HCJ 4805/07
HCJ 6343/07

1. **Petitioner in HCJ 4805/07:** **The Center for Jewish Pluralism – The Movement for Progressive Judaism in Israel**
2. **Petitioner in HCJ 6343/07:** **The Organization of Teachers in Secondary Schools, Seminars and Colleges**

v.

Respondents in HCJ 4805/07:

1. **Ministry of Education**
2. **Association of *Yeshivot* and Torah Institution Principals**
3. **Nit'ei Torah Institutions in the Holy Land**

Respondents in HCJ 6343/07:

1. **Ministry of Education – State of Israel**
2. **Minister of Education**
3. **Attorney General**
4. **Association of *Yeshivot* and Torah Institution Principals**
5. **Nit'ei Torah Institutions in the Holy Land**

The Supreme Court sitting as the High Court of Justice
[27 July 2008]

Before Justices A. Procaccia, S. Joubran, U. Fogelman

Petition to the Supreme Court Sitting as the High Court of Justice

Israeli Legislation cited:

State Education Law, 5713-1953.

State Education (Recognized Institutions) Regulations, 5714-1953.

Compulsory Education Law, 5709-1949.

Budgetary Principles Law, 5745-1985.

Inspection of Schools Law, 5729-1969.

Basic Law: Human Dignity and Liberty.

Israel Supreme Court cases cited:

[1] HCJ 10296/02 *Secondary School Teachers Organization v. Minister for Education* [2005] IsrSC 59(3) 224.

[2] HCJ 6427/2 *Movement for Quality Government in Israel v. Knesset* (2006) (unreported).

[3] HCJ 5711/91 *Poraz v. Chairman of the Knesset* [1991] IsrSC 46(1) 299.

[4] HCJ 428/86 *Barzilai v. Government of Israel* [1986] IsrSC 40(3) 505.

[5] HCJ 142/70 *Shapira v. Bar Association Regional Committee* [1971] IsrSC 25(1) 325.

[6] HCJ 51/99 *Shekem v. Director of Customs and VAT* [2002] IsrSC 56(1) 112.

[7] HCJ 53/96 *H. Aloni Tishlovet Ltd. v. Minister of Industry and Commerce* [1998] IsrSC 52(2) 1.

[8] HCJ 3782/95 *'Bezedeq' Amutah v. State of Israel* [1995] IsrSC 49(5) 362.

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

[10] CrimApp 4445/01 *Gal v. Katzovshvili* [2002] IsrC 56(1) 210.

[11] CrimA 578/78 *State of Israel v. Issa* [1982] IsrSC 36(1) 723.

[12] CA 4603/90 *Gvirtzman v. State of Israel* [1993] IsrSC 47(2) 529.

[13] HCJ 7713/05 *Noah – Israel Association of Organizations for the Protection of Animals v. Attorney General* (2006) (unreported).

[14] HCJ 11163/03 *Chief Surveillance Committee for Arab Affairs in Israel v. Prime Minister of Israel* (2006) (unreported).

[15] HCJ 2599/00 *Yated v. Ministry of Education* [2002] IsrSC 56(5) 834.

[16] HCJ 4363/00 *Upper Poriah Committee v. Minister of Education* [2002] IsrSC 56(4) 203.

[17] HCJ 1554/95 *"Friends of Gilat" Association v. Minister of Education and Culture* [1996] IsrSC 50(3) 2.

[18] CA 2266/93 *Anon. v. Anon.* [1995] IsrSC 49(1) 221.

[19] HCJ 421/77 *Nir v. Be'er Yaakov Local Council* [1978] IsrSC 32(2) 253.

[20] HCJ 6914/06 *National Parents' Organization v. State of Israel* (2007) (unreported).

[21] HCJ 2751/99 *Paritzky v. Minister of Education* (2000) (unreported).

[22] HCJ 98/69 *Bergmann v. Minister of Finance* [1969] IsrSC 23(1) 693.

[23] HCJ 678/88 *Kfar Veradim v. Minister of Finance* [1989] IsrSC 43(2) 501.

[24] HCJ 6051/95 *Recanat v. National Labor Court* [1997] IsrSC 51(3) 289.

[25] HCJFH 4191/97 *Recanat v. National Labor Court* [2000] IsrSC 54(5) 330.

[26] HCJ 6778/97 *Citizens' Rights Movement v. Minister of Internal Security* [2004] IsrSC 58(2) 358.

[27] HCJ 59/88 HCJApp 418/88 *Tzaban v. Minister of Finance* [1988] IsrSC 42(4) 705.

[28] HCJ 727/00 *Committee of Arab Heads of Local Authorities in Israel v. Minister of Construction and Housing* [2001] IsrSC 56(2) 79.

[29] HCJ 3792/95 *National Youth Theater v. Minister of Science and Arts* [1997] IsrSC 51(2) 259.

[30] HCJ 8186/03 *Tali Schools Educational Fund v. Ministry of Education* [2005] IsrSC 59(3) 873.

[31] HCJ 6671/03 *Abu Ganem v. Minister of Education* [2005] IsrSC 59(5) 577.

For the petitioner in HCJ 4805/07 – E. Horwitz, Y. Shlein Ben Or.

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For respondent no. 1 in HCJ 4805/07 and respondents nos. 1-3 in HCJ 6343/07 – D. Zilber.

For respondent no. 3 in HCJ 4805/07 and respondent no. 5 in HCJ 6343/07 – M. Yanovski.

For the parties requesting to join the proceedings (Minister Eli Yishai, MK Yaakov Ratvitz and MK Moshe Gafni) – A. Glass.

JUDGMENT

Justice A. Procaccia

Background

1. The state education system in Israel is designed to achieve various objectives that underlie the set of social, national and humanitarian values constituting the foundation of the ideological existence of the State (s. 2 of the State Education Law, 5713-1953 (hereinafter: "State Education Law")). State education refers to education provided by the State according to a curriculum of studies determined for the official educational institution, which is designed to achieve the said educational goals. In the framework of the overall curriculum, there is a "basic curriculum", which is a compulsory curriculum applying to every official educational institution. The basic curriculum encompasses the hard core of content and values that every official educational institution must impart to its students. The official educational institutions are wholly funded by the State or by one of its organs, and the State is responsible for imparting state education in these institutions in the framework of a curriculum, including the "basic curriculum". Non-official recognized institutions operate alongside the official schools, and these are not supported by the State. These institutions seek to impart to their students educational content that is compatible with the value systems that the institutions wish to promote. At the same time, a balance is required between this content and between the hard core of the general educational values that must be taught in these institutions as well. The law authorizes the State to determine the conditions for recognition of these institutions, to implement a basic curriculum in them, and to set the level of State support for their budgets (s. 11 of the State Education Law). Amongst the conditions for recognition of a school as a non-official

recognized institution is the existence in the school of a "basic curriculum" (s. 3(a)(1a) of the State Education (Recognized Institutions) Regulations, 5714-1953 (hereinafter: "State Education Regulations"). The basic curriculum in recognized institutions must constitute at least 75% of the hours of study in an official educational institution, unless a different level has been approved under certain conditions (reg. 3(c) of the State Education Regulations). Where the said condition concerning the basic curriculum has been fulfilled, the State participates in the budget for teaching hours of a recognized institution at the rate of 75% of teaching hours of a similar official institution, subject to various reservations (reg. 9 of the State Education Regulations).

"Exempt institutions" are a third type of educational institution, in respect of which the Minister of Education is authorized, under certain circumstances, to exempt a pupil from the obligation of regular study at a recognized educational institution (sec. 5(a) of the Compulsory Education Law, 5709-1949 (hereinafter: "Compulsory Education Law")). The question of the obligation to introduce a basic curriculum in an exempt institution as a condition for receiving state funding also arises in the framework of our present discussion. According to the policy of the competent authority, exempt institutions, too, are required to implement the core curriculum to a certain extent as a condition of receiving state funding.

2. Our concern in this proceeding is with the degree of enforcement of the obligation to implement the "core curriculum" in non-official recognized schools in the ultra-Orthodox sector, particularly at the secondary level. This issue is bound up with another question, *viz*. what is the legal situation in relation to continued state support of the budgets of educational institutions that do not fulfill their statutory duty to incorporate into their schools the basic curriculum or the "core curriculum", as it is called by the policy-makers in the Ministry of Education. Another question arises as well: what is the fate of the proposal of the competent authority to convert recognized institutions into exempt institutions, as a means of allowing the continuation of state funding for those schools without imposing upon them an obligation to incorporate the core curriculum into their schools. These issues are bound up with the judgment handed down by this Court several years ago, in which it ordered the obligatory incorporation of the core curriculum in the recognized schools in the ultra-Orthodox sector beginning in the 2007-8 academic year, as a condition for the continuation of government funding for those institutions (HCJ 10296/02 *Secondary School*

Teachers Organization v. Minister of Education [1] (hereinafter – the judgment in the first proceeding).

The Petitions

3. Two petitions have been filed: the petition of the Centre for Jewish Pluralism – The Movement for Progressive Judaism in Israel (hereinafter: "the Movement"), and the petition of the Organization of Teachers in Secondary Schools, Seminars and Colleges (hereinafter: "Teachers' Organization"). The petitions are directed at the Ministry of Education and the Minister of Education, the Attorney General, and at the Association of Directors of Yeshivot and Torah Institutions, and the "Nitei Torah" Institutions in the Holy Land. (R. Eliyahu Yishai, Deputy Prime Minister and Minister of Industry, Science and Culture, and MK's Rabbi Litzman and Rabbi Gafni, requested to join the petition.)

4. The petitions turned primarily on the implementation of the core curriculum of the Ministry of Education in the secondary educational institutions in the ultra-Orthodox sector.

The Movement petitioned for a core curriculum to be set immediately for the ultra-Orthodox sector; this curriculum should be compulsory for the secondary non-official recognized institutions and exempt institutions, and implementation of such a curriculum in this sector should constitute a condition for the continuation of funding for these institutions. The petition also sought an order that government funding for any non-official recognized institution and any exempt institution at the primary level that does not teach the core curriculum, or that does not teach it for the number of hours required by the competent authority, be terminated or reduced accordingly. Remedy by way of relative reduction of the budget of primary educational institutions that teach the core curriculum at a level lower than 100% was also sought. Additional remedy sought referred to the need to set up an effective inspection mechanism for primary and secondary education, to be implemented immediately, which would systematically check the extent of compliance of all the non-official, recognized institutions and exempt institutions with the requirement to implement the core curriculum in their schools.

The petition of the Teachers' Organization turned entirely on the remedy for non-compliance with the judgment in the first proceeding. As stated in the present petition, in that judgment a *decree absolute* was issued, which took effect at the beginning of the 2007-8 academic year (September 2007). Under the decree, all allocations to recognized institutions that teach

religious studies, but which do not fulfill the conditions and the criteria set by law for receipt of state funds, will be cancelled. According to the petition, immediate action must be taken to apply the provisions of this decree.

5. On 25.9.07, after hearing the arguments of the litigants, we issued a *decree nisi* for the remedy sought in the petition of the Teachers' Organization, and a similar decree with respect to the petition of the Movement, insofar as it involved the remedies sought in the petition, other than the remedy in respect of the relative reduction of funding for primary education in accordance with the level of implementation of the core curriculum in each institution.

Our concern, therefore, is with two main subjects: first, the issue of the obligation to implement the "core curriculum" in secondary education in non-official recognized educational institutions and in exempt secondary institutions, with the appropriate application of the decisions in the judgment handed down on this matter. This issue is connected to the continued funding of the educational institutions that were not and are not set up even at present, to implement the core curriculum. The second area is the necessity of setting up a mechanism for effective oversight of primary and secondary education that will operate continuously, and will carry out routine checks of the degree of compliance of all the non-official recognized educational institutions and all the exempt institutions with the provisions of the Law and with the judgment in the first proceeding.

The Background to the Petitions

6. The two petitions were filed against the background of the judgment handed down in the petition of the Teachers' Organization, which had sought a cancellation of the financial allocations granted by the State to non-official recognized institutions that taught only religious studies. In that matter, the Teachers' Organization argued that these institutions do not fulfill the conditions set by law for the purpose of their recognition, since they do not teach the "basic curriculum", i.e. the core curriculum, which contains basic educational values to which every child in Israel must be exposed in the course of his studies at the primary and secondary levels, irrespective of the social sector to which he belongs. In the framework of that petition, the Court was asked to order the secondary educational institutions in the ultra-Orthodox sector to implement the core curriculum of the Ministry of Education beginning in September 2004, or alternatively, to order the State to reduce the financial allocations to institutions that do not teach the core curriculum to the level of funding allocated to the exempt institutions. The

Supreme Court (Justice E.E. Levy, with President Barak and Justice Joubran concurring), made the following main points:

7. Under s. 3A of the Budgetary Principles Law, 5745-1985 (hereinafter: "Budgetary Principles Law"), proper budgetary procedures based on the principles of equality and transparency must be followed in the funding of public institutions that are not managed by State authorities. This rule was valid by virtue of general legal and juridical principles even prior to the enactment of the said statutory provision. The transfer of funds to a particular institution is subject to the conditions designed to achieve the objectives of the allocation. In this case, the financial allocations to the educational institutions must achieve the objectives of the State Education Law and the arrangements by virtue thereof. The transfer of funds to institutions that do not fulfill the basic conditions specified by law or the objectives of state education constitutes a deviation from the authority of the Ministry of Education, and a breach of the fiduciary duty of the public authority to the public. The funding of educational institutions that do not meet the requirements of the law and the regulations in the said sense is cause for concern about violation of the principle of equality, and about unlawful discrimination between institutions that uphold the law and those that do not (para. 15). The Court determined that in practice, there is a core curriculum that is implemented in the official secondary schools, but it has not been anchored in regulations, no mechanism has been devised for its incorporation into ultra-Orthodox schools, and there is no oversight of its implementation. It also determined that the funding of institutions that do not implement the core curriculum is tainted by *ultra vires*. On the other hand, it determined that a core curriculum suited to the ultra-Orthodox educational institutions has not yet been prepared, and that inspection and enforcement mechanisms have not yet been set in place for this purpose (para. 17). In these circumstances the State requested an extension of three years in order to allow it to complete the implementation of the program in the entire primary and secondary educational system. In its response to the petition, the State worded this request as follows:

> 'To set a period of three years from now, i.e. until the 2007-8 academic year, for the preliminary implementation of the core curriculum in the primary schools, to study the lessons learned from the said implementation, to intensify the said implementation in the framework of wide sectors, to internalize the said idea, to refine the inspection and supervisory mechanisms at all levels, to complete the

> formulation of the requirement of eligibility for matriculation as a preliminary condition … to formulate a core curriculum for the intermediate levels and for the secondary schools, to maximize the attempt to reach understandings with the various sectors that are being asked to undergo fundamental changes of life-style with respect to something that touches their very souls, i.e. the education system, to formulate a core curriculum that is offered to the intermediate and secondary schools – is extremely reasonable, and does not seem to the respondents to be in any way excessive.'

8. The Court examined the ramifications of the request of the State for the said extension in light of the criterion of reasonableness. It determined that even though the competent authority had overstepped its authority in channeling funds to educational institutions that do not implement the core curriculum, it ought to be allowed to correct the defect in a balanced, considered manner, even if this requires an additional reasonable period of time. In the end, the Court issued a *decree absolute* ordering the respondents "to cancel the allocations to the institutions that teach religious studies and that do not fulfill the conditions and the criteria set by law for recognition of 'recognized institutions', which would entitle them to financial allocations". The Court further ruled that the decree would take effect after three years, i.e. in the 2007-8 academic year (hereinafter: the *decree absolute*) (para. 20 of the judgment). The date on which the *decree absolute* would take effect was deferred in consideration of the need to allow the Ministry of Education and the Minister of Education to complete the process upon which they had embarked according to a schedule that they themselves set, and which they asked to Court to adopt. The Court found that under the circumstances, a period of three years, as requested by the State, did not deviate from the bounds of reasonableness. The rationale for this determination of the Court is found in the following words of Justice Levy:

> 'The remedy sought by the petitioner – cessation or significant reduction of the funding to institutions that do not teach the core curriculum – is one which is designed to punish, in a certain sense, those who have not sinned. As explained above, no instructions have yet been issued to the ultra-Orthodox institutions concerning the program that they are supposed to implement, except for a warning that in the future they will be asked to comply with new requirements.

The responsibility for this omission lies at the doorstep of the respondents, who have admitted the problem and given us a detailed description of the steps that they have taken, are taking and will be taking in order to bring their actions into line with the statutory provisions. The respondents have already begun to apply those remedies that the petition seeks: the formulation of a core curriculum and its implementation in recognized institutions, including educational institutions in the ultra-Orthodox sector. This curriculum will constitute a criterion for receipt of funds, after completion of the preparatory work.

…

In relating to the problem of funding, the respondents considered the need to impart values of tolerance and mutual respect, through cooperation and not by coercion. They formulated a curriculum that would not only make demands of the ultra-Orthodox education system, but that would also supply the necessary resources (teacher training, preparation of educational materials etc.) in order to meet the conditions that will be set. In fixing a time-table for formulating and implementing the core curriculum for secondary education, the respondents attempted to find a solution through dialogue and the establishment of a suitable supervisory mechanism. The respondents supplied satisfactory answers to the question of why they need the requested period of time in order to complete the preparation and implementation of the core curriculum in the secondary school system. *Here it must be emphasized that the program is one that will apply to 26,000 students in institutions that until now have enjoyed pedagogical autonomy. Considering the complexity of the task and the sensitivity required to carry it out successfully, it appears to us that the time-table set by the respondents is characterized by sensible, gradual steps and not by procrastination, and the seriousness of their intentions can be seen from a similar process that they conducted, which has already led to the successful implementation of the core curriculum in the primary schools.*

> Even if there has been some delay, we must not ignore the fact that the respondents took upon themselves to effect a far-reaching change in the education system – *a system that since the establishment of the State has juggled between the need to respect the didactic autonomy of each of the various sectors in Israel, and the need to provide an education that would prepare each boy and girl for a life of communality in a pluralistic state. Since a decision has been made to recalibrate the balance, with the aim of bringing the various sectors closer together, and to instill in them common basic values, this change must be made with great sensitivity in order to preserve the delicate system of relations that exists between the various sectors in Israeli society*' (*ibid*, at pp. 238-240) (emphasis added).

With the Passage of Time

9. The years passed, and the extension period that had been granted for the *decree absolute* to take effect elapsed. The 2007-8 academic year began, but the core curriculum was not implemented to the full extent required in secondary education in the ultra-Orthodox sector. Several months prior to the start of the 2007-8 academic year, the Movement asked the Minister of Education to clarify whether the process of preparing the core curriculum for secondary education had been completed, what were the procedures for introducing the curriculum into all the ultra-Orthodox institutions, and how was the Ministry set up for overseeing the implementation. On 20.5.07, the petitioner received the response that the secondary school core curriculum was in an advanced stage of preparation in anticipation of the 2007-8 academic year. It was noted, however, that no special resources had been allocated for introducing the core curriculum into primary education, and no resources would be allocated for introducing the program into secondary schools. With respect to inspection, the Ministry referred only to primary education, and mentioned that no new supervisory mechanisms had been established, and that the inspectors, including those dealing with the ultra-Orthodox sector, check the implementation of the core curriculum in the primary schools. Against the background of this response, and concerned that the Ministry of Education did not intend to comply with the *decree absolute* that was issued in the case of the Teachers' Organization and with the declarations that it made in that proceeding, the Movement filed the petition that is the subject of this proceeding. The Teachers' Organization

also turned to the Ministry of Education with similar questions about two months before the *decree absolute* took effect, but it received no substantive response. Hence its petition.

The Petitions

The Petition of the Movement

10. The main argument of the Movement is that the Ministry of Education did not act in accordance with the judgment in the first proceeding. At the secondary school level, the Ministry did not by any means complete the task of preparing the core curriculum, and hence no steps were taken to introduce it, and the Ministry did not initiate the inspection necessary to reduce the transfer of funds to institutions that did not meet the statutory requirements, as the State had undertaken to do in the first proceeding. At the primary school level, the core curriculum was implemented, but the Ministry of Education is not carrying out any inspection to check whether the curriculum is indeed taught in all the educational institutions, and no appropriate supervisory mechanism is being carried out for this purpose with respect to recognized institutions and the exempt institutions. According to the petitioner, the Ministry is aware of scores of primary schools that are not implementing the core curriculum as required by the level of funding that they are receiving, and it is not taking the steps that this entails, i.e. reduction or cancellation of continued State funding of those institutions, in accordance with the level of incorporation of the core curriculum in their frameworks.

According to the Movement, there are only two Ministry of Education inspectors overseeing approximately 800 non-official recognized primary and secondary institutions, encompassing about 200,000 pupils. This is an unreasonable number of positions with which to achieve the objective of the inspection, and it does not allow for suitable oversight required in the statutory allocation of public funds. This is evident in light of the difference between the number of positions allocated for inspectors for the official institutions as opposed to the recognized institutions. In the exempt institutions, not even one position is allocated for an inspector, even though substantial sums of money are transferred to these institutions. Guidelines for regulating the frequency and mode of inspection are lacking, and there is no data bank concerning inspections that have been conducted.

The Movement contends that the conduct of the Ministry of Education, which grants funding to educational institutions that do not meet the statutory requirements, is contrary to the principle of equality anchored in

the very foundations of the legal system, and it is contrary to the provisions of s. 3A of the Budgetary Principles Law. The discrimination that is caused by this funding is two-fold: first, the non-official schools receive preferential treatment vis-à-vis the official schools, in that they receive public money even though they do not fulfill the basic conditions that apply to the official schools; secondly, the pupils in the non-official schools are the subjects of adverse discrimination vis-à-vis the pupils in the official schools, in that they are not taught the basic curriculum that is designed to impart to them values of general basic education, which are essential for every person for the purpose of integration into society in adulthood.

It was also argued that the procrastination of the Ministry of Education in implementing the core curriculum in the ultra-Orthodox sector constitutes, first and foremost, a violation of the *decree absolute* issued in the judgment in the first proceeding, with all the ramifications from the perspective of the obligation to comply with orders of the court. Furthermore, the conduct of the Ministry of Education involves a violation of an administrative obligation to act to implement policy within a reasonable time; it is also detrimental to the welfare of hundreds of thousands of pupils who are not receiving basic general education due to considerations alien to the type of relevant consideration that ought to be taken into account.

The Petition of the Teachers' Organization

11. The Teachers' Organization, too, objects to the non-compliance of the Ministry of Education with the judgment handed down in the first proceeding. It claims that the response of the Ministry of Education to its questions causes concern that on the one hand, the respondents have taken no action to implement the core curriculum in the ultra-Orthodox institutions, and on the other hand, the Ministry of Education has no obvious intention to desist from transferring funds to those institutions, in direct violation of the *decree absolute* that was issued in the judgment. Moreover, violation of the *decree absolute* detracts significantly from the budgetary pool of the recognized educational institutions that do fulfill the conditions of the core curriculum, and thus discriminates against them. The conduct of the Ministry of Education causes a budgetary deficit for those who follow the rules, and benefits those who do not. Non-intervention in the present situation at the judicial level is liable to perpetuate the intolerable situation of allocation of state funds, in huge amounts, for the benefit of non-official institutions that are not inspected and that refrain brazenly from implementing the core curriculum, contrary to the principles of state education. It also perpetuates the inequality created thereby, which is

contrary to the basic principles of a democratic regime. Ignoring the obligation of the Ministry of Education to be diligent in its compliance with the law and with the orders of the court is a flagrant violation of principles that are embedded deep within the Israeli legal system. The Teachers' Organization requests, therefore, that the State be ordered to comply immediately with the directives of the judgment in the first proceeding.

The Position of the State

12. The preliminary response of the State was submitted by way of deposition of the Minister of Education, Prof. Yuli Tamir. The position of the State is that the petition should be denied.

Regarding the *primary schools*, the State argues that there is no real basis for the petitions. As a rule, the core curriculum is implemented in the primary schools in the ultra-Orthodox educational sector, both in the non-official recognized institutions, at a minimum level of 75%, and in the exempt schools, at a minimum level of 55%. The institutions of primary education of these types that do not comply with the said required minimum will not be funded in future. The non-official recognized institutions that do not meet the requirement of 75% of the basic curriculum will be funded like exempt institutions, provided that they teach at least 55% of the basic curriculum. The Ministry intends to increase the implementation of the core curriculum, as well as inspection of its implementation, at the primary level.

At the same time, the State requests that a "caution" – in its words – be attached to the data. According to the State, the data available to it at present is based on the reports of the institutions and on the inspection system in its present format; this includes only three permanent inspectors and four instructors, who have to inspect some 500 non-official recognized institutions with around 145,000 pupils. The present inspection system, says the Minister, is inadequate, which naturally affects the credibility of the data. The Minister intends to take action, beginning with this academic year, to incorporate the core curriculum into primary education, and to increase the inspection significantly.

According to the data of the Ministry of Education, implementation of the core curriculum at the level of primary education in the 2006-7 academic year was at the following levels: the overall level for the non-official recognized institutions stood at the minimum of 75% of the core curriculum; the vast majority of these institutions (411 out of 503) implemented the full core curriculum. Forty-nine ultra-Orthodox institutions in the Center for Independent Education and *Ma'ayan Hahinukh Hatorani* received full

funding even though they did not teach the full core curriculum. The Minister announced that beginning in the coming academic year – 2007-8 – the Ministry of Education will fund institutions strictly in accordance with the level of implementation of the core curriculum; the funding of institutions that teach only part of the core curriculum will be reduced proportionately.

13. *Regarding the secondary schools*: The Ministry of Education completed the core curriculum for secondary schools, and it was transmitted to all the secondary schools soon after the commencement of the 2007-8 academic year (29.8.2007). The Director General's Bulletin in which the core curriculum was published (2008/3(a), 3.1-30) pointed out that *the core curriculum applies to all the pupils in the secondary school system, in all sectors and streams, and that it is a preliminary condition for receiving state funding*. In the official educational institutions, pupils must study the core curriculum in its entirety. In the non-official recognized institutions, the pupils must study at least 75% of the core curriculum, and they must reach a level of achievement that is normal in the official educational institutions. Reaching the level of achievement required in the recognized, official educational system will be checked, inter alia, by means of the METZAV [Hebrew acronym for "School Effectiveness and Growth Indices"] tests and the matriculation exams. Schools that teach at least 75% of the core curriculum will be funded in accordance with the level at which the core curriculum is taught. Educational institutions that teach less than 75% of the core curriculum will not be considered recognized institutions, and they will not receive funding as such. It was further pointed out that *"in exceptional cases, it is possible to receive an exemption from core curriculum studies at the secondary level by virtue of s. 5 of the Compulsory Education Law, 5709-1949. Guidelines concerning applications for exemptions will be published separately"*.

14. According to the Ministry of Education, ultra-Orthodox secondary educational institutions for girls comply, for the most part, with the requirements of the core curriculum, and efforts to further entrench the core curriculum in this sector will continue. The problem focuses on the "*yeshivot ketanot*" – the secondary day schools for boys in the ultra-Orthodox sector (hereinafter: "*yeshiva* day schools"). These are non-official recognized institutions. The State admits that the pupils of these *yeshiva* day schools devote their entire day to religious studies only, in keeping with the accepted religious value-system in the ultra-Orthodox world, and that these institutions do not meet the requirements of the core curriculum.

15. The Minister of Education has announced that at this time, the Ministry of Education is not able to change the reality in which the *yeshiva* day schools refuse to adopt the core curriculum. According to the Minister, introduction of the core curriculum must be effected by means of persuasion and not coercion, since the process is a social, cultural one involving a change from a long-standing tradition dating back to the establishment of the State. The Ministry of Education prefers to proceed gradually in introducing the core curriculum into secondary schools for boys in the ultra-Orthodox sector, by way of continuous dialogue, similar to the manner in which the core curriculum was introduced into the primary education system, and into the secondary school system for girls. This comes from recognition of the right of sectors who follow particularistic life-styles to preserve their identity and their cultural and religious particularity, and from recognition of the importance of religious studies for the ultra-Orthodox community, and from the "overall balancing out of social benefit versus harm" and the many advantages of a consensual arrangement in relation to the introduction of educational programs. The operative proposal of the Minister of Justice is to adopt a special legal model in relation to *yeshiva* day schools – an "exemption model" – the details of which will be elucidated below. This model, according to the Minister, is compatible with the law and with the judgment in the first proceeding. The State proposes adopting this model for a period of two years, after which the policy of the Ministry will be reviewed.

16. The "exemption model" proposed by the Minister of Justice is a program which, according to her approach, would allow those *yeshiva* day schools that are interested, and that meet certain criteria, to be classified as "exempt institutions" by virtue of s. 5(a) of the Compulsory Education Law. This provision allows the Minister of Education to exempt pupils from the requirement of regular compulsory education in a recognized institution mandated by s. 4 of the Law. According to the Ministry of Education, once the exemption has been granted to pupils of the *yeshiva* day schools, it will be possible to fund them at the level of 55% of the funding of official schools, even if they do not teach the core curriculum in their institutions at all. The main conditions set by the State for granting exempt status to *yeshiva* day schools are that their curriculum should not be incompatible with the laws of the State of Israel and its values, and that it should be in keeping with the principles of the Declaration of Independence; that the learning arrangements should be systematic and organized, and that the physical conditions of study should be appropriate and safe (para. 64 of the deposition of the State). The State also points out that those educational

institutions that are granted exempt status will still be subject to the Inspection of Schools Law, 5729-1969 (hereinafter: "Inspection Law"), and will require licensing by virtue thereof.

17. The State mentions in its deposition that it is aware of the ramifications of this step, in the wake of which an absolute exemption from the core curriculum will be granted to tens of thousands of pupils each year. According to the State, the existence of a large number of pupils who are not exposed to the core contents, and are not educated to values of Zionism and democracy, has future problematic consequences for the character of Israeli society. Therefore, its basic position is that the core studies, which help in the realization of the state educational objectives, should be continued and expanded to as many age groups and as many sectors as possible. At the same time, it estimates that at this time, it is not possible to apply the core curriculum to all the pupils in the *yeshiva* day schools, and that this is a decree with which the ultra-Orthodox sector would be unable to comply. Hence, according to the Minister of Education, the decision to establish an exemption track, which at this stage is planned for two years, is a legitimate policy decision that falls within the realm of reasonableness, and it solves a possible contradiction between the requirements of the law and the demands of life.

18. The State argues further that the reasonableness of the decision is enhanced in view of the "second chance" program that the Ministry of Education is conducting. This program is designed to enable a person who has not realized his right to receive basic education in the course of his studies in the primary and secondary education systems, to receive such education, at State expense, when he reaches adulthood, until the age of 30 years. In the framework of this program, pupils are able to realize their right to studies at the secondary level, and to present themselves for matriculation.

19. Finally, the State argues that in various situations, this Court has acknowledged the need for a gradual, slow and long process in order to bring about appropriate societal change, and it has refrained from ordering such change by way of decrees and coercion. An example of this is the matter of compulsory military service for Talmudic Academy students (HCJ 6427/2 *Movement for Quality Government in Israel v. Knesset* [2]). In the present case, religious study is a supreme value in ultra-Orthodox society, one which constitutes the very basis of the value system of the ultra-Orthodox community. Cessation of Torah study for any purpose whatsoever, including for the purpose of secular study, involves serious damage to the root of the belief system and the way of life of the ultra-Orthodox

community. Therefore, such a fundamental change must be introduced gradually, the aim being to reach consensus and avoid coercion – similar to the approach that was adopted in the matter of enlisting Talmudic Academy students into the Army.

The Response of the Representatives of the Ultra-Orthodox Primary Education System

20. Initially, the petition was directed against the special institutions of education – the Center for Independent Education and *Ma'ayan Hahinukh Hatorani* – as well as the State. *Ma'ayan Hahinukh Hatorani* stated in its response that it approves of the institution of a core curriculum, and that it implements it in practice in all its schools. In most of the institutions of this organization, the curriculum is taught in its entirety. Its pupils participate on a regular basis in the METZAV exams that test indices of effectiveness and growth in schools, in full collaboration with the Ministry of Education, and their achievements are not inferior to those of the pupils in the official education system. At the same time, *Ma'ayan Hahinukh Hatorani* disagreed with the approach of the State, whereby the full funding of special institutions is contingent upon full implementation of the core curriculum. The Center for Independent Education objected to the objective of the petitions, i.e. the reduction of funding of the ultra-Orthodox educational institutions. On 25.9.07, with the agreement of the litigants, we ordered that these respondents be removed from the petition.

The Position of the Representatives of the Ultra-Orthodox Secondary Education System

21. On 11.12.07 we granted the request of the representatives of *Nit'ei Ora* Institutions in the Holy Land (hereinafter: *Nit'ei Ora* Institutions) to join as a respondent to the petition. *Nit'ei Ora* Institutions is an association of five *yeshiva* day schools. According to the *Nit'ei Ora* representatives, this association also represents dozens of ultra-Orthodox educational institutions, including other *yeshiva* day schools, for which it speaks. According to the representatives, the judgment in the first proceeding does not apply to *yeshiva* day schools and does not bind them, since they were not a party to that petition and their position was not heard. Moreover, the *yeshiva* day schools did not receive notice from the Ministry of Education concerning their obligation to incorporate the core curriculum in their institutions until after the opening of the present academic year – 2007-8 – on 18.9.7, when the ultra-Orthodox press carried an announcement of the Ministry of Education of the intention to withdraw licenses of secondary schools that do not implement the core curriculum. They argue that a change of such

significance must be brought to the notice of the educational institutions no later than 31 May of the preceding year, which is the last date at which teachers can be informed of their dismissal before the forthcoming academic year.

22. The *Nit'ei Ora* Institutions argue that the spiritual values of the *yeshiva* world deserve recognition and respect from the State institutions, and the curricula that they teach should be recognized as satisfying the objectives and the requisite needs of secondary school pupils in the *yeshiva* day schools. They should not be required, and certainly not forced, to implement the core studies that are taught in the state schools, at any level whatsoever. Some differentiation in funding between secondary schools, based on the percentage of their students who matriculate, is already in place. The gap in funding according to the number of weekly hours per student between a school that presents its pupils for a full matriculation, and a school that teaches religious studies, stands at about 37%.

23. The *Nit'ei Ora* Institutions contend that the proposal to classify the *yeshiva* day schools as exempt institutions is neither appropriate nor acceptable. Not only could it place the *yeshiva* day schools "beyond the pale", but the said classification as exempt institutions is detrimental to the rights of the *yeshiva* day school pupils and their teachers. The *yeshiva* day schools encompass approximately 25,000 pupils, whose school day extends over at least twice the number of hours that are the norm in the official secondary schools. The damage that is likely to be caused to the *yeshiva* day schools from implementing the exemption program is great. It extends beyond the reduction to 55% of the total funding that is allocated to a school implementing the full core curriculum, for it means that other state institutions which help in funding the various activities of the non-official recognized institutions, such as the Ministry of Welfare which supports children in boarding schools, will withdraw their support. Thus, for 6,500 pupils with special needs, no solution will be provided in the framework of the exempt institutions. Teachers' wages are also likely to suffer significantly. According to the argument, it is not for nothing that the *yeshiva* day schools have refrained from applying to change their status to that of exempt institutions, and it should be assumed that they will refrain from submitting such applications in the future as well.

24. On 30.10.07 we granted the application of the Association of *Yeshivot* and Torah Institution Principals (hereinafter: "the Association") to join as a party to the proceedings. This Association incorporates most of the *yeshiva* day schools in Israel (see the letter of the Association to the Minister

of Education, dated 22.11.07, R/11 of the State's deposition of 9.12.07). The Association did not file a separate response on its own behalf.

25. On 23.12.07 a motion was filed on behalf of the Deputy Prime Minister, Eli Yishai, Chairman of the Shas Party, and on behalf of MK's Rabbi Yaakov Litzman and Rabbi Moshe Gafni, leaders of the Torah Judaism Movement (comprising *Agudat Yisrael* and *Degel Hatorah*), to join the petition as respondents. In their response, they noted that the Association cannot respond to the petitions, for it is not authorized to do so, and they asked to serve as a mouthpiece for the *yeshiva* day schools. They did not join the proceeding officially, but we allowed them to submit their arguments in writing and orally, as follows:

They object to the fact that the judgment in the first proceeding, which radically changes the order of things that has prevailed for decades, was handed down without the position of the *yeshiva* day schools having been heard. At the same time, so they say, what has been done cannot be undone. Therefore, the focus must be on the dire straits in which the *yeshiva* day schools have found themselves since the beginning of the 2007-8 academic year. These institutions first heard of the judgment in the first proceeding, and of the intention of the Ministry of Education to make the renewal of licenses and of their funding conditional upon implementation of 75% of the core curriculum in their institutions, about three weeks after the opening of the academic year (on 18.9.07). When the Ministry of Education became aware of the problematic situation, it proposed the temporary exemption track for a period of two years. Even though this proposal is preferable to the total cancellation of government funding, it still contains serious drawbacks that jeopardize the ability of the *yeshiva* day schools to continue to function. The model proposed by the Ministry of Education reduces the allocations to the *yeshiva* day schools significantly, even though many of them were already suffering from significant financial hardship. If the Ministry of Education wished to reduce the rate of funding of institutions that do not implement the core curriculum, it should have given warning of this before the 2007-8 academic year, and in any event no later than 31.5.07, which is the determinant date with respect to the dismissal of teachers and making the necessary arrangements for reducing the hours of study. The Court is therefore asked to order that funding of the *yeshiva* day schools in the 2007-8 academic year continue at the same rate as in the previous academic year, and as normal in the non-official recognized educational institutions. According to the applicants, in the coming months the representatives of the *yeshiva* day schools and the ultra-Orthodox parties will

be meeting with the Ministry of Education in the hope of agreeing upon a format for operating the *yeshiva* day schools in the future.

The Position of the Petitioners with Respect to the Response of the State

26. The Movement argues that the "exemption model" proposed by the Ministry of Education has no legal basis. Obligating certain educational institutions to teach the core curriculum, and granting an exemption from the core curriculum to a certain type of institution, is a serious violation of the principle of equality. This should be seen as an abdication by the State of its obligation to grant the pupils of the *yeshiva* day schools a basic education, which constitutes a violation of the dignity of these pupils in that it denies them fundamental, general educational values. This denial is a result of an administrative decision, and as such it does not meet the conditions of the limitation clause in Basic Law: Human Dignity and Liberty. The creation of an exemption track is contrary to the basic conceptions that underlay the funding of educational institutions up till this point, and it constitutes a radical change in the consistent policy of the Ministry of Education on the subject of the core curriculum; moreover, it involves a deviation from the judgment in the first proceeding. In view of the above, the exemption track is tainted with extreme unreasonableness. The unreasonableness of this exemption track, which was seemingly designed for the purpose of dialogue with the ultra-Orthodox sector, is even greater in view of the length of time that has elapsed since the handing down of the judgment in the first proceeding – a period which was not properly utilized for the purpose of conducting dialogue as aforesaid.

With respect to inspection of implementation of the core curriculum, the Movement argues that the Ministry of Education must produce a workable plan, with adequate budgetary coverage, that will increase significantly the number of inspectors in the non-official institutions. A declaration of intention to increase inspection will not be considered sufficient if it is not backed up by practical arrangements.

All the above notwithstanding, the Movement announced that since the proceedings in this petition lasted well into the 2007-8 academic year, for practical reasons it would not object to a deferment of the execution of the judgment in the first proceeding until the beginning of the 2008-9 year, in order to allow the remaining time to be utilized for incorporating the core curriculum into the ultra-Orthodox educational institutions, and to arrange for inspection of its implementation. This would have to be completed within a preset time frame, and the Court would have to be updated on the progress on the execution of the judgment.

The Teachers' Organization raised similar arguments relating to the position of the State. Following the hearing, a *decree nisi* was issued, as detailed above.

Additional Deposition of Response on Behalf of the State

27. In response to the *decree nisi* that was issued in the petition, the Minister of Education announced that at present, only a few institutions had applied to the Ministry of Education to transfer to the exemption track. From exchanges that took place between the leaders of the ultra-Orthodox community and the Minister of Education, it became clear, so said the Minister, that the ultra-Orthodox sector was having trouble accepting the temporary exemption track at this time, despite the fact that according to the Minister, and as evident from the attached protocol of the discussion of 19.9.07, this track was devised with the full consent of the leadership of the ultra-Orthodox community. The Minister points out in her deposition that she considered the arguments that were raised, primarily the arguments of the leadership of the ultra-Orthodox community relating to the late date at which they were informed of the judgment in the first proceeding and the substantive difficulty in getting organized during the present year for the changes entailed by the modification of their status from non-official recognized institutions to exempt institutions, even though the exemption track had been devised with their complete agreement.

The Minister noted in her deposition that with a heavy heart, she decided to accede to the request of the ultra-Orthodox leadership and to defer the application of the temporary exemption track until the beginning of the 2008-9 academic year, subject to the approval of this Court. In light of this, she asks to defer execution of the judgment in the first proceeding until the end of the 2007-8 academic year, in a manner that will enable the ultra-Orthodox secondary educational institutions to retain the status of recognized institutions, and to continue receiving full funding as institutions with this status. The temporary exemption track, according to the plan, will begin to operate in the 2008-9 academic year. This means, in practice, that the ultra-Orthodox educational institutions will be given a period of a year in order to organize themselves for the transfer to the exemption track.

The Minister again stressed her unequivocal professional position supporting the incorporation of the core curriculum in the ultra-Orthodox sector, and pointed out that this is the objective of the proposal for a two-year exemption track, which involves the intention to hold talks concerning incorporation of the core curriculum into the *yeshiva* day schools.

Updated Position of the Parties

28. On 17.2.08, in the framework of this proceeding, the litigants were given a period of 30 days to hold talks between themselves aimed at reaching an understanding. On 18.3.08, the State announced that talks had been held between the representatives of the Ministry of Education and representatives of the ultra-Orthodox sector. The message that was transmitted to the Ministry of Education in the various meetings was consistent: an education committee comprising nine rabbis, who officially represent the majority of the various streams in the ultra-Orthodox sector, operates within the ultra-Orthodox education system, and this committee holds the authority on questions of education. The members of the committee decided that the policy of implementing the core curriculum in the *yeshiva* day schools is not acceptable; in the present circumstances, and in view of the way in which the proceedings in this petition are unfolding, they feel that promoting legislation to change the normative situation, and to obligate the State to fund the special institutions, including the *yeshiva* day schools, irrespective of their implementation of the core curriculum, is imperative. In fact, by the time this petition was filed, a bill had already been submitted by Members of Knesset from the religious parties, the objective of which was to sever the connection between the requirement to adopt the core curriculum in the ultra-Orthodox schools and receipt of government funds. It was conveyed to us that the Minister of Education objects to the bill and takes a grave view of the pedagogical and educational ramifications that would result from perpetuation of a situation in which significant parts of the population are not exposed to the content and values of the core curriculum. Against this background, the Court was asked by the State to consider in a positive light the proposal for an exemption track, which the State deems preferable to the proposed legislation.

Transitional Arrangement

29. In the course of the hearing on the petition, at the request of the State, we decided upon a transitional arrangement whereby the State will continue at this stage to fund the *yeshiva* day schools at the level of 55%, until the Court rules on the petition.

Decision

30. The present petitions once again raise for discussion an especially important issue of social, legal and moral significance. The question is – what is the extent of the obligation of the State to introduce a core curriculum into the various educational institutions in Israel, including the

special institutions with a particular value system? Another, connected question is that of the extent of the obligation of the special non-official educational institutions to adopt a core curriculum at any particular level in the framework of the curriculum followed in their schools. Another question derives from this question: is the State competent and authorized to transfer public funds to educational institutions that do not shoulder the yoke of the core curriculum, and that violate the obligation to incorporate it into the curricula that they follow; is there a necessary connection between granting government budgetary support to educational institutions, and between the extent to which they are bound by the fundamental values of general state education?

The Substance of the Core Curriculum

31. The core curriculum was designed to expose the Israeli pupil, as such, and irrespective of the social sector to which he belongs, to basic educational content of a general, national and universal nature. This content is the basic kernel that is common to and unites all the different streams in Israeli society, constituting a *"common denominator for all the pupils at the level of concepts, content and values, and in thinking and learning skills"* (National Education Program (Dovrat Report) January 2005, para. 1.7.3). The objective of the core curriculum is to develop shared basic knowledge, skills and life values in the pupils that will enable each one of them to function in their independent lives in pluralistic Israeli society. The core curriculum is based on a wide common denominator built on humanistic, universal values, and on Israel being a Jewish and democratic state.

The core studies were designed to achieve two main objectives: first – to constitute a link connecting all the factions and sectors of the nation, in order to create a basic common denominator, which is vital for creating the essential harmony between the various human strata of society; secondly – to provide each child in Israel with the basic tools to cope with life and to realize the right to equality of opportunity in developing his personality and independence in both childhood and adulthood. The core curriculum includes Jewish studies and the humanities, civics, geography, Hebrew and English, mathematics and sciences, and physical education.

32. Over many generations, specialized educational institutions in the ultra-Orthodox sector operated at a remove from the general content of state education in Israel, with religious studies alone constituting the core of education in their institutions. Over many generations, State funds were transferred to specialized educational institutions, the curricula of which included no element of general education of a general-public nature. The

questions that arose around this reality were dealt with and ruled upon by this Court in the first proceeding, when it considered at length the question of the legality of the present arrangement. The Court in its judgment dealt with two related matters – the extent of the obligation of the specialized institutions to incorporate the core curriculum into their framework, and the connection between the fulfillment of this obligation and the authority of the State to transfer state funds to such institutions. In doing so, it defined the normative position in a clear and explicit fashion. According to the judgment, the core curriculum is compulsory in the non-official institutions, including the recognized institutions and the exempt institutions. State funding is closely bound to the level of implementation of the core curriculum in the educational institution, and will be granted at a level similar to that level of implementation. The State is not authorized to transfer state funds to an educational institution that does not apply the core curriculum at all. It may transfer such funds only in direct proportion to the level of implementation of the curriculum. According to the judgment, the said principle, insofar as it relates to state funding, applies to both the non-official recognized institutions and to exempt institutions. It is derived from the explicit provisions of the statutory law relating to recognized institutions and drawn from the general principles of equality in relation to receipt of state funds that apply to exempt institutions as well by virtue of s. 3A of the Budgetary Foundations Law, and by virtue of the foundations of the system.

33. The present petitions are, therefore, an additional, later link in the fundamental judicial decision of this Court in the judgment in the first proceeding on the said issues. We are standing today on ground that has already been tilled; a complete normative model has already been drawn up on this subject. Even though the present petitions once again present the issues from the aspect of fundamental principles, they are primarily concerned with the question of the extent of *application* of the judgment in the first proceeding, which settled definitively the fundamental questions under discussion.

The focus of the decision confronting us is, therefore, on the aspect of application of the judgment in the first proceeding, which is found at the kernel of the petitions before us. We will say something on the theoretical aspect of the said questions, due to their special importance to the individual and the community in relation to imparting basic educational values to each pupil in Israel as such; to the fashioning of the image of Israeli society in the present and the future; and to ensuring the existence of maintaining the rule of law and proper government procedure in the State.

Application of the Judgment in the First Procedure

34. The basic tenets of the rule of law are that *"when a judgment has been handed down, it must be upheld in word and in spirit"* (per President Shamgar in HCJ 5711/91 *Poraz v. Chairman of the Knesset* [3], at p. 308). The obligation to comply with judgments is one of the basic conditions upon which the rule of law in a democratic state is founded. This obligation *"arises from the law, and it is an expression of the need to regulate the life of society according to basic norms that allow for the existence of an organized framework in which the law prevails"* (ibid). If the judgments of the courts are not obeyed, the principle of the rule of law is undermined and the societal order breaks down; each person does as he pleases, and the distance between the rule of law and anarchy is a hair's-breadth.

35. Non-compliance with the judgment of the court by a citizen is a grave manifestation of a violation of the rule of law. Infinitely more serious is the non-compliance with a judgment on the part of one of the State organs. Indeed, *"the obligation to obey a judgment of a competent tribunal, which applies to every person, applies with greater force to the state authorities"* (Directive 6.1003 of the Directives of the Attorney General (of 15.6.03)). Noncompliance by a state authority with a judgment of a judicial tribunal is one of the most serious and most worrying of the dangers that threaten the rule of law in a democratic state (A. Rubinstein and B. Medina *Constitutional Law of the State of Israel* (Vol. 1, *Basic Principles*, 2005) pp. 271-274). The essential principle of the rule of law is based on the awareness that the State itself, like every citizen, is bound by the law and is not above it. *"The rule of law in its formal sense means that all entities in the State, whether people as individuals and corporations, or the branches of the State, are bound to act in accordance with the law, and action contrary to the law should encounter an organized societal sanction"* (per Justice Barak in HCJ 428/86 *Barzilai v. Government of Israel* [4], at p. 621)). A state in which the state authority takes the law into its own hands – complying with a judicial order against it if it wishes to, and ignoring it if it does not – is one in which the seeds of anarchy and mayhem are being sown, and which is developing a dangerous culture of the rule of force and arbitrariness. A state authority is a fiduciary of the public, and "has nothing of its own" (HCJ 142/70 *Shapira v. Bar Association Regional Council* [5], at p. 331). As such, it should serve as a beacon for respect of the law and the rule of law. The eyes of the public are raised to the state authorities and public office holders. Respect for the values of law, and development of a tradition of protection of the value of the rule of law are influenced by their

conduct. Disobedience of the law and non-compliance with judgments by a state authority involve a deep moral violation not only of the formal infrastructure of the foundations of the law and the regime, but also of the core of the tradition and the culture of proper government, that serve as an example of appropriate conduct of the individual in society. In one case in which the State refrained from complying with a judgment at the set time, the Court said the following, which is appropriate for our case as well:

> 'This reality of non-compliance with a judgment for a period of 7 months is a harsh reality in a law-abiding State when the State, which is responsible for preserving the rule of law, is itself complicit in the non-observance of the law and the decisions of the courts.
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> …
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> Beyond the aspect of the continuing suffering of the fowl, the phenomenon of non-compliance with a judgment by a public authority is deserving of severe criticism *per se*, in view of the deviation that it represents from the conduct of good government, and from basic constitutional norms that are rooted at the base of the democratic process … . The law enforcement authorities did not act in an appropriate manner to implement at the set time the operative decisions of the judgment. Even if they devoted time to examining alternative methods of fattening fowl, and believed in good faith that it would be possible to find a method that complies with the criteria that were set in the judgment, the time and dates for so doing were not up to them. They were dictated by the judgment, and there was an obligation to follow them scrupulously (cf: HCJ 51/99 *Shekem v. Director of Customs and VAT* [6], at p. 125; HCJ 53/96 *Tishlovet A. Aloni Ltd. v. Minister of Industry and Commerce* [7], at pp. 9-19; HCJ 3782/95 *'Bezedeq' Amutah v. State of Israel* [8], at p. 364). It has often been said that the violation of court orders does not merely harm the protected interest upon which the judgment is based. Non-compliance with orders is harmful to "the entire population, to the position of the judiciary and to the social infrastructure that leads to respect for the law", in the words of Justice Barak in CA 371/78 *Hadar Lod Taxi Services Ltd. v. Biton* [9], para. 9; CrimApp 4445/01 *Gal v. Katzovshvili* [10], para. 8). The obligation to comply with

> an order of the court is, therefore, a value that stands on its own, and the law enforcement authorities must be scrupulous in their compliance with court orders in the framework of their obligation to ensure compliance with the law in Israel (CrimA 578/78 *State of Israel v. Issa* [11], para. 3; CA 4603/90 *Gvirtzman v. State of Israel* [12], at p. 555)' (HCJ 7713/05 *Noah – Israel Association of Organizations for the Protection of Animals v. Attorney General* [13]).

36. The obligation of an individual or a state authority to comply with a judgment involves compliance in both letter and spirit. It means compliance according to the literal formulation and the purpose. As with every legal document that must be interpreted according to the text and the purpose, so too must a judgment be interpreted in accordance with its wording and with its purpose in view. Correct, appropriate compliance with a judgment is not compatible with paying lip service to the formal text of a judicial order that is taken out of its context, or with adopting a by-pass route that does not lead to realization of the purpose. The requirement of compliance with a judgment according to its purpose applies to every individual, and it obligates a public authority to an even greater extent. This derives from the greater obligation as a state authority to uphold the rulings of the court in letter and in spirit, without embarking on a route of avoidance that does not fulfill the purpose that the ruling was designed to achieve.

The Main Points of the Judgment in the First Proceeding

37. The judgment in the first proceeding examines in depth the question of the obligations of the State and the non-official educational institutions in respect of implementing the core curriculum to some extent or another in their institutions, and the connection between this obligation and the authority of the State to transfer government funding to these institutions. The judgment notes that the purpose of the education system, which is funded by the State, is to achieve objectives specified in the State Education Law. *"Through education, the legislator seeks to instill into pupils the basic values of Israeli society, in order to provide them with the necessary tools both for success in their occupations and to fulfill their obligations and understand their rights as citizens of the State of Israel"*, says the judgment in para. 7, *ibid*. Section 2 of the State Education Law defines the objectives of state education, which include imparting the principles of the Declaration of the Establishment of the State of Israel, and Israel's values as a Jewish and democratic state; studying the history of the Land of Israel, the Torah of Israel and the Jewish heritage; developing the pupil's personality and his

skills; providing the basis for his knowledge; fortifying his independent thought, judgment and critical faculties; providing equality of opportunity and nurturing social involvement, development of an attitude of respect and responsibility of the person for his natural environment and for nature; and knowledge of the language, the culture and the heritage of different population groups, including the Arab population, while instilling an awareness of the equality of rights of all citizens of the State.

38. According to the judgment, realization of these fundamental aims in Israeli education is achieved by imposing compulsory education by law upon every pupil of compulsory education age, by imposing an obligation to incorporate a "basic curriculum" into the program of studies, and by making funding of educational institutions contingent upon implementation of a core curriculum designed to promote the objectives of public education, at a relative level to be determined by the competent authority. On the matter of government funding, the judgment discusses the distinction between three types of institutions. *Official institutions* are those whose entire budget is funded by the State or one of its organs; *non-official recognized institutions* are those which have been recognized by the Minister in the framework of s. 11 of the State Education Law. The State Education Regulations lay down the conditions for recognition of an educational institution, and prescribe the obligation to follow a basic curriculum, as well as the conditions for the level of budgetary support. Under the Regulations, recognition and licensing of a recognized educational institution are dependent upon implementation of the core curriculum at the level of 75% of the hours of study in an official institution, and subject to certain reservations that were elucidated there. The *exempt institutions* constitute a third track for children of compulsory education age. Under s. 5 of the Compulsory Education Law, the Minister is authorized to order that a child or a youth of compulsory education age, who attends a non-recognized institution regularly, will be exempt from the obligations of regular study by virtue of s. 4 of that Law. This exemption is conditional upon the existence of special reasons for the child not learning in a recognized institution, and upon his receiving a systematic education privately, to the satisfaction of the Minister; the exemption may also be granted if the Minister is convinced that the child is not capable of studying in a regular fashion in a recognized institution (s. 5 of the Compulsory Education Law). As stated in the judgment – *"the exempt institutions, too, receive funding from the Ministry of Education, but at a reduced level, and according to the new program of the respondents – at the level of 55%, which is conditional upon implementation of 55% of the core curriculum that has been prepared"* (para. 7 of the judgment). The judgment goes on to

analyze the obligation to fund the studies of pupils of the 11th and 12th grades in secondary school (s. 6(a)(2) of the Compulsory Education Law, and s. 2(4)(b) of the Compulsory Education (Free Education Outside of an Official Educational Institution) Order, 5738-1978.

39. The judgment also discusses the licensing requirement for every educational institution under the Inspection Law. Granting of the license is conditional upon the fulfillment of certain physical conditions as well as implementation of an appropriate curriculum (s. 9 of the Inspection Law). This provision authorizes the setting of conditions in relation to the curriculum as minimum conditions for licensing the school, irrespective of the question of its funding (para. 9 of the judgment). An agreed assumption underlying the judgment is that –

> 'The parties agree that a condition of receiving public funding is that the educational institution implement the basic curriculum as defined by the Ministry of Education ... . The respondents are of the opinion that the complex and sensitive process of preparation of the core curriculum and its implementation in institutions that have previously enjoyed pedagogic autonomy should be allowed to run its full course (para. 10 of the judgment)'.

40. The judgment relies, therefore, on an assumption that is acceptable to the State and compatible with the Law, whereby public funding of non-official educational institutions – whether recognized or exempt – is conditional upon some level of implementation of the core curriculum, as directed by the competent authority.

The discussion in that case was limited to the question of the timeframe that would be reasonable for putting the core curriculum into practice in the ultra-Orthodox educational institutions. The State asked for a period of three additional years for this purpose, noting the complexity of the reform in the ultra-Orthodox sector and the ideological and practical difficulties its implementation would involve.

41. In its decision, the Court discussed the requirement of following proper, egalitarian, and public budgetary procedures in the funding of public institutions that are not administered by State authorities. This principle, so it determined, ensues from s. 3A of the Budgetary Foundations Law and from general legal principles applying to a public authority. In this instance, government funding of educational institutions was intended to achieve the objectives of state education, and providing such funding without insisting

on fulfillment of this condition constitutes a breach of authority on the part of the public body; it also involves a breach of trust vis-à-vis the public, and a violation of the obligation to extend equal treatment to educational institutions that comply with the objectives of the law and those that do not (para. 15 of the judgment)..

42. In the circumstances of the case, the Court deemed it right to allow the competent authority a period of three years to correct the problem in the educational institutions in the ultra-Orthodox sector, despite its breach of authority, and despite the fact that it was acting in breach of the law in providing funding for educational institutions that did not fulfill the objectives of state education. *Inter alia*, the Court took into consideration the argument of the Ministry of Education that the program involved was a complex one, extending to some 26,000 pupils in the ultra-Orthodox educational institutions which until now had enjoyed pedagogic autonomy. Aware of the drastic change that is planned for the curriculum in the general education system, and in view of the complexity of the task and the sensitivity required in its implementation, the Court accepted in its entirety the request of the State for an extension.

In the end, the Court issued a *decree absolute* to cancel the government allocations to institutions teaching religious studies that did not fulfill the required conditions for the purpose of recognizing them as "recognized institutions", which would entitle them to monetary allocations, in accordance with the remedy sought in the petition. Execution of the decree was deferred for three years, until the start of the 2007-8 academic year.

43. The judgment covers wide ground, and its determinations regarding the prohibition on transferring public funds to institutions that do not fulfill the objectives of public education extend to all the non-official educational institutions, including the recognized institutions and the exempt institutions. Although the operative decree applies to non-official recognized institutions, as requested in the petition, the determinations of principle in the judgment are much wider than the operative decree and they apply, both literally and according to their logic, to *all* public funding of *any* educational institution, of whatever type.

The attempt to isolate the contents of the operative decree from the other determinations in the judgment, and to deduce that it permits continued public funding of non-official educational institutions that are not recognized, such as exempt institutions, simply because they are not included in the actual wording of the *decree absolute*, is akin to detaching the purpose of the judgment from its formulation, and to taking things out of

their true context. The meaning of the alleged distinction between the operative decree and the general determinations in the judgment will be elucidated below.

The Response of the Ministry of Education to the Determinations in the Judgment and to the Set Time-Table

44. From the responses of the Ministry of Education to the petitions, and from the position it adopted in Court, it is clear that the judgment of this Court in the first proceeding was not complied with on time, and has not been complied with yet, neither in letter nor in spirit.

With the opening of the 2007-8 academic year, the core curriculum was not introduced nor incorporated into the secondary day schools in the ultra-Orthodox sector. Moreover, from the response of the State and from the arguments of the representatives of the ultra-Orthodox education sector it emerges that during the three years that elapsed from the time the judgment in the first proceeding was handed down, no real steps were taken by the Ministry of Education to incorporate the core curriculum in the *yeshiva* day schools in the ultra-Orthodox sector. Up till the time of filing the petitions, no dialogue had taken place, and certainly no understandings or agreements had been reached between the Ministry of Education and the representatives of the ultra-Orthodox educational institutions concerning incorporation of the curriculum. The announcement concerning the requirement to implement the core curriculum as a condition of continued government funding was delivered officially to the ultra-Orthodox educational institutions only at the start of the 2007-8 academic year, if not later, following the filing of these petitions. It was not proven that there had been any real attempt on the part of the Ministry of Education to utilize the three year period it had been awarded under the judgment, at the request of the State, in order to aggressively promote the core curriculum in the ultra-Orthodox secondary education system for boys, and to fulfill the obligation and the responsibility of the Ministry of Education on this matter. The 2007-8 academic year began, and even ended, without the core curriculum having been implemented, and without the appearance of even the first signs of real preparation for its implementation in the near future. The picture that emerged in Court in relation to the awareness of the Ministry of Education and the Minister of Education of their duty to comply with the judgment in the first proceeding was deplorable.

The Plan to Convert the Status of the Recognized Educational Institutions to Exempt Institutions

45. As if this was not enough. The Ministry of Education, in its distress, sought a way out of the mess, and what was it? A creative idea – the brainchild of the officials of the competent authority – was suggested. The *decree absolute* issued in the judgment would be by-passed, and the non-official recognized institutions in the ultra-Orthodox sector would be allowed to continue receiving government funding even without implementing the core curriculum at any level, in the following original way: in September 2007 the Ministry of Education issued a public announcement whereby, beginning in the 2007-8 academic year, licenses and budgets would not be given to secondary educational institutions that do not teach at least 75% of the core curriculum. The licenses of secondary educational institutions that do not meet the requirements of the core curriculum would be withdrawn. At the same time, these institutions would be able to submit an application for a temporary exemption by virtue of s. 5 of the Compulsory Education Law, so that its pupils would not be in violation of the requirement of regular attendance at a recognized institution. The applications could be submitted until 30.1.07.

In its oral pleadings, the State clarified that institutions that were granted the said exemption would continue to operate as exempt institutions and to receive state funding, even though the core curriculum would not be incorporated at any level into their programs of study. The State explained this step by saying that the operative decree in the judgment in the first proceeding prohibits continued funding of *non-official recognized institutions* that have not adopted the core curriculum of the Ministry of Education. Hence, from the moment that these institutions change their status from non-official recognized institutions to *exempt institutions*, then, magically, the operative decree of the judgment does not apply to them, and it is possible to continue funding them as exempt institutions at the level of 55%, even though they in no way comply with the requirement of teaching the core curriculum.

46. *On the factual level*, the secondary schools for boys in the ultra-Orthodox sector rejected the idea of becoming exempt institutions for their own reasons, due to the concern that such a step would lead to a reduction of the financial support from the present level of 75% to a level of 55%, and due to the concern that changing their status to that of exempt institutions would adversely affect other support that they receive from other entities. Even though it became evident that the step of changing from recognized institutions to exempt institutions was not at all practical, it reflects a problematic, jarring position on the part of the Ministry of Education in

relation to its attitude to the judgment in the first proceeding, and to its obligation to comply in good faith with court orders, as expected and required of a state authority.

47. The policy adopted by the Ministry of Education in allowing a recognized institution to change its status to that of an exempt institution in order to continue receiving government funding without adopting the core curriculum seems inexplicable, in the following senses:

First, it stands in clear contradiction to the rulings in the judgment in the first proceeding, both in letter and in spirit. These rulings, which point to a direct link between government funding and implementation of the core curriculum in non-official educational institutions, relate explicitly to all the non-official educational institutions that receive state funds. These rulings apply, without exception, to both recognized and exempt institutions. The State itself declared in Court in the first proceeding that its funding of the exempt institutions at the level of 55% is conditional upon incorporation of the core curriculum in these institutions, to an extent that it determines. The fact that the operative decree in the judgment relates, as requested in the petition, to non-official recognized institutions in the ultra-Orthodox sector, and does not extend to exempt institutions, is neither here nor there. The obligation of the competent authority is to comply with the judgment according to its spirit, and not to latch onto the literal wording of the order in an attempt to find a by-pass route that is not compatible with the substantive determinations of the judgment and with the rationale underlying it.

Secondly, the technique devised by the Ministry of Education to enable the "mobility" of recognized institutions and their conversion to exempt institutions in order to allow them to be "released" from the obligation to incorporate the core curriculum into their frameworks, and at the same time to continue receiving government funding, is incompatible with the proper use of the authority to grant exemptions by virtue of s. 5 of the Compulsory Education Law. The authority to grant an exemption was intended for special situations in which there is a substantive justification for exempting parents and children from regular attendance at a recognized educational institution. Such an exemption is granted in exceptional circumstances, and it has side effects whereby a person who is not subject to the obligation of regular study is not entitled to free education, the State is not responsible for providing him with free compulsory education, and the parents do not have the right to choose a recognized educational stream (s. 5(b)(3) of the Compulsory Education Law). Clearly, proper use of the power to exempt is totally incompatible with "mobility" of recognized educational institutions

and their conversion to exempt institutions in order to rid them of the obligation to implement the core curriculum. How much more incompatible it is with the continued transfer of government funds to such institutions, while they refrain from teaching the core curriculum as required by the policy of the Ministry of Education, and as required under the conditions included in the license of the school by virtue of the Inspection Law. This policy will be discussed at greater length below.

Thirdly, the idea that it is possible to continue transferring public funds to exempt institutions that do not incorporate the core curriculum into their schools is contrary to general legal principles of equality in allocation of public funds. The principle of equality anchored in s. 3A of the Budgetary Foundations Law, and the obligation to ensure equality as a value of a constitutional character, which has found expression in the case-law, are not in keeping with the continued funding of exempt institutions that do not fulfill the core requirements. To permit such a situation would violate the requisite unity and equality between the various educational institutions in the various sectors, which are entitled to public funding on the basis of the fulfillment of equality-based conditions that are reflected in the adoption of the basic elements of public education and core curriculum in a school framework, at a level determined by the competent authority.

48. Particularly disturbing about the position of the Ministry of Education is the absence of any commitment on its part to future compliance with the judgment. The State in its pleadings relates to the process of "evolution rather than revolution", to future dialogue, undefined in time, with the heads of education in the ultra-Orthodox sector, to the attempt to influence the heads of the ultra-Orthodox community in a gentle way and without coercion, as if we were now at the beginning of the process of incorporating the core curriculum and not at the end. In presenting its reasons to us, the Ministry of Education and the Minister of Education showed no sign of recognizing the gravity of the phenomenon of non-compliance with the judgment until now, and the lack of genuine commitment to future compliance was manifest. The request for a deferment for an additional one- or two-year period that was raised before us was not accompanied by any real commitment to enforcing the curriculum, other than the utterance of some non-committal, amorphous statements lacking any real substance. The position of the Ministry of Education in the current proceeding reflects a substantive and significant withdrawal from the position that it adopted in the previous proceeding, and a reversal on the commitment it made then to correct the flaw in its actions over the years in

transferring funds to ultra-Orthodox educational institutions without insisting on the link between this funding and incorporation of the core curriculum into their schools. The position of the Ministry of Education contained no assertion of a change in its *professional* policy in relation to the obligation to implement the core curriculum in all the licensed educational institutions. The change occurred, so it would appear, on other levels that were external to the framework of the relevant factors that the competent administrative authority ought to have considered in the exercise of its authority – factors that were alien to constitutional obligations, to reasonability and equality in the exercise of an administrative power; considerations which were not compatible with the duty of trust of the authority vis-à-vis the public, and which are not guided by the basic principles governing the allocation of public funds; considerations which ignored the basic obligation of the public authority to comply with judgments of a high judicial tribunal.

49. In these circumstances, the competent authority's non-compliance with the judgment is extremely significant. The ramifications of such conduct extend beyond the issue under discussion in this proceeding, for all its importance. They touch on the hard core of the rule of law and the obligations of good governance that apply to a state authority. They have an effect on the normative-moral scheme underlying the idea of separation of powers, and the obligation of the ruling bodies to respect the authority of other bodies. They convey a worrying message to the public at large and to the Israeli citizen as an individual. In these circumstances, judicial intervention and granting the main remedies sought in the petitions before us were warranted.

50. This judgment could have been concluded on this point, and action taken as warranted by the circumstances described above. However, the importance of the substantive issue involved in this proceeding – imparting core values in education to all sectors of the population – justify dwelling somewhat on the legal and moral aspects of the substantive issue, including the existing link between the commitment to the core education and the matter of public funding for educational institutions, continuing directly from the determinations of the judgment in the first proceeding and in the spirit of the judgment.

Rights and Obligations in Education in Israel in Relation to the Individual and the Public

51. The right to education has been recognized in our law as a basic right granted to every person (HCJ 11163/03 *Chief Surveillance Committee for*

Arab Affairs in Israel v. Prime Minister of Israel [14]; HCJ 2599/00 *Yated v. Ministry of Education* [15], at p. 834). The right to education was guaranteed in the Declaration of Independence, and it is grounded in various international conventions that Israel has ratified or to which it is a party, and in conventional international law (s. 26 of the Universal Declaration of Human Rights (1948); s. 13 of the International Covenant on Economic, Social and Cultural Rights (1966); ss. 28 and 29 of the Convention on the Rights of the Child (1989); Y. Dinstein, "Cultural Rights", 9 *Israel Yearbook on Human Rights* (1979) 58; HCJ 4363/00 *Upper Poriah Committee v. Minister of Education* [16], at pp. 213-215). The right to education is entrenched in various Israeli statutory provisions (Y. Rabin, *The Right to Education* (5762-2002), at p. 301 ff.). This right is not new to us; rather, it is deeply embedded in the values of Judaism and in the heritage of Israel (*Yated v. Ministry of Education* [15], at p. 842; *Movement for Quality Government v. Knesset* [2]). The crucial importance of the right to education lies in the indispensability of education for the realization of human rights as an individual and for the expression of a person's human autonomy, as a key element of a person's personality and abilities, providing him with the capability of dealing with matters and the possibility of realizing the equal opportunities in the society in which he lives in youth and in adulthood. The right to education impacts on a person's other basic rights, such as the freedom of expression and the freedom of occupation; realization of the right to education is intended to achieve societal objectives. Education constitutes a connecting link between the different and varied sectors of society, and an essential bridge for the building of a harmonious social fabric. Education is an important vehicle for promoting liberal democratic values. It is an essential condition of self-realization of the individual, and for the existence of normal life in society (see Justice Or in HCJ 1554/95 *"Friends of Gilat" Association v. Minister of Education and Culture* [17], at pp. 24-25).

52. The right to education is a complex right. It contains an aspect of human rights, as against which stands a "human obligation" that must be realized within the framework of compulsory education. Compulsory education by virtue of the law applies both to the individual and to the State, which must allocate resources to maintain a free education system, and to oversee the practical realization of the right to education and the obligations it entails. The realization of few human rights is compelled by law. The right to education is one such right.

53. The right to education from the point of view of the individual is interwoven with the right of parents to raise and educate their children in

accordance with their world-view and beliefs, as a natural right which is theirs by virtue of the natural connection between themselves and their children (President Shamgar in CA 2266/93 *Anon. v. Anon.* [18], at pp. 235-236). In view of the special role of education in shaping the face of the individual and society, the State is responsible not only for enforcing and overseeing the implementation of compulsory education in all sectors, but also for regulating directly and by means of licensing conditions the substantive content of education, and the basic values that are imparted through this content in all educational institutions. Realization of the right to education is, indeed, in the hands of the child and his parents; at the same time, the State bears an obligation to ensure the teaching of basic educational values that are common to all in order to maximize social harmony and to prepare all children in Israel to become citizens with shared rights and obligations. These two aspects of rights and obligations in education were discussed by Justice M. Elon in HCJ 421/77 *Nir v. Be'er Yaakov Local Council* [19], at p. 265:

> 'Two basic rights-obligations exist with respect to the matter of educating the young generation: first – the right-obligation of the parents to provide their offspring with suitable education, and their view-outlook on the question of what is suitable education is undoubtedly of great significance; and the second – the right-obligation of the State, through its institutions that are authorized for this purpose, to assure the imparting of appropriate education in an organized and planned fashion as determined by law, and this right-obligation, too, is extremely important and significant.'

54. Education, in addition to its importance as a substantive human right, carries great weight from the point of view of society as a whole. *"Education shapes the face of society and determines its image, not only from the point of view of the gains in knowledge and expertise that are acquired, but also in fashioning the ethical and moral basis that characterizes it"* (HCJ 6914/06 *National Parents' Organization v. State of Israel* [20]). Education creates a bridge between different cultures, ways of life and outlooks, and enables the building of a foundation for common and fruitful social life between different sectors of the population within the boundaries of one country (*Friends of Gilat v. Minister of Education and Culture* [17], at p. 24; Y. Rabin, at pp. 73-79).

55. A natural tension is liable to arise between the rights of parents to provide their children with education according to their world view, and the obligation of the State to enforce compulsory education and to ensure the imparting of basic pedagogic values to every child in Israel in every sector of the population. Parents of children of compulsory school age may prefer education that is built upon values and beliefs that are not compatible with the basic values of society and the regime in Israel. Tension is liable to rise where the parents belong to an ethnic-cultural minority, and they seek to preserve their personal autonomy by imparting the heritage of their special culture through the educational framework and maintaining communal life according to their beliefs and life-style. The particularity of the minority group may be reflected in religious belief that becomes combined with the right to freedom of religion (*Anon.v. Anon.* [18], at pp. 232-233). This tension is linked to a more general tension that exists in law between the rights and obligations of parents vis-à-vis their children, and the obligation of the state to ensure the welfare of the child and his rights (*Anon. v. Anon.* [18], at p. 237). The accepted starting point in Israel, as in other democratic states, is that the said tension must be resolved by respecting the autonomy of the family to choose the educational line that it desires for its children, while at the same time recognizing the authority of the State, and at times its obligation as well, to intervene in this autonomy for the sake of protecting the child's welfare and his rights, and to achieve the general social objective of creating a common denominator of basic educational values that unite all members of society (*Anon. v. Anon.* [18], at p. 238). In the field of education, the State is authorized, and even obligated, to ensure that the basic educational values are imparted to each child, no matter who, in order to prepare him for adulthood and to allow him to realize his personality and his abilities in society. This is also essential for the purpose of shaping normal life in society overall.

56. International conventions that entrench the right to education have adopted the guiding principle whereby the right of parents to choose the educational line that they wish for their child according to their selection must be respected; this right, however, is subject to the minimal requirements that the state sets with a view to respect for human rights and basic freedoms, and in order to realize every person's potential to take an active part in society (art. 26 of the Universal Declaration on Human Rights (1948); art. 13 of the International Covenant on Economic, Social and Cultural Rights (1966); art. 6 of the Convention on the Rights of the Child (1989); art. 5(1)(c) of the Convention Against Discrimination in Education; Rabin, at pp. 166, 185).

Basic Educational Curriculum – General

57. Against the background of the existing tension between the right of the individual to education, which can be realized through educational content that is determined according to the wishes of the parents, combined with the public interest in imparting basic educational content that is common to all pupils irrespective of sector, was born the need to formulate a basic educational curriculum, determined by the State. This basic curriculum – the core curriculum – was designed to achieve a balance between the opposing values. On the one hand, its contents are designed to impart common values to all the children of Israel in all the sectors, to constitute a connective link between them, and to instill in them values that are important for the shaping of their personalities and that contribute to societal harmony. On the other hand, this curriculum must be limited in scope, and it must focus on the most important things so that the parents are left with enough breathing space in which to realize their autonomy to choose the desired educational track for the child. In this, the core curriculum reflects a merging and balancing between the value of respect for the personal autonomy of the individual in choosing the educational stream he wants, and the need to impart minimum norms of general education, designed to ensure that every child in Israel is exposed to basic educational and pedagogical norms that should be the legacy of every citizen of the State, irrespective of world view, religion or belief. This balance aims to combine the needs of the individual and the needs of the public, with reciprocal concessions on the part of each.

58. The need for a core curriculum is especially evident where the cultural and ideological distance between the different sectors of the population is particularly great. Here more than anywhere it is necessary to create a common base of principles that will enable these sectors to live together in one human society. This need becomes greater in a state that absorbs immigrants, such as Israel, which is characterized by a mosaic of different cultures and sectors of society, with varied cultural backgrounds, and is particularly applicable in the context of isolated minority groups, as Prof. Radday says:

> 'The autonomy of a sub-group or of parents on matters of education cannot be unlimited and it is not a license for limiting the potential of the child to achieve full personal maturity. The educational responsibility towards children in society does not belong to the community or the parents alone; rather, it is shared between them and the liberal state'

(Frances Radday, "Religion, Secularism and Human Rights" *Makom Lemahshava Basha'ar* 7 (2000) 26; Y. Rabin, at pp. 156-160).

On the other hand, we must bear in mind that in regard to minority groups with their own cultural and religious identities in particular, the balance is likely to be found in limiting the content of the core curriculum to the bare minimum necessary to achieve general educational purposes, while respecting the freedom of such groups to impart their particular educational values to the pupils of that sector.

59. The great importance of teaching a core curriculum throughout the whole educational system, including the private schools, is recognized and accepted in many places in the western world. Thus, for example, in England and in many states in the USA, the requirement to teach a core curriculum is accepted even in private schools. In England, the Education Act, 1944 recognized the right of parents to educate their children in accordance with their wishes in independent schools, subject to the provision of "efficient and suitable instruction" (ss. 71 and 76 of the Act). In *R. v. Secretary of State for Education and Science Ex Parte Talmud Torah Machzikei Hadass School*, CO/422/84, The Times, 12 April 1985 (Q.B.), the English court considered the appropriate balance between the authority of the State to require the provision of a minimum general level of education for every pupil in the State, and the right of parents to choose the desired educational track for their children in the context of a private school of the ultra-Orthodox Jewish stream. The Court ruled that in the case of religious minority groups, the State must attribute considerable weight to the wishes of parents to educate their children in accordance with their beliefs. At the same time, the State is entitled to make minimum demands regarding education and curriculum with which each school must comply, regardless of its character. The State, in such circumstances, must focus on the requirements that are essential for obtaining a suitable standard of education, and for imparting basic educational values, while demonstrating sensitivity towards the traditions of the minority group, and it must not turn the private school into a type of state school. To achieve this balance, the school that was the object of the petition was required to change its curriculum in line with the requirements of the official Inspector (see also Rabin, at pp. 437-438). Under the Education Act, 2002, the Minister of Education must make regulations prescribing the conditions required of independent schools in various areas, including the quality of the education they provide (s. 157(1) of the Act). By virtue of this section, the Education (Independent School

Standards) (England) Regulations were enacted in 2003. In the area of pedagogy, the Regulations determined that the curriculum of a school must include a suitable teaching program that would provide, *inter alia* –

> 'Full time supervised education for pupils of compulsory school age, which gives pupils experience in linguistic, mathematical, scientific, technological, human and social, physical and aesthetic and creative education' (reg. 2(a)).

60. In the USA, many States have obligated private schools to include a core curriculum in their programs (see: Eric A. DeGroff, "State Regulation of Nonpublic Schools: Does the Tie Still Bind?" 2003 *BYU Educ. & L.J.* 363, 392 (2003); see also the analysis of the regulation of private schools, by state, on the website of the American Ministry of Education (www.ed.gov/pubs/RegPrivSchl/chart2.html)). The United States Supreme Court recognized the constitutional right of parents to educate their children according to their belief. However, it has stressed repeatedly that this does not entail a negation of the authority of the state to set reasonable requirements for private schools, including a requirement to include certain general contents in the framework of the curriculum. Thus, for example, it ruled in the case of *Central Dist. No. 1 Bd. Of Ed. v. Allen*, 392 U.S. 236, 245-247 (1968):

> 'A substantial body of case law has confirmed the power of the States to insist that attendance at private schools, if it is to satisfy state compulsory attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction. Indeed, the State's interest in assuring that these standards are being met has been considered a sufficient reason for refusing to accept instruction at home as compliance with compulsory education statutes.'

An interesting case, similar to ours, was heard by a Federal Circuit Court in *New Life Baptist Church Academy v. East Longmeadow*, 885 F.2d 940 (1st Cir. 1989). That case dealt with a law of the State of Massachusetts requiring private schools to teach "[r]eading, writing the English language and grammar, geography, arithmetic, drawing, music, the history and Constitution of the United Stated, the duties of citizenship, health education, physical education, and good behavior". The Baptist church objected to the authority of the State to interfere in the curriculum of its school, and argued that this was contrary to the freedom of religion guaranteed in the First

Amendment to the American Constitution. The Circuit Court dismissed the position of the Church, saying that –

> '[t]he Free Exercise Clause does not prohibit the School Committee from enforcing, through appropriate means, a state law that requires 'approval' of the Academy's secular education program [because] *the state's interest in making certain that its children receive an adequate secular education is "compelling"'* (pp. 943-944) (emphasis added).

61. Thus, from comparative legal sources we learn that the requirement to follow a core curriculum in education is accepted in the Western conception of legal values, and is perceived as being warranted, even in relation to private schools of cultural-religious minority groups. The character of these schools justifies special consideration on the part of the State of the particular cultural needs of different sectors, but it does not exempt the schools from their obligation to teach their pupils the general moral and social values upon which the state is founded.

The Core Curriculum in Israeli Education Law

The Core Curriculum in Israeli Education Law and Its Implementation as a Mandatory Requirement in the Various Educational Institutions

62. The establishment of a core curriculum in Israeli education is designed to guarantee that common basic principles of education are imparted to all Israeli children in all sectors of society. The implementation of the core curriculum in the education sectors is derived from the State Education Law, from the licensing conditions of schools under the Inspection Law, and from the link in the education laws and in the law in general between incorporation of the core curriculum and the entitlement of an educational institution to government funding. The curriculum in official educational institutions includes a compulsory "basic curriculum" as specified in s. 1 of the State Education Law:

> '*"curriculum"* means – a curriculum prescribed by the Minister for the official educational institution with a view to attaining the object stated in s. 2, and *includes the "basic curriculum" to be prescribed by the Minister as an obligatory program for every such institution*.'

The objectives of the curriculum, including the core curriculum, are included in the primary objectives of state education specified in s. 2 of the State Education Law. These objectives combine educating to basic values

upon which the State is founded as a Jewish and democratic state, alongside development of the child's personality and abilities as an individual.

63. Section 11 of the State Education Law authorizes the Minister of Education to implement the core curriculum as a *mandatory requirement* in non-official recognized educational institutions as well. This provision grants the Minister of Education professional discretion as to the scope of inspection of these institutions and the level of government funding. The section provides as follows:

> 'The Minister may, by regulations, prescribe a procedure and conditions for the declaration of non-official institutions as recognized educational institutions, *the introduction therein of the basic program*, the management and supervision thereof, *and for the assistance of the State towards their budgets, if and to the extent that the Minister decides on such assistance*' (emphasis added).

64. Soon after the enactment of the State Education Law by the Knesset, the Minister of Education published the State Education Regulations. Regulation 3 specifies the conditions for declaring an educational institution as a recognized institution; one of these conditions is the existence of a basic curriculum (reg. 3(a)(1a) of the Regulations). According to reg. 3(c), the basic curriculum in a recognized institution will be taught at the level of 75% of what is accepted in an official institution, subject to reservations:

> 'The basic curriculum in a recognized institution will constitute 75% of the total hours of study in an official educational institution, but the Minister may authorize different levels, provided that the pupils in the institution achieve, in tests and exams, the level of achievement in an official educational institution.'

65. The Inspection Law requires educational institutions that are not State-owned to be licensed. Operating an educational institution without a license constitutes a criminal offence (s. 33 of the Inspection Law). The Inspection Law applies to the majority of non-official educational institutions – whether recognized or exempt – apart from a limited number of exceptions specified by law, which are of no concern here. One of the main conditions for granting a license to a school is the maintenance of an appropriate standard of education with regard to "the curriculum, the time-table and the duration of studies … in accordance with the standard and with the norm in the type of school to which the application relates" (s. 9(a)(1) of

the Inspection Law). In giving his decision on this matter, the Director General must consider "the type of school in question and the age and needs of the pupils – *all in accordance with rules made by the Minister of Education and Culture, in consultation with the Education and Culture Committee of the Knesset*" (s. 9(b) of the Law). Accordingly, the Inspection of Schools (Criteria for Granting Licenses) Rules 5731-1971 (hereinafter: "Inspection Rules") were enacted. According to these Rules, the Director General, when deciding on the existence of a satisfactory standard, from the aspect of the curriculum, in an educational institution seeking a license, must take into account the "programs, the schedules and the notes issued by the Director General that are in force with respect to that type of school at the time of submission of the application for a license" (s. 1 of the Inspection Rules).

66. Under s. 28(a) of the Inspection Law, the Minister of Education is authorized to require of an educational institution, as a condition of granting it a license, that the education it provides be based on the principles of state education:

> 'The Minister of Education and Culture may issue to the license-holder directions which, in the opinion of the Minister, are necessary in order to ensure that the education provided at the school is based on the principles specified in s. 2 of the State Education Law, 5713-1953.'

In the course of the first proceeding, the Ministry of Education created a fixed procedure for the purpose of submitting an application for licensing educational institutions according to the Inspection Law (Fixed Licensing Procedure, 5765). On the pedagogic level, the Procedure states that a condition for licensing an educational institution is teaching the core curriculum, i.e. –

> 'teaching the basic curriculum (the core curriculum) as determined by the Ministry of Education' (s. 15 of the procedure for submitting an application for licensing educational institutions in the 2008-9 school year, and s. 14 of the procedure for 2004-5, as cited in para. 16 of the complementary state response of 23.7.04 in the petition of the Teachers' Organization in the first proceeding).

67. This policy of the Ministry of Education has not been changed; it remains in force and binding as before. Educational institutions are required to comply with the policy of the Ministry of Education applying to the

modes of operation of educational institutions, as expressed in the Bulletins of the Director General of the Ministry (s. 17 of the Fixed Licensing Procedure). The Ministry of Education did indeed issue a string of Director General's Bulletins prescribing the obligation to implement the core curriculum in educational institutions, first in primary schools ("Core Curriculum for Primary Education in the State of Israel", 2764/1(a), 3.1-22), and recently in secondary education as well ("Core Curriculum in Secondary Education", 5768/3(a), 3.1-30) (for the procedures that preceded publication of the core curricula, see HCJ 2751/99 *Paritzky v. Minister of Education* [21]; *Secondary School Teachers Organization v. Minister for Education* [1]). These Bulletins apply, as specified therein, *to all streams, in all sectors of primary and secondary education*. Regarding primary education, the Director General's Bulletin Concerning the Core Curriculum in Primary Education states that the entire core curriculum is compulsory for pupils in official education; pupils of non-official recognized education must study at least 75% of the core curriculum and they must achieve a standard of education that is the norm in the official schools, whereas pupils of the exempt institutions must study at least 55% of the core curriculum. Regarding secondary education, the Director General's Bulletin Concerning the Core Curriculum in Secondary Education states similarly that the core curriculum is compulsory for all pupils in the Israeli official education system, in the recognized institutions and in the exempt institutions. Section 3 of the Bulletin states that the core curriculum applies to all pupils in the secondary education system, and it is a precondition of receiving government funding. Section 3.2 states that pupils in the recognized system must study the entire core curriculum, and that pupils of the non-official but recognized system must study 75% of the core curriculum and attain the level of achievement required in official institutions. At the same time, the Bulletin Concerning the Core Curriculum in Secondary Education does not specify the required level of the core curriculum that the exempt secondary schools are required to follow. The Bulletin simply mentions the fact that educational institutions that teach less than 75% of the core curriculum will not be declared to be recognized institutions, and will not be funded as such, and that –

> 'In exceptional cases it will be possible to obtain an exemption from compulsory courses by virtue of s. 5 of the Compulsory Education Law 5709-1949. The guidelines for applications for exemption will be issued separately' (s. 3.5 of the Bulletin Concerning the Core Curriculum in Secondary Education).

Guidelines for granting exemptions in secondary education were recently published on the website of the Ministry of Education (http://cms.education.gov.il/EducationCMS/Units/Owl/Hebrew/Nehalim/PatorZamani.htm). These guidelines do not include a requirement to teach the core curriculum in the exempt institutions. Instead, they require that the curriculum taught in the institution not be contrary to the laws of the State of Israel and its values, or to the principles of the Declaration of Independence; that the format of the studies be methodical and organized; and that the physical conditions of study be appropriate and safe. The question of how the Ministry of Education reconciles the Fixed Licensing Procedure for Secondary Education, which requires that the core curriculum be taught in all educational sectors including in the exempt institutions, with the guidelines for granting exemptions to recognized institutions by virtue of s. 5 of the Compulsory Education Law, has not been resolved.

68. Thus, in Israeli law there is an explicit statutory requirement to implement the core curriculum in the official institutions and in the non-official recognized institutions. This requirement derives from the State Education Law and the State Education Regulations, and implementation of the core curriculum is a condition for granting recognition to an educational institution that is not official. The requirement to implement the core curriculum in non-official recognized institutions also applies to these institutions by virtue of the Inspection Law and the Regulations and Rules that were published thereunder, and by virtue of the Director General's Bulletins concerning the core curricula in primary and in secondary education in recognized institutions. Today, the requirement to implement the core curriculum applies to exempt institutions as well. By virtue of the Inspection Law and its Regulations and Rules, exempt primary education institutions must implement the core curriculum at the level of 55% as a condition of licensing by virtue of the Director General's Bulletin Concerning the Core Curriculum in Primary Education. At the same time, no general directive has been issued fixing the minimum required level of core curriculum studies in secondary education exempt institutions.

The Link Between the Core Curriculum and Government Funding

69. The core curriculum in all educational sectors is implemented by a number of means. Its implementation is a binding condition for the recognition of an educational institution, and it is liable to be a binding condition for the purpose of licensing. Implementation of the core curriculum as part of the general educational values that are imparted to pupils is closely and directly linked to the government funding that may be

transferred to an educational institution. Receipt of government funding is conditional upon the adherence of an educational institution to general educational values that are reflected in the core curriculum at the level set by the competent authority. This is engendered, first and foremost, by principles of equality in the allocation of state funds between the various educational institutions. It derives from the education laws, and finds expression in the procedures and the rules set out in the Bulletins of the Director General of the Ministry of Education.

The Principle of Equality in Allocation of State Funds

70. The principle of equality is one of the fundamental principles of law. It is "the life-breath of our entire democratic regime" (Justice Landau in HCJ 98/69 *Bergmann v. Minister of Finance* [22], at p. 698). Equality is a key value in the assessment of the legality of the public administration (Y. Zamir and M. Sobel, "Equality Before the Law", *Law and Government* 5 (5760) 165). Unlawful discrimination means differential treatment of equals and unequal and unfair treatment of those deserving of the same treatment (HCJ 678/88 *Kfar Veradim v. Minister of Finance* [23], at p. 507). The principle of equality is based on the conception of relevance in the sense that there should be no differentiation between people or matters for reasons that are not relevant; at the same time, differentiation is permitted for relevant reasons (HCJ 6051/95 *Recanat v. National Labor Court* [24], at p. 312; HCJFH 4191/97 *Recanat v. National Labor Court* [25]). The concept of equality does not necessarily require absolute identity in administrative arrangements. At times, in order to achieve equality, it is possible to act "in view of differences" (President Barak in HCJ 6778/97 *Citizens' Rights Movement v. Minister of Internal Security* [26], para. 6).

Allocation of state funds for various public objectives is always subject to the principle of equality. Distribution of government funds is subject to the requirements of equality and reasonability, and must be based on relevant considerations, and conducted according to clear and open criteria (HCJ 59/88 HCJApp 418/88 *Tzaban v. Minister of Finance* [27], at pp. 706-707).

71. State support for educational institutions is subject to the general laws of support, the principal ones of which are presently found in the Budgetary Principles Law. The "meta-principle" in the laws of support is the principle of equality, anchored in s. 3A(c) of the Budgetary Principles Law, whereby:

> 'A sum specified in a budgetary item for a type of public institution will be divided between public institutions that belong to that type on the basis of equal criteria.'

72. The principle of equality that applies to the distribution of funding is substantive, requiring equal treatment of equals and differential treatment of those who are different, according to the extent of their difference. Differential treatment of individuals or of institutions that do not differ in any relevant way constitutes unlawful discrimination, and establishes cause for judicial intervention (HCJ 727/00 *Committee of Arab Heads of Local Authorities in Israel v. Minister of Construction and Housing* [28], at p. 89; *Tzaban v. Minister of Finance* [27], at p. 706; HCJ 3792/95 *National Youth Theater v. Minister of Science and Arts* [29], at pp. 281-283). Unlawful discrimination is liable to find expression in the granting of different levels of support to institutions whose relevant characteristics are similar, through setting different conditions for each institution for the purpose of allocation of public funds despite the absence of any relevant justification.

73. Government funding for educational institutions in Israel was, for many years, tainted by lack of substantive equality. This led to injustice, and made it difficult to attain the principal educational objectives in all the sectors. In order to deal with these distortions, the Shoshani Commission for the Examination of Funding in Primary Schools was appointed. This Commission recommended the gradual shift to a new system of funding, based on criteria that were equal, uniform and public for all Israeli pupils. One of the main criteria appearing in the recommendations is the "teaching of the core curriculum as determined by the Ministry of Education, and full inspection of its implementation, as necessary conditions for the funding of all types of educational institutions". The level of participation of the Ministry of Education in the funding of schools was fixed by the Shoshani report in accordance with several conditions, including teaching of the core curriculum as a basic necessary condition for the receipt of funding in all types of educational institutions (s. 5.1 of the Shoshani Report). This principle was adopted by the Ministry of Education, and anchored in the abovementioned Director General's Bulletins for both primary and secondary education in all sectors and streams. According to the Shoshani Report, the system of funding is uniform, but the level of funding varies in accordance with the status of the school and its proximity to the State (s. 3.7 of the Report) (HCJ 8186/03 *Tali Schools Educational Fund v. Ministry of Education* [30], para. 7 of my opinion).

74. The principle of equality in distribution of state funds to educational institutions is not upheld when different substantive standards are set for different educational institutions in relation to the obligation to implement the core curriculum. Implementation of the core curriculum, which reflects the main principles of education to values that are common to all pupils in Israel, is a condition for an educational institution to belong to the education system in Israel, both structurally and from the point of view of values. The commitment to implement the core curriculum at the level set by the Ministry of Education according to the type of institution, is a necessary condition of entitlement to state funds, and this condition is common, by virtue of law and by virtue of basic values, to all educational institutions whatsoever. If this condition is not fulfilled, the basis for transferring government funds to the educational institution disappears, and a gap of inequality is created between educational institutions that comply with the core curriculum requirement and those that do not. The obvious conclusion of this is that government funding is conditional upon implementation of the core curriculum, and its level is in direct proportion to the level of implementation.

75. The core curriculum is designed to achieve a balance between the right of the pupil to be exposed to the basic educational material needed for the formation of his personality and the development of his abilities, and the provision of a response to the general public interest that seeks to create a common dialogue between different sectors of the population whose life-style, culture and religion are different, with the aim of achieving social coherence at the basic level. Alongside these interests is the substantive right of the parents to choose education of a special character for their child, compatible with their beliefs and life-style. The tension between the different interests increases where the cultural and ideological differences between the particular sector and the rest of society are deep. It is in precisely these circumstances that it is particularly important to impart the core educational principles, so that a balance can be achieved between recognition of the particularity of sectoral education on the one hand, and on the other hand, facilitation of the process of integrating the particular community into the wider social fabric and constructing a human bridge unifying all the sectors of the nation.

From Unlawful Discrimination to a Gradual Shift to a Policy of Equality

76. It was argued by the State that incorporation of the core curriculum into the special educational institutions requires a gradual progression and an extended period of incremental action, and it is not possible to introduce the

curriculum into these institutions all at once. According to the State, this argument constitutes justification for a further deferment of the implementation of the core curriculum in the *yeshiva* day schools in the ultra-Orthodox sector.

77. Differences of culture and of religious ideology do not, *per se*, justify discrimination between groups, and they do not lessen the breach of equality that is liable to result from differential treatment of groups with a relevant common denominator. At the same time, differences in cultural background, life-style and value-systems may justify a certain incremental approach to the introduction of a new arrangement aimed at achieving equality. Any such gradual progression must, however, be conducted in good faith and reasonably, and not as a means of putting off the end and perpetuating, indirectly, the discriminatory arrangement. This incrementality depends on the nature of the matter, the degree of objective difficulty in introducing the change, and the length of time that is reasonable as a transition period, in view of all the circumstances of the matter. The question of incrementality in the application of the appropriate change arose, *inter alia*, in the case of compulsory army service for *yeshiva* students, where I said as follows:

> 'The particularity of a community and its differentiation from other sectors of the public sometimes present a basic difficulty in fulfilling the substantive requirement of equality in bearing the burdens of society as a whole, and in meeting all the obligations placed on the shoulders of citizens, that are essential for the conduct of orderly societal life. At times, differences in values and ideologies affect the life-styles of the community and create a real barrier to its integration into the life of society and the state, and to its equal participation in bearing public obligations. This is a familiar social phenomenon. It must be investigated and evaluated; its meaning must be understood and its true parameters defined. *It must not be treated* a priori *as particularity that justifies permissible discrimination and the application of a different law, as if we were dealing with "different treatment for those who are different" that does not constitute discrimination. As a rule, cultural-spiritual particularity* per se *is not evidence of relevant particularity that legitimizes, from a conceptual point of view, the creation of a discriminatory arrangement in bearing the burden of public obligation. At the same time, this*

> *particularity may well require a special adaptive mechanism; at times it will require a gradual, multi-stage process to bridge the gap between the different groups, along the path to the objective of equality.* This path is liable to require action on the basis of particularity. We must deal with this particularity as part of the democratic process that strives for true integration between the various population groups, creating harmony and points of consensus between them while recognizing and respecting their ideological and moral independence' (para. 4 of the judgment).

The issue of the gradual approach to change arose in another area, in the case of a truancy officer in the Bedouin sector in the south, in which gradual change was required in order to bridge the discriminatory gap that existed in this area (HCJ 6671/03 *Abu Ganem v. Minister of Education* [31], at pp. 591-592):

> 'Full awareness of the need to bridge the deep chasms in different areas of life in Israeli society, and in this case, chasms between the Jewish sector and the Arab-Bedouin sector in the area of education, requires, on the one hand, determination regarding the obligation to take action to achieve equality; on the other hand, it must be recognized that not all the changes and not all the necessary social modifications can be fully achieved immediately, and bridging the chasms that have been created over many generations does not occur with the wave of the hand or the stroke of a pen. Bridging the deep chasms, which are the result of a long-standing reality, must be based on a prioritization of what comes first and what comes later; it requires giving priority to that which is cardinal and deferring that which is marginal. It requires time for proper preparation from a wide perspective, in order to ensure that the righting of one wrong will not inadvertently create another wrong; it requires defining a reasonable time frame for achieving the desired objective of equality and taking into account, *inter alia*, other important and complex social objectives and determining the order of preference; it requires ensuring that the gradual process which has begun of decreasing the gap and promoting equality will advance

at a reasonable pace, until its completion with the achievement of the desired objective.'

78. Indeed, even where there is justification for the gradual application of a new arrangement that is necessitated by the requirement of equality, the reasonableness of the transition period requested must be examined against the background of the special circumstances of the subject under discussion, with all its ramifications. The case of the enlistment of Talmudic Academy students is not like that of the incorporation of the core curriculum into the educational institutions in the ultra-Orthodox sector. The requirement of equality, involving a fundamental revolution in the way of life of a young person who belongs to a community with a special way of life, is not the same as the implementation of a general curriculum at a certain level in a special educational institution, as an addition to the specialized curriculum that is followed in the school. Enforcing compulsory military service, which means leaving the life in the Academy and enlisting in the army, is not the same as requiring a pupil to be exposed to basic educational values alongside his main, religious studies, from the point of view of the gradual implementation of the new arrangement. However, even in this last matter, this Court acknowledged the reasonability of the gradual process for introducing the core curriculum, and it decided upon three years as the transition period for general organization on the part of the Ministry of Education and for the ultra-Orthodox educational institutions to carry out the transition to an equality-based system in education and in public funding of education. Unfortunately, this long transition period was not utilized for its intended purpose: we stand today at the very same point at which we stood over three years ago, and nothing has happened in that time. The exemption track that was proposed by the Ministry of Education was intended to by-pass, in an unacceptable manner, the obligation of the authorities and the educational institutions to complete the process of incorporation of the core curriculum into the ultra-Orthodox educational institutions by the end of the transition period, in order to attain the objective of equality between the educational institutions in the education system in its entirety.

79. Over and above all this: the State has gone further yet, and it is not due to its commitment to introduce the core curriculum into the ultra-Orthodox educational sector that it is requesting another extension of the transition period. Oblivious to its commitment regarding the introduction of the core curriculum into the ultra-Orthodox educational institutions, it is acting contrary to the equality-based model, and is seeking to move over to another model, i.e. the exemption track, the objective of which is to

perpetuate and widen the division between the educational institutions by emphasizing the irrelevant differences between them, while capitulating inexplicably to the demands of a community that refuses to accept the onus of the law and the onus of the basic principles that bind the entire education system. The presentation of the exemption model as a temporary arrangement that will later be reviewed does not lessen the gravity of non-compliance with the law and with a judgment and the time-table that was set therein.

Needless to say, this mode of operation cannot meet the criteria of equality, and it must be disqualified. The continued funding of non-official recognized institutions that have not incorporated the core curriculum into their programs does not fulfill the criterion of equality, and does permit the transfer of government funds to those institutions.

The determinant date for the execution of the educational policy based on equality, from the point of view of implementation of the core curriculum and transfer of government funding to the educational institutions, passed already at the beginning of the 2007-8 academic year; as we are now at the end of that academic year, this equality-based policy ought to be applied, in practice, at the beginning of the 2008-9 academic year, i.e. in September 2008, at the very latest. As of this date, transfer of government funds will be conditional upon the implementation of the core curriculum.

Inspection

80. Over and beyond the matter of continued funding of the educational institutions being made conditional upon incorporation of the core curriculum, the petitioners also sought a remedy relating to inspection of the mode of implementation of the curriculum in the institutions that have adopted it and which receive government support. The request of the petitioners is that the Ministry of Education build up significantly its arrangements for inspection of the level of implementation of the core curriculum in the educational institutions that receive government funding, in order to ensure that they are indeed fulfilling this requirement.

81. Indeed, fulfillment of relevant and equal criteria for the allocation of public funds to educational institutions is a necessary but insufficient condition. The public authority is bound by a constant duty to ensure that the distribution of funds is carried out according to the rules and that the conditions for granting funds are fulfilled in practice and over time. Supervision of the distribution of funds by the public authority and of the fulfillment of the set conditions is therefore required as part of the fiduciary

duty of the authority to the public (*Tzaban v. Minister of Finance* [27], at pp. 705, 706).

The manner and scope of such supervision are matters that fall within the discretion of the public authority, which must determine its order of priorities, taking into account its resources. At the same time, the authority may not dispense with effective and efficient supervision of the distribution of funds as befitting the nature of the public assistance that is being granted. Supervision that allows for the creation of non-supervised areas in government funding and for the transfer of funds at significant levels with no real examination of whether preconditions have been fulfilled, is liable to constitute a breach of the fiduciary duty of the public authority to the public (*Abu Ganem v. Minister of Education* [31], at pp. 584, 585).

82. In the present case, there is no dispute regarding the need for inspection of the educational institutions to ascertain their fulfillment of the conditions for the purpose of their receipt of government funding. The State recognizes the importance of inspection of the educational institutions, and its indispensability in the governmental funding system. The State admitted, in the declaration of the Minister of Education, that the present inspection set-up is "inadequate". Consequently, it was not prepared to guarantee that the data that it submitted to the Court relating to the level of incorporation of the core curriculum in the primary schools is correct, and it appended a "caution", in its words. The Minister of Education announced her intention to improve and intensify the inspection mechanism already in this academic year. She stated in her deposition:

> 'In the opinion of the Minister, the inspection system must be fortified, and it is her intention, as part of the implementation of the exemption model, to initiate a process for intensifying the incorporation of the core curriculum, expanding the inspection system significantly, and improving and increasing the efficiency of the quality of administrative inspection. The Minister is taking action at this time to obtain budgetary support for the implementation of these steps, that will allow for the compilation of a reliable and objective data base, and as a natural outcome of this, a more precise examination of the incorporation of the core curriculum' (para. 30 of the respondent's deposition of 24.9.07).

Since this statement was made, no additional data specifying the degree to which this intention has been realized has been submitted to us. In these

circumstances, it would also have been appropriate to issue a *decree absolute* relating to inspection of the level of implementation of the core curriculum by the educational institutions as a condition of receiving government funding.

Outcome

83. In light of the above, it was our intention to issue a *decree absolute* in the two petitions, to take effect at the start of the 2008-9 academic year, ordering the respondents – the Ministry of Education and the Minister of Education – to act immediately to implement and introduce the core curriculum in all the non-official recognized educational institutions at secondary education level in the ultra-Orthodox sector; similarly, we intended to order that the Ministry of Education refrain from granting government assistance to any educational institution in the ultra-Orthodox sector that does not include the core curriculum in its teaching program, including non-official recognized institutions and exempt institutions, and that in this context, the *decree absolute* that was issued by this Court in HCJ 10296/02 on 15.12.04 must be complied with in letter and in spirit.

We also intended to rule that the Ministry of Education is under an obligation to set up an effective inspection mechanism for primary and secondary education which will be responsible for systematically overseeing the compliance of the ultra-Orthodox educational institutions with the requirement of teaching the core curriculum: an institution which is found to be in violation of these conditions would have its funding cut or reduced accordingly.

However, after writing this judgment, and soon before the date set for its reading, we were informed that the Knesset approved in second and third readings a new law dealing with the subject matter of this proceeding, even while these petitions were pending and awaiting decision. We are not familiar with the details of this new legislative development, and naturally, the new legislative procedure was not the subject of discussion before us, and was not examined in the framework of the petitions. As such, no operative orders will be issued, and we will not adopt any position concerning the relationship between this legislative development and the normative position that preceded it. This issue may be examined elsewhere.

The Ministry of Education will pay the attorney's fees of the petitioner in HCJ 4805/07 in the sum of NIS 20,000, and those of the petitioner in HCJ 6343/07 in the same sum.

Justice S. Joubran
I agree.

Justice U. Fogelman
I agree.

Decided as per the judgment of Justice A. Procaccia.

24 Tammuz 5768.
27 July 2008.