The Supreme Court sitting as a Court of Civil Appeals

CA 4926/08

Before: The Honorable Justice E. Rubinstein

The Honorable Justice S. Joubran

The Honorable Justice N. Hendel

The Appellants:
1. Nashef Wael & Co.
2. Abd Elkader Nashef
3. Tibi Muneer
4. Munder Haj Yichye
5. *Hadran* Ltd.

v.

The Respondent: The National Water and Sewage Authority

An appeal against the judgment of the Haifa District Court sitting as a Court of Water Affairs dated March 13, 2008, in Appeals Committee 111/01 and in Appeals Committee 620/05, given by the Honorable Judge R. Shapira, and Representatives of the Public Mr. S. Shtreit and Mr. G. Hermelin.

On behalf of Appellants 1-4: Adv. Tibi Taufik

On behalf of Appellant 5: Adv. Eyal Sternberg; Adv. Ortal Mor

On behalf of the Respondent: Adv. Limor Peled

JUDGMENT

Justice S. Joubran:

1. The appeal presented before us addresses the Water (Extraction Levy) Regulations, 5760-2000 (hereinafter: the "**Water Regulations**" or the "**Regulations**"), the legality thereof and the validity of the process of promulgation thereof. I shall present the matters hereinbelow in an orderly manner.

Normative and Factual Background

2. On February 4, 1999, the Knesset adopted the State's Economy Arrangements (Legislative Amendments to Attain the 1999 Tax Year Economic Policy and Budget Goals) Law, 5759-1999. In the framework thereof, the legislator indirectly introduced amendments to the Water Law, 5719-1959 (hereinafter: the "**Water Law**"). The amendment to the Water Law resulted in significant changes in the regulation of water extraction, motivated by the desire to create a network of incentives, both positive and negative, for the extraction of water from a wide range of sources, in order to optimize the level of water utilization, in light of the regional and national water shortage. Since, the historical background of Israel's water economy, which created the need for legislative amendments, was elaborately described in HCJ 9461/00 **The Jordan Valley Water**

Association, Collective Agricultural Association Ltd. v. The Minister of National Infrastructures (not published, December 12, 2006), it is not necessary to elaborately address it again here (for elaboration, see: ***ibid***, paragraphs 5-14), or to address all of the aspects of the said amendment. Suffice it to say that the amendment of the Water Law focused on Sections 116-124. The dispute in this appeal revolves around Section 116 which, in its previous wording, is relevant to the case at hand, prescribed as follows:

> **Extraction Levy** **116.** **(a) The Minister of National Infrastructures, with the consent of the Minister of Finance, upon consultation with the Water Council, and with the approval of the Knesset's Finance Committee, shall determine a levy to be paid by water extractors to the State's Treasury (hereinafter – an Extraction Levy)**
>
> **(b) The Extraction Levy shall be imposed on all extractors of water from a specific water source and shall be calculated in accordance with the units of the volume of the extracted water; the extent of the levy shall reflect the regional and national shortage of water, and may be different for each water source and with respect to each of the purposes of the water and the uses thereof.**
>
> **(c) The Extraction Levies shall be updated in the same manner the water tariffs are updated pursuant to Section 112(a), *mutatis mutandis*.**
>
> **(d) The water extractors and the consumers from the water source with respect to which a levy shall apply, shall be granted the opportunity to voice arguments prior to the extraction levy being determined.**

In 2007, Section 116 was re-amended and extensive changes were made in the framework thereof, however the wording that is relevant to the case at hand is the wording quoted above. By virtue of this section, and in accordance with the authority vested therein in sub-section (a), the Minister of National Infrastructures promulgated the Water Regulations, in which the extent of the extraction levies was determined. A distinction

was made between consumption and extraction purposes (residential, agricultural and industrial consumption) in the case of the Coastal Aquifer, while a uniform levy was prescribed for all of the consumption and extraction purposes in the case of all the other sources.

3. In the case before us, the contents of the Regulations do not bear any special significance, but the significance lies in the manner in which they were adopted and the extent to which the secondary legislator abided by the terms and conditions prescribed in Section 116(d) of the Water Law. The section provides that the water extractors and consumers must be given an opportunity to voice their arguments prior to the determination of the extraction of levies. Meaning, Section 116(d) requires the secondary legislator to grant the water extractors and consumers an opportunity to voice their arguments before determining the extent of the extraction levy with respect to a certain water source. In the case before us, such an opportunity was indeed granted, after a notice, regarding the extraction levy that was about to be determined, was published in Hebrew in the national printed press. The Appellants, however, who possess extraction licenses, did not voice their arguments regarding the extraction levies that were determined in the Regulations, at the designated time. The Water Regulations were published on July 30, 2000, and annual bills, based on the extent of the levies determined therein, were sent to the Appellants for the volume of water approved in the extraction licenses they possess. The said charges related to the years 2000-2005.

The Dispute between the Parties and the Litigation To Date

4. The Appellants filed two appeals to the Haifa District Court, sitting as a Court of Water Affairs (Appeal Committee 111/01 and Appeal Committee 620/05), which were heard together, and in which they argued against being charged water levies during 2000-2005, pursuant to the new Water Regulations.

   The Appellants argued, *inter alia*, that the Water Regulations are *ab initio* null and void and lack any validity towards them since they were not published in the Arabic press. As such, Appellants argue they were *de facto* denied their right to voice their arguments regarding the contemplated levies prior to the promulgation of the Regulations. They argue that since notice of the Regulations was not published in the Arabic press, arguments unique to the Arab population were not presented to the drafters of the Regulations, and therefore the Regulations are ultimately flawed in that they ignore considerations that are unique to the Arab population of extracters and consumers, in general, and to the Appellants, in particular. It is alleged that the importance of the right to be heard (*audi alteram partem*) is elevated in this case, due to the severe impairment to property rights entailed in the adoption the Regulations. The Appellants wished to convince the District Court that the lack of publication in Arabic, amounts to prohibited discrimination. The Appellants further argued against the legality of the extraction levy charges in their case, because they were imposed via a flawed process, since the charges for 2002-2004 were retroactively imposed in 2005, contrary, so they claim, to the annual charging procedure. Additionally, Appellants complained that they continued to be charged after the suspension of the extraction licenses in their possession, since, so they claim, upon the suspension of their licenses, they cease being extractors for the purpose of the extraction levy. In this matter, the Appellants added that once the collection processes were stayed and the licenses were suspended, they should not have been charged with a special levy for extracting water without a license. Furthermore,

according to the Appellants, the Respondent should have considered the **water loss**, i.e., the amount of water that is lost during the extraction process, as a result of the archaic extraction system in their possession. The Appellants stated, in this context, that the Respondent should assist them in renovating and maintaining that system, rather than charging expensive levies. The Appellants further claimed in this matter that, due to the state of the agricultural sector, they had not managed to exhaust the license's quota, while the Respondent charges as per the amount approved in the extraction license.

5. The Respondent, on the other hand, claimed that the Appellants had extracted water for many years without paying the levy and the ancillary payments. According to the Respondent, the imposition of the levies upon all of the extractors was done by law and not by the Regulations. The Regulations only prescribe the rate of the levy. The Respondent further claimed that there is no obligation in the law to publish the adoption of the Regulations in Arabic and that the Appellants did not demonstrate that publishing in the national and Hebrew press is insufficient or that it prejudices the Arabic speaking population. The Respondent further claims that the Appellants did not establish a factual basis which could support their claim regarding prohibited discrimination. Finally, the Respondent claims that if the Appellants were of the opinion that the records of the actual extractions were mistaken, they should have taken care of that immediately, informed the Respondent, and disputed the amounts specified in the bills when they were prescribed or charged, and they cannot raise such a claim at this stage.

6. On March 13, 2008, the Court of Water Affairs (the Honorable Judge **R. Shapira** and Representatives of the Public **S. Shtreit** and **G. Hermelin**) denied the appeals, after ruling that the authority's act of publishing the invitation regarding the Regulations only in Hebrew, does not deviate from the zone of reasonableness. The Court reviewed the case law that addresses the status of the Arabic language and reached the conclusion that in the case presented before it, there is no obligation to publish the invitation in the Arabic language press. Appellants' claim regarding prohibited discrimination was also denied, since it was not proven that publishing only in the national press prejudices the Arab population. The Court stated, in this context, the purpose of the publication is to reach the broad public, and just as there are Hebrew speakers who do not read Hebrew newspapers, there are Arabic speakers who do read Hebrew newspapers, and therefore, so it was ruled, one cannot accept the argument that the publication in the national press, prejudices the **entire** Arab population. The Court additionally ruled, after hearing the merits of their arguments and determining that they are irrelevant to the matter of prescribing the extracting levies, that even had the invitation been published in the Arabic press and the Appellants would have consequently voiced their arguments against the Regulations, this would not have changed the Regulations that were promulgated or the water levy charges that were imposed thereon.

   The Appellants' claims regarding the amounts of extracted water and the water loss were also denied, as it was ruled that they were irrelevant to the matter at hand. The Court ruled that to the extent that the Appellants extract less water than that stated in the extracting license, it is presumed that they shall update the Respondent so that it shall update the charges in accordance with the actual consumption. The same applies with respect to the alleged loss, as it was ruled that the levy is calculated based on the amount of water extracted, and if the system is inefficient, it is the Appellants', not the Respondent's, duty to improve the system and take action to repair it. As for the Appellants' argument regarding the delayed arrival of the bills, the Court ruled that it is

incumbent on the Appellants to update the authority of their current address. It was further ruled that the Appellants know that they possess water extraction licenses and that they are required to pay for the extraction of water, and therefore, if and to the extent the notices did not arrive on time or to the correct location, they should have approached the authority, inquired about the delay, and updated their mailing address. Additionally, the Court was convinced that the bills were sent to the Appellants each year.

And now, to the appeal before us.

The Parties' Arguments

7. In the framework of the appeal, the Appellants reiterate some of the arguments they raised before the Court of Water Affairs. Additionally, they claim to an error in the judgment, as the legal analysis therein relies on the current wording of Section 116(d), while the Regulations were promulgated by virtue of the authority vested by the previous wording of Section 116(d), and they emphasize that the law obligates granting a right to be heard, and that this is not a right granted to the general public, but rather to the limited public of water extractors and consumers of a relevant water source, who could be adversely affected by the levy.

8. The Respondent, on the other hand, claims that the Court's reliance on the new wording of the section is irrelevant to the rulings in the judgment, since both wordings essentially address the same matter, i.e., granting the water extractors and consumers the right to be heard, and the two wordings differ in the entity responsible for determining the extent of the levy and which is obligated to grant the opportunity to voice the arguments. The Respondent also claims that there is no duty to publish in Arabic, and that in cases where the legislator wished to impose such a duty, it did so explicitly. It was further argued that that even if there is such a duty, non-compliance therewith does not result in the revocation of the Regulations. The Respondent further argues that the Regulations apply to the broad public of water extractors and consumers, and not, as the Appellants argue, to a limited public. It was argued, in this matter, that the right to be heard in the case of a general change is not the same as the right to be heard in the case where the change's effects are personal and direct. Furthermore, the Respondent claims that even were it to be ruled that the Appellants' right to be heard was violated, application of the relative voidness doctrine to the case at hand leads to the result that the Regulations should not be revoked, since, as ruled by the Court of Water Affairs, the Appellants' arguments against the Regulations would not have changed them. The Respondent also mentions in this context, that, if and to the extent the Appellants' principled argument were to be accepted, there is yet an additional consideration against the revocation of the Regulations – the Appellants' indirect attack of the Regulations. The Respondent also draws attention to the severe damage that shall be caused to the water economy if the Regulations are revoked.

9. During the hearing before us, we suggested that the parties communicate and reach a settlement regarding the extent of the Appellants' accumulated debt. On April 24, 2012, the parties' attorneys informed us that Appellant 4 reached an agreement with the Respondent regarding payment of his debt, and his specific matter, therefore, is no longer before us. The discussions between Appellants 1-3 and Appellant 5 and the Respondent did not bear fruit, and therefore we must rule in the matters raised in the parties' arguments that were presented above.

Discussion

10. The main question underlying the appeal before us relates to whether or not there was a duty, pursuant to Section 116(d), as worded at the time of the publication of the Regulations, to also publish the invitation to voice arguments against them, in Arabic. The answer to this question is divided into two. First we shall rule whether or not there is a principled obligation to publish the invitation in Arabic. If and to the extent our conclusion shall be that there is indeed such an obligation, we shall examine the consequence of the violation thereof in the case before us, in terms of the relief.

    Prior to discussing the central issue, I shall note that I do not find merit in the Appellants' other arguments and I agree with the Court's conclusions in its judgment on those matters. As for the wording of the section upon which the Court relied, I find that there is no material difference between the two wordings in terms of the question of principle that the Appellants raise, and in my opinion the outcome that flows from one wording, is also relevant to the other, and *vice versa*.

The Duty to Hear the Water Extractors and Consumers

11. The rules of natural justice, including the right to be heard (*audi alteram partem* rule), were, as most fields of administrative law, developed through case law. In the framework of these rules, it is a known rule that the administrative authority is obligated to grant an individual the opportunity to voice his arguments prior to reaching a decision that may prejudice him (see: HCJ 4112/90 **The Association for Civil Rights in Israel v. GOC Southern Command**, PD 44(4) 626, 637-638 (1990); HCJ 654/78 **Gingold v. National Labor Court**, PD 35(2) 649, 655 (1979); HCJ 113/52 **Zachs v. The Minister of Trade and Industry**, PD 6(1) 696, 703 (1952)). The right to voice arguments, however, is not an absolute right, but rather, is a right that is subject to exceptions that were outlined and formulated over the years (see, for example, HCJ 7610/03 **Yanuh-Jat Local Council v. The Minister of Interior**, PD 58(5) 709 (2004); HCJ 598/77 **Deri v. The Parole Board**, PD 32(3) 161, 165 (1978); HCJ 185/64 **Anonymous v. The Minister of Health**, PD 19(1) 122, 127 (1965); HCJ 3/58 **Berman v. The Minister of Interior**, PD 12(2) 1493 (1958) (hereinafter: "**Berman**")). In **Berman**, it was ruled that the right shall be applied according to the **criterion** of **adverse affect**. According to the criterion, the right to voice arguments exists *de facto* for whoever is or may be adversely affected by the authority's actions (see: **Berman,** page 1508; Baruch Bracha "The Right to be Heard: In Regulation Promulgation Procedures As Well? Following HCJ 1661/05 Hof Azza Regional Council v. The Knesset" ***Moznei Mishpat*** 6 428 (2006) (hereinafter: "**Bracha, The Right to be Heard**"). This is the rule, and it has its exceptions. One of the exceptions relates to the proceedings of secondary legislation. As early as in **Berman,** it was ruled that the duty to hear arguments "does not apply to legislative actions, or to actions of a governing-sovereign nature, in the proper sense of this term" (**Berman,** 1509; in this context, see also: HCJ 335/68 **The Israel Consumer Council v. Chairperson of the Commission of Inquiry for the Supply of Gas**, PD 23(1), 324, 334 (1969); Baruch Bracha **Administrative Law** 223 (Volume A, 1987); Yoav Dotan **Administrative Guidelines** 125-126 (1996); Raanan Har-Zahav **The Israeli Administrative Law** 292 (1996)).

12. The ruling in **Berman**, pursuant to which the right to be heard does not apply in

legislative procedures, in general, and in secondary legislative procedures, in particular, has been reinforced over and over again, and has recently been addressed again in the framework of the petition filed by the Gush Katif evacuees against the Disengagement Plan Implementation Law, 5765-2005, in which, *inter alia*, the argument regarding not granting an opportunity to voice arguments against the Disengagement Plan Implementation (Gaza Strip) Order, 5765-2005, and the Disengagement Plan Implementation (Northern Samaria) Order 5765-2005, was discussed again (see HCJ 1661/05 **Hof Azza Regional Council v. The Knesset of Israel** PD 59(2) 481, 719-728 (2005)). In that judgment it was ruled that the evacuation orders have legislative effect, and as such are not subject to the duty of a hearing prior to being promulgated. In this context it was emphasized that:

> "With regard to the hearing obligation in the case of secondary legislation, the longstanding ruling in **Berman** is the law currently presiding in Israel, and while there are some who have expressed reservation - and there is merit to the criticism, at least in certain types of secondary legislation – the operative rule has never been changed. The Petitioners are of the opinion that it is time for a change; however we do not find, that the matter before us warrants such a change." (*ibid*, paragraph 427).

13. The essence of the matter is that according to Israel's common law, in the framework of which the rules of administrative law, including the rules of natural justice, are prescribed through case law, the authority's obligation to grant any party who could be adversely affected by its actions an opportunity to voice arguments, does not apply in a procedure of promulgating regulations of legislative effect. This exception has been subject to much criticism both in case law and in legal literature (see: LCA 3577/93 **The Israeli Phoenix v. Moriano**, PD 48(4) 70, 86 (1994); Aharon Barak **Judicial Discretion** 487 (1987); Yitzhak Zamir **The Administrative Authority Volume B** 1047-1048 (Second Edition, 2011); **Bracha, The Right to be Heard**, on page 429), and it has even been presented as an issue of principle that has not yet been ruled upon (see: HCJ 6437/03 **Tavori v. The Ministry of Education and Culture**, PD 58(6) 369, 378 (2004)). However, the exception still stands (see: **Bracha, The Right to be Heard**, page 431). Hence, only in cases in which there is an explicit statutory provision which imposes upon the authority an obligation to allow the voicing of arguments in a secondary legislating procedure, or that grants the said right to voice arguments, will the individual, who is adversely affected by the regulations, be entitled to voice his arguments, all in accordance with the terms and conditions appearing in the law. This is also the case in the case before us: The origin of the duty to allow voicing arguments in the framework of the promulgation of the Water Regulations – the right the Appellants are claiming – is not under the purview of the common law right, which, as mentioned, excludes secondary legislation procedures, but rather is under the provisions of Section 116(d) itself, which is not merely declaratory, in the sense that it declares a right that already exists, but is rather constitutive, in the sense that it creates a right, which otherwise would not exist.

14. In light of the above, there is no doubt that in the case at hand, the promulgation of the Water Regulations pursuant to Section 116(a), as was previously worded, is subject to the Minister of Infrastructures' obligation to give the public that may be adversely affected by the regulations that prescribe the extent of the water levy, a proper

opportunity to voice its arguments. The said Section 116(d) prescribes as follows:

> **(d) The water extractors and the consumers from the water source with respect to which a levy shall apply, shall be granted the opportunity to voice arguments prior to the extraction levy being prescribed.**

As can be seen, all that the section prescribed is the duty to grant the opportunity to voice arguments. The section does not regulate the manner in which the authority shall fulfill its duty. Questions as to the scope of the duty and as to what derivative duties derive therefrom also arise in this context. An extensive answer to the said questions is not required in order to resolve the principled and practical dispute in the case at hand. All we are required to rule on is whether the duty to grant an opportunity to voice arguments includes the **duty to inform** the relevant public of the anticipated promulgation of the Regulations and to invite them to voice their arguments with respect thereto; and if the answer is affirmative, we also shall address the question of the language of notification.

The Duty of Informing and its Manner of Performance

15. There is no dispute that there is no real substance to the right to voice arguments or to the duty to grant an opportunity to voice arguments, if the individual is not **informed**, at the relevant time, of the administrative procedure which may adversely affect or impact him. The realization of the right is intertwined with knowledge of its existence, and of the occurrence of the event that creates the circumstances upon which its realization depends. In the case at hand, in order to be able to voice arguments regarding the Water Regulations, the extractors and the consumers must be aware of their said right and of the fact that the minister is contemplating the promulgation of regulations with respect to which they are entitled, pursuant to the law, to voice their arguments, prior to their promulgation. However, the procedure in the case at hand is not the same as the procedure in cases in which the right to voice arguments is only granted to individuals. Contrary to a private hearing that is conducted due to the authority taking an action which could adversely affect or impact a known or limited number of individuals, a public hearing takes place when the action with respect to which the hearing is required adversely affects an undefined public or a large number of persons. As clarified above, according to Israeli law, in the case of the latter category of administrative actions, the right to voice arguments is granted, in general, only if the law explicitly provided therefor.

16. In any event, the nature of the hearing, whether private or public, along with other parameters, prescribes the manner in which it is conducted. In the context of our case, the means by which the existence of the hearing is brought to the attention of the interested parties – be it an individual to whom the authority's decision is personally addressed or, as in our case, a large group of individuals – also varies accordingly. For example, while it can be expected that the authority take action to locate a person whose license it wishes to invalidate and invite him to voice his arguments prior to a decision being reached, the same effort is not to be expected with respect to an administrative action by which potentially all of the citizens or an undefined public of persons could be adversely affected. In such cases, general publication might be sufficient. It is clear that if it were possible to personally inform each and every person who could potentially be adversely affected that would be ideal, however, this is not feasible when dealing with a

broad public. It follows that publishing the matter via popular media channels, or by any other means to which the majority of the relevant public is likely to be exposed, could be sufficient.

17. Indeed, other than personally contacting each person who potentially could be adversely affected, every method entails certain inadequacies, yet it is clear that a publication inviting the public to voice arguments, which reaches the majority of the public, will result in a situation in which the arguments, or at least the majority of the arguments, that are relevant to the individuals who were not exposed to the publication, and did have the opportunity to voice their arguments, are voiced by others. One of the purposes of conducting a public hearing is to ensure that the authority has the information required to reach an informed and balanced decision based on the broadest possible relevant data available at that point in time. Therefore, in matters in which there is a duty to hear arguments, it is likely that most of the data relevant to reaching the decision, which the competent authority had not seen, will appear in the arguments raised by part of the public that wishes to exercise the right to be heard that was granted thereto, and thus the purpose of imposing the duty is realized.

18. In light of the above, it is my opinion that even if the manner in which the authority chose to inform the public, regarding the public hearing that is being conducted, does not ensure fully informing all of the individuals who may be adversely affected by the administrative action, this does not constitute a deviation from the scope of reasonableness, and does not sacrifice the purpose of the right to be heard. This is so, since, as mentioned above, in the absolute majority of cases, excluding a few exceptions, most of the claims that relate to the matter will be argued, and consequently, the data, or at least the majority of the data, necessary for reaching a reasonable and proportional decision that is based on a broad factual basis, will be brought to the authority's attention. This is also in the case at hand. The Respondent was not required to send each water extractor and consumer a personal invitation to voice arguments in order to fulfill its duty to inform. Therefore, Respondent's decision to publish the invitation to voice arguments in the press, in and of itself, does not, in principle, deviate from the scope of reasonableness.

Duty to Inform in Arabic

19. I have expressed the position that the duty to inform, in the context of publishing the invitation to voice arguments, does not require taking measures that would ensure perfectly universal notification. Obviously, it is desirable that the information, which is the subject of the publication, reach the entire public related to the matter, so that it can exercise its legally granted right to be heard. However, as was explained, the reasonableness principle does not demand this; there is no doubt that publication that can be **assumed** to reach the entire public related to the matter, shall be deemed reasonable. Another question in this context is whether the duty to inform includes the duty to adjust the content of the invitation to the Arabic speaking public, by means of publishing the invitation also in the Arabic press and in the Arabic language. In my opinion this question should be answered in the affirmative. I shall specify my reasons below. But beforehand, I shall briefly address the principled case law regarding the status of the Arabic language in Israel.

The Arabic Language in Israel

20. The Arabic language is, alongside the Hebrew language, an official language in Israel, by virtue of Section 82 of the Palestine Order in Council, 1922 (hereinafter: "**Section 82**"), a Mandate statute that provides as follows:

> **Official Languages**
>
> **82. All the ordinances, official notices and official forms of the government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. Subject to any regulations the High Commissioner may promulgate, the three languages may be used in the Government offices and the courts. In the case of any contradiction between the English version of any ordinance or official notice or official form and the Arabic version or the Hebrew version, the English version shall prevail.**

21. Section 82 was adopted into Israeli law in the Law and Administration Ordinance, 5708-1948 (hereinafter: the "**Ordinance**"). However, the requirement to use the English language was repealed in the framework of Section 15(b) of the Ordinance, and it was provided that "any provision in the law that requires using the English language is repealed," while the obligation to use Hebrew and Arabic was maintained, so that the official status of both languages as official languages was maintained. The ramifications of this status has not yet been fully clarified and in cases previously presented to this Court concerning the practical significance of Arabic's status as an official language, the justices have differed in their opinions (see for example: HCJ 4112/99 **Adalah -- Legal Center for Arab Minority Rights in Israel v. Tel Aviv Municipality**, PD 56(5) 393 (2002) (hereinafter: "**Adalah**"); Justice Cheshin's judgment in LCA 12/99 **Mar'ei v. Sabek**, PD 53(2) 128 (1999) (hereinafter: "**Mar'ei**")). For example, in **Adalah**, which dealt with the use of the Arabic language on municipal signs, Justice **D. Dorner** was of the opinion that "the official status of the Arabic language is not expressed only in the uses specified in Section 82. The specification in the section is not an exhaustive list. The essence of the provision is the determination of the status of the Arabic language as an official language of the State of Israel" (on page 478). On the other hand, Justice (as was his title at the time) **M. Cheshin** was of the opinion that the status of the Arabic language as an official language does not, in and of itself, impose a duty upon the authorities to use it other than within the boundaries drafted in the section itself. President **A. Barak** was of the opinion that Section 82 does not include the duty to include Arabic writing on municipal signs and ruled that the solution to the issue lies in the proper interpretation of the section authorizing the local authorities to post municipal signs, while striking a balance between the various purposes. Therefore, President **A. Barak** found that when interpreting the authority to post municipal signs, the balance between the special purposes of the Section (making the city and its streets accessible to the public, warning about traffic dangers, and the need for clear and legible signs), and

the general purposes (the right to equality, the freedom of language and the uniqueness of the Arabic language compared to other minority languages, on the one hand; and the preferred status of the Hebrew language, and the importance of uniformity and national solidarity, on the other hand) "leads to the conclusion that Arabic writing should be added, alongside the Hebrew writing, on the municipal signs in the responding cities" (on page 419).

22. It appears that it will be difficult to infer from **Adalah** a **general** duty to use the Arabic language alongside Hebrew. **Adalah** does not extend beyond the boundaries of the narrower issue addressed therein, regarding the duty to add Arabic writing to municipal signs in mixed cities (see: HCJFH 7260/02 **The Ramla Municipality v. Adalah, The Legal Center for Arab Minority Rights in Israel** (not published, August 14, 2003)). It follows that the question regarding the ramifications of the status of Arabic as an official language remained unresolved and in the case at hand it requires our attention. The question at hand is whether the Respondent's duty to inform also includes the duty to inform in Arabic. While, as written above, **Adalah** does not have direct implications for this case, in my opinion, the issue presented before us is to be examined in accordance with one of the frameworks presented to resolve the issue in **Adalah**, as shall be specified below. I shall note, in this context, that I do not share the opinion expressed by the honorable Justice (as was his title at the time) **M. Cheshin**, in **Adalah**, that the status of the Arabic language and the ramifications thereof is a matter best left to the political system. The courts are the authorized interpreters of the law, and the case before us raises a question regarding the interpretation of a statute. Therefore, this is not a political matter that the court must refrain from addressing. Therefore, in the case at hand, we must ask whether to prefer President **A. Barak**'s position and rule in the case at hand by interpreting Section 116 purposively, or rather to follow the path paved by Justice **D. Dorner** and analyze the implications of Section 82 on the case at hand? A third option is to cling to the language of Section 82 and examine whether the publication of the invitation to voice arguments falls within the boundaries of one of the alternatives therein, i.e. "ordinances, official notices and official forms".

23. It is my opinion that, in the circumstances of this case, all three options lead to the same outcome, and therefore we do not have to determine which is preferred, even though, in my opinion, the three are not **necessarily** mutually exclusive, as I shall clarify below. Indeed, theoretically there could be cases in which the results from applying the above methods will be different, and in such cases this Court would have to rule on this question. However, as mentioned, in my opinion, in the case at hand we shall leave this matter for further discussion. I shall now specifically discuss each of the three courses separately and elaborate on the outcome of their application.

Interpreting Section 82

A. Interpreting Section 82 – the Meaning of the Term "Official Notices"

24. As mentioned, Section 82, entitled "Official Languages", imposes a duty to use Hebrew and Arabic in all "the ordinances, official notices and official forms of the government". This raises the question whether the Minister of Infrastructures was, in virtue of the said duty, also obligated to publish the invitation in Arabic. It is my position that this question must be answered in the affirmative. It appears that it is not difficult to classify the invitation to voice arguments, published in the newspaper by the relevant governmental

authority, as an official notice. The dictionary definition of the term "notice" is: "Information published to the public, a written notification, an announcement. Examples: Notice boards in the streets, a notice in the newspaper announcing an upcoming performance, an obituary notice. (See: Avraham Even-Shoshan, **The New Dictionary – Third Volume** 1252 (5727)). It follows, that textually speaking, the invitation to voice arguments that was published in the press falls within the meaning of the term "notice", and the question which remains is whether this is an **official** notice. In my view the criteria for classification of a notice by a given authority as an official notice should be the **identity of the publishing party and the linkage between the publication and the governmental function**. If a governmental authority or a party serving a governmental function publishes a notice that has a linkage to the governmental function or the work of the authority, in the framework of the function it serves, the notice is most likely an official one. On the other hand, if, for example, a city resident wishes to publish a notice on the municipal billboard (without addressing the other terms and conditions related to local government), this would be a private notice that does not fall within the definition of the term "official notice", notwithstanding the official platform on which it was published, and is therefore not subject to the duty imposed by Section 82 (see for example: CA 105/92 **Re'em Engineers Contractors Ltd. v. The Nazareth Illit Municipality**, PD 47 189 (1993) (hereinafter: "**In Re Re'em Engineers** ").

25. In the case before us, the invitation to the public to voice arguments was published via the national press, on behalf of parties in the Ministry of Infrastructures, and has a tight linkage to the Minister of Infrastructures' function as a secondary legislator. It would appear then that this is an official notice on behalf of a governmental ministry. Accordingly, based on the literal interpretation of the text of Section 82, there is a duty to publish the invitation, which, as mentioned, is an official notice, both in Hebrew and in Arabic.

While, we could stop here, I shall also analyze the matter before us in accordance with the frameworks presented by the majority justices in **Adalah**, in order to reinforce the outcome reached according to the approach presented in this section.

B. Interpreting Section 82 with Reference to the Historical Background (Justice D. Dorner's Approach)

26. In my opinion, even if we refrain from searching for the meaning of the term "official notice" and from answering the question whether an invitation in the press falls within its scope, thus adopting Justice **D. Dorner's** interpretative technique in **Adalah**, we would reach the same outcome. In this context, suffice it to say that in resolving the issue, Justice D. Dorner does not ignore the historical background of Section 82, rather she establishes her interpretation of the Section upon it, and concludes that the fact that the duty to publish in English was repealed while the obligation regarding Hebrew and Arabic remained, ratifies the "status of the Arabic language as an official language of the Jewish and democratic State of Israel" (paragraph 4 of her opinion). In this matter, Justice **D. Dorner** summarizes as follows: "the official status of the Arabic language is not expressed only in the uses specified in Section 82. The specification in the section is not an exhaustive list. The essence of the provision is the determination of the status of the Arabic language as an official language of the State of Israel" (paragraph 5 of her opinion). Therefore, even if, as mentioned, we take this path and abandon the attempt to interpret the term "official notice", it is clear, so I believe, that a publication addressed to

the entire population of extractors and consumers calling them to come and voice their arguments, is subject to the duty prescribed in Section 82, even were we to reject the approach that the publication which is the subject of this appeal falls within the definition of an "official notice". In this context the positive facet of the rights that derive from Arabic's official status and the value of equality are interconnected, as was expressed in **Adalah**:

> "The conclusion, then, is that while Hebrew is the primary official language of the State of Israel, being the national language of the majority, the Arabic language's status as an official language pursuant to the amended Section 82 is meant to realize the Arab minority's freedom of language, religion and culture. […] The realization of this freedom is not limited to protecting the Arab population from a prohibition to use its language, but rather it obligates the authorities to grant the Arab minority the possibility of living its life in the State of Israel in its own language. The assumption is that Arab citizens in Israel may only know Arabic, or in any event, may only be fluent in this language. […] This purpose derives from the value of equality" (Paragraph 7 of Justice **D. Dorner**'s opinion).

There can be no dispute that the intensity of the positive facet of the right deriving from the Arabic language's status as an official language and by virtue of which an individual has a claim against the authority, changes in accordance with the purpose and importance of the publication. For this matter, the right of the Arab minority "to live its life in the State of Israel in its own language" and to "only know Arabic" (from Justice **D. Dorner**'s above words), imposes upon the authority a duty to make the information and its relevant publications accessible to the group to which the members of the Arab population belong. Otherwise, what would remain of the duty of the "authorities to grant the Arab minority the possibility of living its life in the State of Israel in its own language" other than fine words devoid of content? It follows, that in the case at hand, based on the interpretative approach adopted by Justice **D. Dorner,** I find that there was a duty to also publish the invitation in Arabic, by virtue of the duty in Section 82 of the Palestine Order in Council.

Interpreting the Duty Pursuant to Section 116(d) (President A. Barak's Approach)

27. As mentioned, President **A. Barak** was of the opinion that Section 82 does not include the duty to include Arabic writing on municipal signs, so the course he adopted in that case can provide guidance were the two above interpretation approaches to be rejected. President **A. Barak** turned, in this context, to the section appearing in the Municipalities Ordinance [New Version], empowering and authorizing the local authorities to post municipal signs. In this context it was noted that: "This power is a discretionary power. This discretion is never absolute […]. This is limited discretion. It is limited by the special purposes that underlie the authorizing legislation; it is limited by the fundamental values and fundamental principles of the legal system, which constitutes the general purpose of any legislative act" (paragraph 14 of his opinion).

28. Section 116, as worded at the time relevant to this appeal, granted the Minister of

Infrastructures the power and authority (the result of the exercise of which is contingent upon the consent of the Minister of Finance, in consultation with the Water Council and with the approval of the Knesset Finance Committee), to prescribe the water levy to be paid by the water extractors to the State's treasury (Section 116(a)). Section 116(d) imposes a duty upon the Minister of Infrastructures to allow the voicing of arguments from the extractor and consumer publics, prior to prescribing new water levies. It follows that the power and authority to prescribe the water levies is already limited by a number of provisions within the section itself: The section, *inter alia*, limits the minister's discretion by requiring approval by additional parties and by requiring hearing the arguments of the parties which could potentially be adversely affected by the prescription of the new levy. Hence, the section imposes upon the minister a mandatory power and authority (see: Yitzhak Zamir, **The Administrative Authority – Volume A** 319-325 (2010)), instructing him to grant an opportunity to voice arguments, but it does not determine the terms and conditions governing the manner of exercising this power and authority. This does not imply that the Minister of Infrastructures' discretion with respect to the manner of exercising the mandatory power and authority pursuant to Section 116(d), regarding those parts not regulated by the law, is unlimited. To the contrary, the exercise of the mandatory power and authority that is defined in Section 116(d) is limited, both by the special purposes that underlie it, and by the general purposes, which, as mentioned, constitute the fundamental values and principles of the legal system. Therefore, we must consider the special purposes that underlie the duty prescribed in Section 116(d) and the general purposes, in order to examine the boundaries of the discretion granted to the Minister of Infrastructures, and the conclusion regarding the reasonableness of the decision only to publish the invitation to voice arguments in Hebrew and in the national press will naturally follow.

A. The Special Purposes

29. The duty to grant an opportunity to voice arguments in the framework of secondary legislation procedures is uncommon; one can even say, quite rare. I mentioned hereinabove the case laws that outlined the rule and the exception regarding the right to be heard (see paragraphs 11-13 above), and there is no need to repeat them. However, as mentioned above, one of the exceptions that was ruled in **Berman**, and was reaffirmed in the rulings of this Court, provides that, in general, the right to be heard is not applicable in legislation procedures, including secondary legislation procedures. It follows that when, in a certain matter, the legislator does impose the duty upon a minister to enable the public, which may be adversely affected, to voice arguments in secondary legislation procedures, this imposition should be viewed as an indication of the great importance of the issue at hand. Therefore, it can be said that Section 116(d) is intended to serve an purpose viewed by the legislator to be particularly important: the presentation of all of the data before the secondary legislator so that it can make an informed, proportional, and reasonable decision, based on as extensive a factual basis as possible. The flip side of this coin is granting the potentially adversely affected party the opportunity to present the minister – directly or indirectly – with relevant information for making the decision regarding the extent of the water levy, and which serves the purpose of involving a defined public in proceedings that impact it as well as signaling to that public that the authority is speaking with it rather than at it.

B. The General Purposes

30. Due to the great similarity between this case and **Adalah**, it seems that **some** of the general purposes listed by President **A. Barak** there (see: his opinion in paragraphs 16-21) are also relevant to the case at hand. Whereas, as mentioned, these purposes are external to the specific norm and constitute the fundamental values and principles of the legal system in Israel. It follows that it is unnecessary to further elaborate beyond that which was presented in President **A. Barak**'s opinion, and it will suffice to list those purposes briefly.

31. The first general purpose, relevant to the case at hand, is the **protection of a person's right to his language**; the second general purpose is **ensuring equality**; in this context President **A. Barak** states that:

> "The meaning of the matter in the case at hand is that the (local) authority must ensure equal use of its services […]. If part of the public cannot understand the municipal signs, their right to equally benefit from the municipality's services is prejudiced. Indeed, once language has a significant importance to an individual and his development, it is necessary to ensure that his opportunities as an individual are not limited due to his language" (paragraph 19 of his opinion).

Meaning, the purpose of making the authority's services equally accessible to individuals can be included under the general purpose of ensuring equality. In this context, President **A. Barak** drew attention to two additional purposes: the **status of the Hebrew language** and the **recognition of the importance of language as an element of national solidarity and of defining the sovereign state**. It does not appear that these purposes are substantial in the case at hand. The purpose of protecting the status of the Hebrew language does indeed impact the question regarding the language of signs in general, and municipal signs, in particular, since the signs are not just functional, but also bear some symbolism. One could even say that the language of municipal signage is the face of the city, and that therefore there is good reason to examine the question whether or not it is appropriate to add an additional language to the municipal signs, also in terms of the status of the Hebrew language. In the case at hand, however, the purpose regarding the status of the Hebrew language does not have much impact, since it would be difficult to say that one of the purposes of the mandatory power and authority to grant an opportunity to voice arguments is to protect the status of the Hebrew language or to promote the value of "the existence, development and flourishing of the Hebrew Language…" (In Re **Re'em Engineers**, 208). The same logic applies with respect to the purpose of recognizing the importance of the language as an element of national solidarity and of defining the sovereign state. On the other hand, one can think of an additional general purpose which did not appear in **Adalah** - the purpose of the **efficiency of the administrative authority's action**, and in our context this could support refraining from publishing in Arabic.

C. Striking a Balance between the Purposes

32. It is known that any purpose, when examined individually, could lead to a different conclusion. However, under the Israeli legal system, there are no absolute values and principles, rather, the view that they are relative, is predominant. It follows that after

identifying both the special and the general purposes that vie for priority, each must be granted its relative weight and must be weighed against the others in order to discover the point of equilibrium (see for example, HCJ 6163/92 **Eisenberg v. The Minister of Building and Housing**, PD 47(2) 299, 264 (1992); HCJ 935/89 **Ganor v. The Attorney General**, PD 44(2) 485, 513 (1990)). It should be emphasized, in this context, that there may be cases in which balancing might lead to several points of equilibrium, any of which, if chosen when exercising discretion, would be reasonable (see: HCJ 5016/96 **Chorev v. The Minister of Transportation**, PD 51(4) 1 (1997)). I believe that in the case of the duty to publish the invitation to voice arguments in Arabic, the balance between the purposes of protecting an individual's right to his language and ensuring equality, including making the authority's services accessible to a language minority group, on the one hand, and the purpose of the efficiency of administrative authority's actions, on the other, leads to the conclusion that there was a duty to publish the invitation to voice arguments in Arabic. It follows that the decision in the case at hand was made by the deciding entity without having considered all of the relevant considerations – the status of the Arabic language, making the publication accessible, equality, etc. – and it can be said, on these grounds alone, that the decision is unreasonable. However, in light of the above discussed balance, it emerges that the decision deviates from the scope of reasonableness, on its merits as well.

33. I shall mention that Section 116(d) prescribes a duty, which can be fulfilled in a number of ways in other words, there is a scope of reasonableness, within which there are several options which the Minister of Infrastructures could have selected. For example, the Ministry of Infrastructures could have personally approached the potentially adversely affected parties and invited them to voice their arguments; however the option chosen was that of publishing in the press, an option, which, in and of itself, like its predecessor, is certainly reasonable. One can think of other reasonable means of publishing means, which the Ministry of Infrastructures could have taken to fulfill the duty to inform. The platform of publication, however, is not the only matter that should be examined; so, too, should the matter of the language of publication, which was discussed above and which the Minister of Infrastructures should have weighed and considered in his final decision.

34. I note that the assumption that most, even if not all, of the Hebrew reading and speaking public will encounter the publication in the Hebrew press, is definitely a reasonable one. This assumption is incorrect, however, with respect to the Arab public. Indeed, one can say that the publication in the press, in general, is a reasonable means of fulfilling the duty imposed in the framework of Section 116(d). This is even the manner adopted to inform the public regarding the deposit of a plan in the framework of the Planning and Building Law, 5725-1965 (hereinafter: the "**Planning and Building Law**") (see: Section 89). As clarified above, in the case of the duty to inform, the scope of reasonableness includes the possibility that the information which is the subject of the publication will not actually reach the entire relevant public. Publishing only in the Hebrew press, however, while refraining from publishing in Arabic, through a platform that is widespread among the group of Arabic speakers, is unreasonable. The reasonableness principle could not sanction a situation in which the authority published only via a platform to which the majority of the water extractors and consumers are not exposed. Similarly, a situation in which the majority of a distinct group among the extractor and consumer public is not exposed to the publication, is unreasonable as well. Yet, that is what publication in the Hebrew press is for Arab extractors and consumers, the majority of whom are likely to not be exposed to such publications, and, at the very least, whose

exposure to the Arab press is significantly greater. It follows that with respect to such a public, by refraining from publishing via a platform to which the majority of such a public is exposed, and which is in their language, the authority deviated from the scope of reasonableness.

35. It is necessary to clarify that while different languages are spoken in the State of Israel, due to Jewish immigration from various countries around the world, this differs from the Arab population, in terms of the purpose of protecting an individual's right to his language. In **Adalah**, President **A. Barak** expressed the following, relevant to the case at hand:

> "Does our approach not imply that residents of different towns in which there are minority groups of speakers of various languages, will now be able to demand that the signs in their towns will be in their language as well? My response is negative, since none of those languages is the same as Arabic. The uniqueness of the Arabic language is twofold. First, Arabic is the language of the largest minority in Israel, which has lived in Israel since far far in time. This is a language that is linked to cultural, historical, and religious attributes of the Arab minority group in Israel. This is the language of citizens who, notwithstanding the Arab-Israeli conflict, wish to live in Israel as loyal citizens with equal rights, amid respect for their language and culture. The desire to ensure dignified coexistence between the descendants of our forefather Abraham, in mutual tolerance and equality, justifies recognizing the use of the Arabic language in urban signs-in those cities in which there is a substantial Arab minority (6%- 19% of the population)-alongside its senior sister, Hebrew . . . […]. Secondly, Arabic is an official language in Israel (see paragraph 12 above). Many languages are spoken by Israelis, but only Arabic – alongside Hebrew – is an official language in Israel. Arabic has, then, been granted a special status in Israel. This status does not have a direct application in the case at hand, but does have an indirect application. […] the fact that the Arabic language is "official" "has surplus and unique value" (**Adalah**, paragraph 25).

These two explanations – the fact that Arabic is the language of the largest minority in Israel and an official language – justify, in our case as well, granting the Arabic language special treatment compared to the languages of other minorities. In this matter, it is clear that there is an interest that the Arab minority learn the language of the majority, which is the dominant language in the country. However, due the unique status of the Arabic language, a situation in which an individual belonging to the Arab minority in Israel is adversely affected due to only being fluent in his language, cannot be allowed.

Interim Summary

36. As presented above, I posit that the decision not to publish the invitation in Arabic and

via a platform to which the Arab speaking public is exposed, is unreasonable, based upon the three above mentioned approaches: the interpretation of Section 82, both as per the term "official notice" and in accordance with Justice **D. Dorner**'s approach in **Adalah**, and the interpretation of the obligation prescribed in Section 116(d), as per President **A. Barak**'s approach. I note, in this context, that although I discussed each approach separately, this should not imply that they are mutually exclusive. While President **A. Barak** rejected Justice **D. Dorner**'s interpretative approach in **Adalah**, his approach of interpreting power and authority, in light of their (special) underlying and (general) overarching purposes can indeed coexist with Justice **D. Dorner**'s broad interpretation of Section 82. This is also true with respect to the interpretation of the term "official notices", which can coexist alongside President **A. Barak**'s approach and alongside Justice **D. Dorner**'s approach. While it may appear *prima facie* that in the latter matter there is an inherent contradiction, *de facto*, nothing stands in the way of accepting the proposed interpretation of the term "official notices" and agreeing to the approach that the overall interpretation of Section 82 must be applied based on the historical circumstances that encompassed its legislation during the Mandate period and its adoption by the Israeli legislator. This matter, however, goes beyond what is necessary in the case at hand, such that I am not required to rule on this matter here.

Be the preferred approach of the interpreter as it may, the conclusion that emerges is that the decision to publish the invitation to voice arguments exclusively in Hebrew and in the Hebrew press is not a reasonable decision, and, at the very least, is a decision made in violation of a statutory obligation, all as per the interpretative approach applied. It follows that the question we must now ask is: what is the consequence in the case before us? In other words, what is the warranted relief under the circumstances? I shall now turn to this question.

The Relief

37. The case before us raises two interrelated flaws. First, the lack of concurrent publication in Arabic of the invitation to voice arguments, and second the result thereof, i.e., the denial of the Appellants' right to actually voice their arguments. As for the consequence of the lack of publication in Arabic, I do not believe the appropriate relief, by virtue of this flaw *per se*, is to invalidate the Water Regulations. It would be sufficient to order that when the water extraction levies are updated it shall be mandatory to also publish the invitation to voice arguments in Arabic (this obligation is currently imposed on the Water Council pursuant to Section 116(d) of the Water Law).

38. Appellants' matter also relates to their inability to exercise their right to be heard, which was indeed violated in the case before us. This raises the question: How is such violation to be treated? *Prima facie*, the results of an action that deviates from the scope of reasonableness or that is tainted by illegality, should be null and void. However, it is known that according to the relative voidness doctrine or the relative consequence theory, which have been accepted in our system, one must distinguish between the flaw and the consequence thereof (see: CrimA 1523/05 **Anonymous v. The State of Israel** (not published, March 2, 2006)). In this matter, it has been said that:

> "Case law regarding relative voidness (which, for the sake of accuracy, should be referred to as “relative legality”), provides that one must distinguish, in the framework of

> judicial review of an administrative decision, between two levels: the first level – the flaw in the decision; and the second level – the consequence of the flaw. With respect to the first level, the Court must examine and determine if there was a flaw in the decision such as: ultra vires, violation of the right to be heard, conflict of interests, irrelevant considerations, and the like. If the Court ruled, on the first level, that there was a flaw in the decision, then it must, on the second level, consider the consequence of the flaw, i.e. the appropriate relief. The Court's considerations differ greatly at the two levels: at each level the Court has different objectives and uses different tools" (LCrimA 4398/99 **Harel v. The State of Israel**, PD 54(3) 637, 643 (2000)).

This is the case when dealing with an administrative flaw (see: AAA 3518/02 **Rajby v. Chairperson of the Local Planning and Building Committee**, Jerusalem, PD 57(1) 196 (2002); HCJ 10455/02 **Amir v. Israel Bar Association**, PD 57(2) 729 (2003)). This is also the case regarding a void contract to which the administrative authority is a party (see: CA 6705/04 ***Beit Harechav* Ltd. v. Jerusalem Municipality** (yet to be published, January 22, 2009)), and is also the case in judicial review of secondary legislation of the legislative authority (see: EA 92/03 **Mofaz v. Central Elections Committee Chairman for the Sixteenth Knesset**, PD 57(3) 793 (2003)).

39. The right to be heard is an important right in Israeli law, and, as mentioned above, is grounded in the rules of natural justice. In the case before us, the Appellants were entitled to voice their arguments, or, at the very least, to an opportunity to voice them, which was not made possible, due to the Minister of Infrastructures' not complying with his obligation to publish the invitation to voice arguments in Arabic. The violation of the rules of natural justice, including the right to be heard, is deemed *ultra vires* (see: CA 183/69 **Petach Tikva Municipality v. Avraham Tachan of "Amishav" Laboratory**, PD 23(2) 398, 404-406 (1969)), and constitutes a cause to invalidate an administrative decision. However, all this is still subject to the relative voidness doctrine. When examining the consequence of the violation of the right to be heard, the considerations are as follows:

> "… the question is, what is the consequence of the violation of the mandatory hearing. Does the violation revoke the decision *ab initio*? Not necessarily. […] According to the relative voidness theory, it is appropriate to adapt the consequence of the violation (including the relief granted by the Court) to the circumstances. In each case, the matter is placed at the Court's discretion. The Court may, *inter alia*, consider: the severity of the violation; whether at hand is a direct or indirect attack of the decision; whether the decision is being attacked by a person directly adversely affected by the decision or by someone else; the timing of the attack on the decision; the damage caused to the person, due to having been denied a prior hearing, the damage that could be caused to the public, were the decision to be invalidated and the chances to cure the wrong by means of a later hearing". (HCJ

2911/94 **Backi v. Kalaji – General Manager of the Ministry of Interior** PD 48(5) 291, 305-306 (1994)).

40. The question, then, is how the flaw in the case at hand should be treated. In my opinion, vacating the Water Regulations, only due to the fact that the Appellants did not have the opportunity to voice their arguments at the time relevant to the promulgation, is unwarranted. Additionally, I find it unwarranted to order the vacating of the notices of debt sent to the Appellants due to the water extraction bills they had to pay pursuant to the extraction licenses in their possession. One can, indeed, find a causal connection between the lack of publication of the invitation to voice arguments in Arabic, and via platforms widespread among the Arab population, and the Appellants not knowing, as emerges from their affidavits, about the amendment of the Water Regulations. However, Appellants did nothing, or at least it was not proven to us that they took any action, related to the notices of debt issued in the Appellants' matters, related to a period spanning over five to six years, concerning these debts, of which they should have been aware. The Appellants did not, during said period, ask the authority about the extent of their debt for water they extracted nor did they demonstrate any effort to discuss the authority's conduct (which they are now criticizing) at the time of the promulgation of the Regulations. Passively waiting until the authority acted to collect the debt, which, in the interim, had accumulated to large amounts, is inappropriate. Furthermore, Appellants chose to attack the lack of publication of the invitation to voice arguments, and the amount they were charged, by means of an indirect attack, notwithstanding the fact that, as mentioned above, the debts accumulated over a number of years. An indirect attack is not the standard course in matters such as these, which serves as an additional consideration supporting my conclusion that neither the Regulations nor the debt notices should be voided.

41. I shall further note that I agree with the District Court's rulings regarding the potential impact of the arguments that the Appellants raised before it (and before us) regarding the contents of the Water Regulations and the consequence of the arguments on the wording of the Regulations, had the Appellants been granted the opportunity to voice them before the secondary legislator. The general purpose of Section 116 of the Water Law, which the promulgation of the Water Regulations was meant to realize, is to prescribe the water extraction levies with the goal of incentivizing extractors to make the extraction process more efficient and to conserve the limited resource, in light of the difficulties faced by the Israel water economy. If, and to the extent that, the Appellants have reservations regarding their physical ability to use their allocated extraction quota, these are arguments that relate to the terms and conditions of the water license, which are inappropriate to raise in the framework of determining the extent of the levies. Additionally, the lack of alternative water sources in the vicinity of the aquifers from which the Appellants extract water is irrelevant to the purpose of treating the shortage in the various reservoirs in accordance with their condition, as is reflected from time to time. Similarly, questions regarding the socio-economic condition of the water extractors and consumers are irrelevant in the framework of determining the water levies.

42. Thus, in light of the fact that Appellants' arguments, even had they been presented before the Minister of Infrastructures, would probably not have changed the Regulations' wording that became binding; in light of the manner in which Appellants chose to attack the violation of the obligation to conduct a hearing in their matter – by means of an indirect attack; in light of the extensive damage to the public interest and the public

funds which would be caused by a invalidating the Regulations; and in light of the associated damage of the cancellation of the Appellants' debt, I have been convinced, based on the relative voidness doctrine, that, despite the flaw of not publishing the invitation to voice arguments in Arabic, it is inappropriate to invalidate the Regulations or the notices of debt in the Appellants' matter.

Before Summation

43. In the framework of its arguments, Respondent claimed that, contrary to other laws, such as the Planning and Building Law (Section 1A(a)(2)), the Mandatory Tenders Regulations, 5753-1993 (Regulation 15(a)), and the Freedom of Information Regulations (Availability of Environmental Information to the Public), 5769-2009, the legislator did not prescribe anything in Section 116(d) of the Water Law regarding the manner of publication, nor did it include a duty to publish in Arabic. Meaning, it can be understood from its argument that the Respondent wishes to infer from the legislator's silence that it, and, similarly, the Minister of Infrastructures before it, are exempt from the obligation to also publish in Arabic. I cannot accept this argument. As is known, in **Adalah** too there was no express obligation to include Arabic writing on the municipal signs in the Municipalities Ordinance itself, yet the Court did not deduce from this that there was no duty, since one cannot infer that the legislator's silence in the matter at hand was deliberate, as that inference is not necessary in order to properly realize the purpose of the law (see: BAA 6045/02 **Binstock v. Tel Aviv District Committee of the Israel Bar Association**, PD 58(2) 1, 5 (2003); HCJ 212/03 **Herut – The National Jewish Movement v.** Justice Mishael Cheshin, Chairman of the Central Elections Committee for the Sixteenth Knesset, PD 57(1) 750, 758-759 (2003)). As I have ruled above, the balancing of the purposes of Section 116(d), in accordance with the framework outlined by President **A. Barak** in **Adalah**, leads to the conclusion that there is also an obligation to publish the invitation to voice arguments in Arabic.

44. I shall further wish to note that while the Water Council is currently responsible for updating the water levies pursuant to Section 116, at the time relevant to this appeal, it was the Minister of Infrastructures who was responsible. Therefore, it would have been desirable had the Appellants added the Minister of Infrastructures as a respondent. I have been convinced, however, that we can rule on the matter before us without hearing the minister's position, given that the Respondent chose not to raise claims on this level and itself defended the path taken by the minister at the time of the publication of the invitation to voice arguments.

Summary

45. The appeal before us raises questions regarding the manner of exercising the discretion granted to the Minister of Infrastructures (which is currently in the hands of the Water Council), whilst fulfilling the duty, as defined in the Section 116(d), to allow arguments to be voiced before promulgating the Water Regulations that determine the extent of the levies for extracting water in Israel. The aforementioned voicing of arguments constitute a type of public hearing, distinguished from a personal hearing on several levels, primarily with regard to the right to be informed and to the extent of informing deemed reasonable. Clearly, the authority must ensure broad exposure of the invitation to voice arguments, in order to enable the majority of the relevant public to exercise their granted right to be heard. This does not mean, however, that in order to reasonably fulfill this

duty, the authority must see to it that notification is universal. Equally important to the matter at hand is the question whether there was an obligation, concurrently with the publication in Hebrew in the national press, to also publish the invitation to voice arguments in Arabic and in the Arab press. I have answered this question in the affirmative, following three interpretative theories, two of which focus on the interpretation of Section 82, while the third is based on interpreting the mandatory power and authority grounded in Section 116(d) of the Water Law. Finally, and in light of the unique circumstances of this case, I have reached the conclusion that despite the flaw of refraining from publishing the invitation in Arabic and in the Arab press, and pursuant to the relative voidness doctrine, it is inappropriate to invalidate the Water Regulations or the notices of debt that were sent by virtue thereof.

46. Therefore, subject to that which is presented in my opinion, I recommend to my colleagues to deny the appeal.

Given the circumstances of the matter, each party shall bear its own expenses.

Justice

Justice E. Rubinstein:

A. I concur with the outcome reached by my colleague Justice **Joubran** and with the core of his reasoning. My colleague, however, deemed it appropriate to elaborate on the matter of the status of the Arabic language in Israel, in connection with the matter of the publication of the notices pursuant to Section 116 of the Water Law, 5719-1959 (prior to its amendment) in Arabic. My colleague embarked on a principled discussion of this matter, even though Respondent already declared in the court of lower instance (the Court of Water Affairs) that future notices will also be published in Arabic. Respondent's attorney even reiterated this worthy commitment in the hearing before us, in response to our questions. Yet, since my colleague has discussed the principle, I shall add a few remarks of my own. I shall note at the outset, that in my opinion this is among the matters to which the saying of our sages, spoken by Shammai, "Say little, do much" (Ethics of the Fathers [***Pirkei Avot***] 1:15) applies, since the more one studies the Arabic language and applies a broad approach to its use, the better; while the more one treads on questions that impinge upon the sensitive sphere of political debate, even when they are presented as legal questions, the more complicated matters get. Fair-mindedness and pragmatic common sense is good counsel for such matters.

B. I shall emphasize that, beyond the legal question, I am of the opinion that the study of the Arabic language by the Jewish public in Israel should be promoted. Regrettably, despite extended efforts in the educational system, this remains far from being sufficiently developed. Arabic speakers are a large minority in Israel. The majority of these speakers today do indeed know Hebrew, which is the dominant language in the country, the language of the majority, and the primary official language. Given the fact that native Arabic speakers are a large minority among us, as well as the fact that Israel is surrounded by neighbors who are all Arabic speakers, with some of whom we even have peaceful relations, the knowledge of Arabic among Jews in Israel, except for the older generation of Jews who originated from certain Arab countries, is, in my opinion, far from satisfactory. Not to mention the fact that the Arabic language is a fundamental part of a rich and ancient culture. I shall take the liberty, at this opportunity, to add my

voice to those calling for enhancing the study and knowledge of Arabic and the culture related thereto; this could only bring benefit to the relationship between the State of Israel and its domestic minorities as well as with its surrounding neighbors. I shall quote, in this matter, from a speech I gave, while serving as Attorney General, in Tishrei 5760 (October, 1999) at Givat Haviva, which was published in ***Kiryat Hamishpat*** A (5761), 17, and in my book ***Netivei Mimshal Umishpat*** (5763), 278.:

> "As is known, the Arabic language has the status of an official language in the State of Israel. However, knowledge and use of Arabic in Israel falls short, both in terms of convenience for Arab citizens, residents, and visitors, and for use by the Jewish public. Incidentally, this would be an appropriate place to mention that in my opinion more should be done in terms of teaching Arabic grammar in schools in Israel. I myself am a graduate of the Middle-Eastern studies department, in its format, which preceded the Six Day War, when peace seemed a far and unreachable goal. At a time when the circle of peace is opening and extending, I would be all the more happy if Arabic was taught more. There is nothing quite like familiarity with the Israeli Arabs that live among us and the surrounding Arab world. That familiarity is lacking. Language is one the best means for familiarity."

It was further said (page 281) that "The Ministry of Transportation was instructed to add Arabic inscription to new license plates on Israeli vehicles. This... taking the peace process into consideration and the possibility that vehicles with Israeli plates will be able to travel in the neighbors' territories". It was further said (***ibid***) that "Including the Arabic language in official publications of the State of Israel is not only in order to grant it its proper standing, but that at times the very use of the language, in and of itself, grants the opportunity to attain equality". This is true also in the matter of the obligation to publish tenders in Arabic: "There is no proper meaning to equality through participation, if there is no language accessibility, *inter alia*, due to language barriers" (page 282). See also my paper "The State and Israeli Arabs: The Struggle for Equality in the Framework of a Jewish, Democratic and Tormented State" (***ibid***, 293, published in its essence in ***Kiryat Hamishpat***, C, 107)

In my recent capacity as Chairman of the Central Elections Committee for the Nineteenth Knesset, I felt it necessary, *inter alia*, to give the Arabic language proper standing by including a segment in Arabic in my address to the citizens of Israel in the traditionally broadcasted Central Elections Committee Chairman's call to participate in the elections.

C. Indeed, much of the matter before us addresses, beyond the legal aspects, questions of respecting the minorities among us (see, on this matter, my paper "The Equality of Minorities in a Jewish and Democratic State" ***Zehuyot*** 3 (2013) 140, 142-144); I expressed my opinion (page 145) that "The study of Arabic is one area in need of repair. The majority of Israeli Arabs today know Hebrew, because they live with the majority, Jewish society. Among the Jewish population – other than among immigrants of earlier generations who immigrated from Arab countries and whose mother tongue is Arabic – the situation is vastly different. Lack of knowledge of Arabic is most regrettable…" He

who respects – is to be respected. I am of the view that the promotion of the Arabic language should be kept as distanced as possible from the political debate concerning the Arab-Israeli conflict, and should be strongly encouraged in practice. The more the focus is on the practical sphere, on promoting studying the language and using it, the better; it must not be perceived by the public as part of a struggle to alter the Jewish and democratic essence of the state, i.e., to remove the Jewish label from the state, so as not to create unnecessary antagonism. This is what common sense demands: proper respect, proper study, proper use – but not, heaven forbid, a tool for harming the State's Jewish, Jewish and democratic identity. In my opinion, the more we remove this matter from the principled struggles and focus on establishing appropriate practical arrangements, the more the effort will bear fruit. "The essence is not study, but deed", as spoken by Rabbi Shimon Ben Gamliel (Ethics of the Fathers [*Pirkei Avot*] 1:17). Of course, I shall not claim that there is no point in legal deliberation, in appropriate cases, as demonstrated by those petitions that were accepted. However, in my opinion, ultimately, legal rulings are most appropriate when a worthy request, which, with a little bit of goodwill, could have been met, is not satisfied.

D. As mentioned, too much talk can often be counter-productive. I shall illustrate this from the highly-informative book by historian Dr. Nathan Efrati, **Hebrew and the State – Hebrew's Public Status since the Establishment of the State** (5770 - 2010), which extensively reviews the evolution of both the parliamentary and public discussion, related to the issue of the Hebrew language and its status, and consequently, to the issue of the Arabic language, going back to the establishment of the state. A summary of the remarks with respect to Arabic are presented below in order to draw attention to the inherent sensitivity of the matter. The author mentions (on page 9), that in the United Nations resolution of the 29th of November, 1947 (the Partition Resolution), it was stated with respect to Arabic that "In the Jewish State adequate facilities shall be given to Arab-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the Courts and in the administration". When the matter of the Arabic language was raised in the People's Council, by Meir Grabovski (Argov), a signer of the Declaration of Independence and eventually a member of Knesset, in an argument regarding the wording of the Declaration of Independence and assuming equal rights to both languages in Israel, **David Ben-Gurion** replied that "No-one will object to there also being freedom of language", however "the language of the state is Hebrew. This does not prevent other residents from using their language anywhere" (pages 9-10); Eventually, Section 15(b) of the Administration of Rule and Justice Ordinance, 5708-1948, was adopted, which repealed the requirement to use English – but did not change the status of Arabic (see also the notes at ***ibid***, page 10). See also ***ibid***, pages 36, 127-128, 131-134 regarding various bills proposed over the years regarding the Arabic language and its relation with Hebrew. The author summarizes the failed attempts for special legislation regarding the status of Hebrew (page 134) "The bills always failed due to the implications of such legislation on the status of the Arabic language"; this occurred, for example, in the discussions of a private bill regarding Hebrew by MK Ora Namir in 1982, "despite the fact that Namir explicitly provided that the law was intended to protect the Hebrew language without in any way derogating from the existing status of the Arabic language" (***ibid***, page 230). Similarly, see page 243 with respect to the position of both left and right wing governments and the great sensitivity they demonstrated in this matter. On a personal note, I shall mention that the author discusses (page 230-231) remarks of mine from a meeting of the Education and Culture Committee (dated 23rd of Cheshvan, 5743 - November 9, 1982), in a discussion

regarding MK Namir's bill, when I served as legal counsel of the Ministry of Foreign Affairs (page 230-231), "On behalf of the Ministry of Foreign Affairs, [he] praised Namir for the third section of her bill that provided that the rights of the Arabs shall not be prejudiced, as stated in Section 82 of the Palestine Order-in-Council, of 1922, i.e. the status of the Arabic language shall be preserved. He expressed his hope that this law would be publicized so that this fact shall also become known abroad, and not be interpreted as an offensive change". For a review of Supreme Court rulings on the matter, see ***ibid*** 231-232. The author further mentions that, when faced with private bills regarding the Hebrew language, which frequently declared that they do not intend to prejudice the Arabic language, the government's position was to consistently oppose any change in the status of the Arabic language (***ibid***, page 236); and *inter alia*, ministers also expressed the spirit of this position; while, as opposed to them, "No appeal was heard from the Arab members of Knesset with respect to the preferred status of the Hebrew language in the State of Israel" (page 236), and MK Raleb Majadele, the Minister of Culture and Sport, when submitting a bill to establish an Academy for the Arabic Language (Knesset Education and Culture Committee Hearing, February 19, 2007; ***ibid*** page 236), spoke of enhancing Arabic's prestige as the "second official language".

The result is that the attempt to formally anchor the status of Hebrew in a law, beyond that which exists in Section 82, did not succeed, due to the sensitivity of the Arabic issue. On the other hand, the author reviews "Adalah"'s efforts to, in his words, "undermine the preferred status of the Hebrew language", and challenge the Jewish character of the State – as appears in a document of constitutional nature published on its behalf in 2007, (pages 246-247), while defining Israel as a "democratic bilingual and multi-cultural state, as opposed to its current definition as a Jewish and democratic state"; see also footnotes on page 246.

E. Furthermore, it is known that the legal status of the Arabic language is complex, as demonstrated by the case law presented by my colleague Justice Joubran. It is clear that, on the one hand, the Hebrew language is in fact the main language of the State, a Jewish state, as per the Declaration of Independence, and democratic in its essence, and a Jewish and democratic state, as per its definition in the Basic Law: Human Dignity and Liberty and in the Basic Law: Freedom of Occupation. That an overwhelming majority of this country's citizens are Jewish, and that the various governmental institutions conduct themselves first and foremost in Hebrew are well known facts that do not require evidence. It is undisputable that the revival of the Hebrew language, from Eliezer Ben Yehuda and his friends and onwards – a revival, which, without resorting to excess mysticism, can be deemed miraculous – and the unimaginable success of transforming Hebrew from a sacred tongue to a living language, spoken by the multitudes of immigrants and ingathered exiles, is an enormous part, of the Jewish national revival in Israel, and whose importance cannot be overstated. As Ephraim Kishon said ("This is the Country", in **The Knitted Kipa and Some More Pro-Israel Satires** (5753 – 1993) 5) "This is a country where a mother learns the mother tongue from her children". Having said that, the Arabic language has legal status as an official language by virtue of **Section 82 of the Palestine Order-in-Council, 1922**; see Y. Zamir **The Administrative Authority (2010)** (2nd Edition) on page 66, where Arabic is described, in the framework of the rights of the Arab public, as a "second official language". It is not superfluous to note that a few years back the Knesset adopted the Law for the Supreme Institute for the Arabic Language, 5767-2007, the drafting of which parallels the language of the Law for

the Supreme Institute for the Hebrew Language, 5713-1953 (the law that establishes the Academy of the Hebrew Language); see also Efrati, ***ibid***, 233. "In the Supreme Institute for the Arabic Language Law, the institute was charged, *inter alia*, with 'Research of the eras and branches of the Arabic language' (Section 391), and with 'Conducting relations and exchange of information with the Hebrew Language Academy and with Arabic and Hebrew research institutions in Israel and around the world." (Section 3(5)).

Over the years, the legal issue has been discussed in the case law, in scholarly publications and in the opinion pages of the press. As far back as 1967, Advocate (and eventually Judge) Avigdor Salton published his article "The Official Languages in Israel" (***Hapraklit*** 22 (5727 - 1967) 387), in which he reviewed the then current legal status of the Arabic language (page 391 and onwards), concluding on page 397 with the opinion that "legally speaking, there is no duty for government ministries or courts to respond in Arabic", and that is rather " only **a license**" (emphases original) granted to the authorities, subject to preventing a miscarriage of justice; see page 395. Furthermore, "As for the question of the official languages in Israel, in general, it appears to me that in this field more is concealed than in revealed, and the Knesset should address this important question" (p. 397). The matter arose later on in HCJ 527/74 **Khalef v. The District Planning and Building Committee, Northern District**, PD 29(2) 319 (1975) in a matter similar to the case at hand, and there was no dispute that a plan that was deposited should have also been published in Arabic, as per Section 89(a) of the Planning and Building Law, 5725-1965 (as was amended in 5733 - 1973).

F. In LCA 12/99 **Jamal v. Sabek** (1999), Justice (as was his title at the time) **M. Cheshin** noted (paragraph 18), regarding the right to vote and the use of Arabic, that Arabic has – in the provision of Section 82 of the Palestine Order in Council – an "especially exalted status, and there are even those who believe that it is an official language (whatever the interpretation of the term "official" may be) … the main point being that the Arabic language is the language of a fifth of the State's population – the language of the public, language of the culture, language of the religion, and that this portion of the population is a significant minority whom, and whose language, we must respect"; see also CA 8837/05 **Marshud v. Shorty** (2009) (paragraph 21). The matter was extensively addressed in HCJ 4112/99 **Adalah v. The Tel Aviv - Jaffa Municipality**, PD 56(5) 393 (2002). My colleague reviewed the three opinions that were presented therein regarding signs in mixed cities where the Petitioner requested that it be applied universally. My position there as the Attorney General was, as President Barak summarized (paragraph 3 on page 405):

> "In a notice on his behalf (on behalf of the Attorney General – E.R.) it was noted that in his opinion the respondent municipalities do not have an obligation to post signs in Arabic. Such an obligation does not stem from Section 82 of the Palestine Order-in-Council, 1922. Arabic, however, is an official language of a large and respected minority in the State. This status that it has - alongside the Hebrew language, which has a primary status - creates an obligation that the governmental authorities consider the use of the Arabic language in accordance with the matter in question. In terms of the respondent municipalities, it follows that certain criteria are expected of them when exercising their discretion

> in those cities in which there is a significant Arab minority. **First of all**, a distinction can be drawn between main arteries and side streets. The obligation to also post signs in Arabic applies primarily to signs on the main streets and central roads. **Secondly**, the obligation to post signs in Arabic applies mainly in areas in which there is a large Arabic-speaking population. **Thirdly**, signs directing to public institutions, as well as directional signs within the public institutions themselves must also be in Arabic. **Fourthly**, updating the signs in all such places where adding Arabic writing shall be required, shall be made within a reasonable time frame. The Attorney General added that consideration must be given to the general interest of readers' comprehension, i.e., the public interest that everyone understand the signs. The main importance of this interest is readers' comprehension of safety and warning signs. It is of lesser importance in other signs (directing signs, including road and roundabout signs and signs in public squares, as well as other public signs). The Attorney General added that some of the Arab public is able to read and understand Hebrew and English signage".

Further on (in paragraph 6 on pages 406-407) the President quoted from my complementary position that in the case of localities with a significant Arab minority "practical considerations, as well as considerations of respecting the language of the Arab public, could justify expanding the scope of the signs in Arabic beyond the main streets and central roads, and beyond those areas in the local authority's jurisdiction which include a large Arabic-speaking population", with the details being determined by the local authorities.

The majority opinion, with President **Barak** and Justice **Dorner** applying different normative interpretations, was that it is appropriate for an obligation of Arabic writing to be applied in its entirety. President Barak did not see this through the prism of Section 82, although he was of the opinion (paragraph 13 on page 411) that consideration should be given to the official status of the language, and therefore viewed the source to be in the mere authority to post municipal signs in the language of the largest minority in Israel (paragraph 25 on pages 417-418). Justice Dorner was of the opinion that the matters derive from Section 82, since (paragraph 7 on page 478) "…while Hebrew is the primary official language of the State of Israel, being the national language of the majority, the Arabic language's status as an official language pursuant to the amended Section 82, is meant to realize the Arab minority's freedom of language, religion and culture …", in accordance with the principle of equality. Justice (as was his title at the time) **Cheshin** (paragraph 16 on page 429) emphasized that the fact that the Arabic language is referred to as "official" "grants the language an exalted status, but one should not infer an operative legal conclusion from such status other than in circumstances in which this is required and in subordination to the law. The material is sensitive and delicate, … and therefore we must be guarded: we shall be cautious and refrain from reaching operative legal conclusions from the fact that the language is "official", unless this is required in consequence of applying another fundamental principle of law…" Freedom of language – yes, but without being dragged into politics. Justice Cheshin

added (paragraph 61 on page 460) that "The real matter of the petition before us is not the street signs of the respondent municipalities. The matter – in its essence: from its beginning through to its end, is the cultural and national rights of the Arabs in Israel… The matter of granting these - or such - rights - is, first and foremost, a political one, which, in any event, is to be decided upon by the political authorities. The question is delicate and complicated, with far-reaching implications for both the image and character of Israel as a Jewish and democratic state…".

G. See also I. Saban "The Collective Rights of the Arab-Palestinian Minority, Do They or Do They Not Exist and the Extent of the Taboo" ***Iyunei Mishpat*** 26(1) (2003) 241, 260 and onwards, regarding Arabic's status and for a critical overtone regarding the matter of the practical realization of the language's official status; I. Saban "A Sole (Bilingual) Voice in the Dark", following HCJ 4112/99 **Adalah v. The Tel-Aviv Municipality**" ***Iyunei Mishpat*** 27(1) (2003) 109, and particularly 130-133; I. Saban and M. Amara "The Status of Arabic in Israel: Law, Reality and Borders: Using the Law to Change Reality", ***Medina Vechevra*** 4 (5765 - 2004) 885; A. Hacohen "Multiplicity of Opinions and a Human's Right to Speak his Language" ***Parashat Hashavua Bereshit*** 32 (5772); A. Harel-Shalev "The Status of the Arabic Language in Israel - Comparative Perspective" **Adalah's** Electronic Newsletter 14 (2005); Alaa Mahajna "The Arabic Language and its Indigenous Status in Israel" **Adalah** (2008); Dr. A. Bakshi "The Status of Arabic in the State of Israel," **The Zionist Strategy Institute** (5772-2011). This collection of articles, reflecting different legal, public, and political directions, indicates the sensitivity, not to mention the volatility, of the matter, and the conflicts therein. In any event, more than a few of the authors emphasize the practical aspect, the gap between the legal analysis and the facts on the ground. There is no dispute, including among those of the opinion that the status of an official language should be reserved exclusively for Hebrew, that "also as a matter of values, one must protect the linguistic autonomy of the Arab minority and its rights of freedom of expression and linguistic accessibility to government services" (Bakshi, ***ibid*** 36). I have not addressed the various proposals for enacting a constitution in Israel and the references therein to the matter of language; that matter lies outside the purview of this case. Therefore, *prima facie*, as opposed to the sharpened legal and political disputes, in all that relates to the practical level, the gap is not really that wide.

H. I shall return to my opening remarks. **The essence is not study, but deed**, and, with it, common sense. There is a proper place for legal disputations and from every possible angle. They are part of the dialog, and at times the debate, in the political, public, academic and legal arena, which probably will not end in the near future. Perhaps we will see this debate concluded if the State of Israel completes its constitutional project, a goal to which I personally aspire. In the meantime, however, my advice, as stated above, is "say little and do much", both in terms of studying the Arabic language and in terms of using it, out of respect towards the minorities among us. This does not prejudice the Hebrew language or Israel's essence as a Jewish and democratic state. On the contrary, in the very honor it bestows upon its minorities, the majority society shall gain honor for itself.

Justice

Justice N. Hendel:

I concur with my colleague Justice **S. Joubran**'s extensive and thought provoking judgment and with Justice **E. Rubinstein**'s important remarks.

Justice

Now, therefore, it was ruled as per Justice S. Joubran's judgment.

Given today, the 5th of Cheshvan, 5774 (October 9, 2013)

Justice Justice Justice