurance funds are to be directed only at the "have-nots" and not at the "haves", regardless of the particular name given to the personal status of a particular "have"; and the idea of social security requires that assistance be given to a widow only as long as her *actual* personal situation has not changed, and only as long as she does not live in a relationship as part of a couple, through which she is able to receive support and security. Once she has returned to a life based on being part of a couple, whether in the framework of an official marriage or in the framework of a relationship known as "common-law marriage", she is presumed to no longer require the support of the social security system. The allowance to which she was entitled in the past, when she lived by herself and faced the struggle for

existence alone, should now be directed towards other social objectives reflecting a real need. The social conception underlying the National Insurance Law strives, therefore, to examine life as it really is, according to a criterion of actuality; it distances itself from formalistic frameworks that do not reflect the true situation. In order to promote the objective of providing social security, the statute, for the most part, avoids the official frameworks of marriage and divorce and examines the true life of a couple, as it is conducted on a daily basis (compare to the similar purpose of the Public Service Law (Pensions) [Consolidated Version], 5730-1970, and in this context, HCJ 4193/04 *Gartner-Goldschmidt v. National Labour Court* [31], (*per* Justice Procaccia, at paras. 20-21)).

The interpretation given by my colleague Justice E. Hayut to the provisions of the National Insurance Law, looking at the reality of human life, as distinguished from an official format that defines personal status, is consistent with the language of the statute, and with its social purpose.

I would further comment that equating the rule applied to a widow who lives with a common-law partner to the rule applied to a widow who remarries, for the purpose of determining entitlement to a survivors allowance or a dependents allowance, may create substantial problems regarding enforcement. What is the test for recognizing the existence of "common-law relationship"; when and how will the competent authority become aware that this type of relationship has come into being; and how will the principle of equality in enforcement be maintained in this area? These questions have not been raised before us, but we can assume that the competent authority is aware of them and is prepared to deal with them.

Justice H. Melcer:

I agree with the comprehensive opinion of my colleague Justice E. Hayut, and with the comments of President D. Beinisch. Nevertheless, I wish to add three comments:

(a) I accept the conclusion that a woman who has not remarried, but who does live with her partner as a common-law wife — is comparable to a widow who has remarried, with respect to the expiration of her entitlement to a survivors allowance or to a dependents allowance which is given to her by

virtue of her deceased husband. The linguistic context and a purposive interpretation of the provisions of the National Insurance Law are sufficient to establish this.

Nevertheless, in order to reach the said result, I do not need to rely on the argument that were we to hold otherwise, a widow who became a common-law wife and is now widowed of her common-law husband could be entitled to both the original allowance and to an allowance by virtue of her deceased common-law partner, and that this result borders on the absurd. I do not need such an argument because the concept of a "common-law wife" does occasionally create, by its very nature, problematic situations that may in extreme cases lead to double payments, or to divided payments, or to other complicated solutions. This can happen, for example, if the widow's common-law partner was married to another person at the time of his death — and I will not elaborate (see ss. 130 and 238 of the National Insurance Law; CA 233/98 *Katz v. Keren Makefet* [30]; *Atar v. NII* [41]; and finally, *Ariel v. Egged Members Pension Fund Ltd* [14]; Lifshitz, *Common-Law Partners*, *supra*, at pp. 267-268.)

(b) The change in status of a widow who has remarried is usually clear and unequivocal, determined entirely by the validity of the marriage. On the other hand, a change in status that occurs when a widow becomes the common-law wife of the man with whom she lives (as in the definition of s. 1 of the National Insurance Law) is not as unequivocal. It is comprised of *two* cumulative conditions (see *Atar v. NII* [41]), and a determination that such a change has taken place will depend on the facts and circumstances (see *Ariel v. Egged Members Pension Fund Ltd* [14]). It therefore appears to me that prior to terminating the entitlement to an allowance, the NII should grant the person whose said entitlement is to be cancelled a full right to argue against such cancellation, over and above what would in any event be such person's right to appeal following the decision.

(c) It would be best if regulations were enacted pursuant to s. 262(b) of the National Insurance Law, which would establish the types of cases and conditions in which the right of a widow who has remarried to receive a survivors allowance would not expire. I have not heard any clear explanation for the fact that no such regulations have been enacted to date, while similar regulations have been enacted pursuant to s. 135(c) of the National Insurance Law regarding the non-expiration of a remarried widow's right to a dependents allowance in certain situations (see National Insurance Regulations (Dependents allowance for a Remarried Widow), 5737-1976).

Justice E. Arbel

I concur in the opinion of my colleague Justice E. Hayut. I agree with her that a widow who becomes a common-law wife should be treated as a widow who has remarried, as that term is properly interpreted in the context of ss. 135, 255(b) and (d) and 262 of the National Insurance Law.

Since such a widow has again established a family life with a life partner and is again living as part of a joint household, her entitlement to continued receipt of a dependents allowance should expire, as the purpose of the payment of the allowance is to secure the dignified support of a widow who has been left without an additional provider (subject to the exceptions listed in the opinion of Justice Hayut, at p. 17). Any different interpretation would create an improper disparity between the treatment of a widow who has officially remarried and the treatment of a widow who has established a family unit with a new partner but without a wedding ceremony. I agree that the legislature's intent would be subverted if a distinction were to be drawn between the two groups, given that the status of a common-law partner is established in the definitional section of the Law, even though I do not ignore the fact that within this framework, common-law partners may have different levels of commitment. It is indeed reasonable to attribute to the legislature an intention to grant the common-law wife both the good and the bad — meaning that a common-law wife will enjoy the rights of a married woman, but that these rights will expire in the same way as they do for a married woman. I agree with those who argue that it would be preferable if the legislature enacted an express provision establishing the termination of these rights, but as long as the legislature has not responded to the matter, and for the reasons that my colleague has described, the proposed interpretation is to be preferred. I would also add that there can be no doubt regarding the obligation of the state to those who were injured or who sacrificed their lives for the state, or to their families, and that this justifies the distinction that is made with respect to these widows, as explained by my colleague.

Decided as *per* Justice E. Hayut.

11Tishrei 5771.

19 September 2010.