



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
14 November 2013

Original: English

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined fourteenth to sixteenth periodic reports of the State of Israel

Addendum

Information received from the State of Israel on follow-up to the concluding observations*

[17 October 2013]

Concluding observation No. 16:

The Committee notes with concern the adoption of laws and the consideration of bills conditioning social and economic benefits on completion of military service, thus excluding non-Jewish communities who are exempted from military service such as Palestinian citizens of Israel. Moreover, it regrets the adoption of the 2009 Special Amendment No. 6 to the Regional Councils Law (Date of General Elections) (1994), which could considerably restrict the political participation of non-Jewish minorities (Articles 2 and 5 of the Convention).

The Committee recommends that the State party abrogate all discriminatory laws and rescind all discriminatory bills so as to ensure non-Jewish communities' equal access to work and social benefits as well as the right to political participation enshrined in the Convention.

1. As mentioned in the 14th Periodic Report (2010), benefits provided to military veterans, including the rights set out in the *Absorption of Discharged Soldiers Law 5754 – 1994*, as well as other benefits provided by the Discharged Soldiers Department in the Ministry of Defense, are granted to every IDF veteran, regardless of his/her religion. Most of these benefits are calculated according to the length and type of regular service performed, and some are given on the basis of socio-economic criteria. Moreover, persons from among minority populations who serve in the IDF, enjoy affirmative action and are entitled to receive enhanced benefits compared with those received by Jewish veterans.

* The present document is being issued without formal editing.

2. The Supreme Court's decision (2006) regarding the petition filed by "Adalah – The Legal Center for Arab Minority Rights in Israel" – that was mentioned in the 14th Periodic report (2010) has been reiterated in many later supreme courts' decisions. Within that decision, former Supreme Court president, Justice Barak, rejected Adalah's argument that in this case the use of this criterion results in discrimination against Arab citizens. Justice Barak reasoned in this regard that "a distinction made on the basis of the national or military service criterion is not necessarily a permissible distinction or illegal discrimination: this depends on the circumstances. Those who have completed military or national-civil service differ in many respects, as a group, from those who have not. Thus, for example, those who have completed military or national service dedicate much of their time and energy to the benefit of the general public. They cannot work or make a living during their service period. As long as this distinction is based on these factors, and as long as it is relevant in a given situation, it should not be considered illegal discrimination." (*H.C.J. 11956/05, Suhad Bishara, et. al. v. The Ministry of Construction and Housing* (13.12.06)).

3. Additionally, in the abovementioned Concluding Observation the Committee noted with concern "the consideration of bills". In that regard, it is important to give some details concerning the Israeli Legislation Process.

4. The State of Israel is a democratic state, which allows every democratically elected Knesset Member the right to present bills that reflect the best interests and will of his/her constituencies, in accordance with the law.

5. Every private bill presented by a Knesset Member goes through a lengthy process, including preliminary approval of the Speaker of the Knesset and his/her deputies who examine, *inter alia*, if the bill includes any forbidden racial content or negation of the State of Israel as the homeland of the Jewish people; a discussion held by the Ministerial Committee for Legislative Affairs regarding the Government's position; a discussion in the Knesset Plenum and only following the Knesset Plenum's approval – hearings before the relevant Knesset Committees, and later, the final approval of the Knesset Plenum, symbolizing the legislator's sanction to the final version of the law.

6. Note that the relevant Knesset Committee is authorized to make significant changes in the wording of the bill, and additional changes may be made by the plenum through reservations filed by Knesset members. This thorough and often prolonged process is aimed at ensuring that the final law reflects due process and the will of the legislator.

7. Israeli courts have the competence of judicial review regarding any act of legislation, in light of the Basic Laws. One recent example in this regard is the decision of 16 September, 2013 given by the High Court of Justice concerning a petition filed by several NGOs, regarding the constitutionality of Amendment No. 3 to the *Prevention of Infiltration Law (Offenses and Jurisdiction)* 5772-2012. An extended panel of nine judges ruled that holding persons in detention for a long period of time (up to a maximum period of three years) constitutes a material violation of their rights, including liberty and dignity, as enshrined in the *Basic Law: Human Dignity and Liberty*. The court determined that this violation does not meet the proportionality criteria contained within the limitation clause of the Basic Law, and was therefore unconstitutional. The court annulled section 30A of the law (*H.C.J. 7146/12 Naget Serg Adam et. al. v. The Knesset et. al.* (16.9.13)).

8. The abovementioned Concluding Observation included a recommendation that the "State party abrogate all discriminatory laws and rescind all discriminatory bills". During the consideration session the Committee raised and discussed several laws and bills and addressed them as discriminatory. Hereinafter, some details concerning these laws.

The Prevention of Harming the State of Israel by Boycott Law (5771-2011)

9. This law is intended to protect Israeli citizens from damages caused by organized boycotts and to guarantee that no use of public financial sources will be made in order to support activities that may harm Israeli citizens. The Law does not limit a private person's consideration if and from whom to purchase goods and services and deals only with organized and deliberate boycotts.

10. An act according to this law is not a criminal offence but amounts to a civil tort, which in certain cases may lead to compensation. The Law does not have any criminal sanctions or supervision mechanisms, and is subject to the courts' jurisdiction.

11. Several petitions were filed against this law, and on December 9, 2012, the Supreme Court residing as the High Court of Justice ordered the respondents to provide the reasons why this law or Sections 2-3 of the Law should not be cancelled. The petitions are still pending. (H.C.J. 5329/11, *Uri Avneri et. al. v. The Knesset et. al.*).

12. The wide public debate, the amendments that were made to this law and even the criticism it encountered, all demonstrate the strong democracy and freedom of speech enshrined in the Israeli legal system.

Amendment No. 8 to the Cooperative Society Ordinance 1933

13. In March 2011, the *Cooperative Society Ordinance* was amended (*Amendment No. 8*) in order to regulate in law the function of the Admission Committees for the acceptance of new candidates in agricultural and communal localities in the Negev area and the Galilee. Due to the small size of these communities and the special nature of the partnership between their inhabitants, the Law sets certain criterions to be met by people who wish to join these communities.

14. According to the Law, the Admission Committee may refuse to accept a new candidate to an agricultural or communal locality, based on several criterions. Such criterions include: minimum age limit (if the candidate is a minor), economic ability (the candidate lacks economic ability to build a house within the time period set in the land allocation agreement), suitability to the social life of the community (based on professional examinations), intention to settle and live his/her life in the community, etc. In order to prevent discrimination, the Law further determines that the Admission Committee may not reject a candidate based on illegitimate grounds such as; race, religion, gender, nationality, disability, personal status, age, parenthood, sexual orientation, political view, country of origin and political view.

15. In addition, the Law creates an Appeal Mechanism that enables the rejected candidates or the local community to appeal against the Admission Committee's decision to an Appeals Committee. The Appeals Committee's decision is also open for the review of the Administrative Courts.

16. Note that the abovementioned amendment anchors and regulates the work of the Admission's Committees which existed through former decisions of the Israel Land Administration (ILA).

17. Two petitions which challenge the constitutionality of the 8th amendment to the *Cooperative Society Ordinance* are pending before the Supreme Court. On January 25, 2012, the State submitted a detailed response to these petitions in which it outlined its position whereby the 8th amendment reflects an appropriate balance between the need to ensure the continued development of small communities in the peripheral areas of Israel, by allowing for the acceptance of new members to these communities who will contribute to their existing social life and communal cohesion, and the State's responsibility to ensure that land is allocated on a reasonable and non-discriminatory basis.

18. The State argued that the decision-making framework established by the 8th amendment is an appropriate means for enabling the continued development of peripheral communities, whilst ensuring that applications are not rejected on illegitimate grounds. With regard to the claim of the petitioners that the amendment applies only to Jewish communities, the State clarified that there is no legal obstacle to the application of the amendment to Arab communities, should they so wish, and should they choose to form an appropriate corporation.

19. The State also emphasized the fact that the 8th amendment establishes a framework for decision-making, whilst individual decisions are subject to administrative appeal and may be challenged in the district courts and, upon appeal, in the Supreme Court. The State argued that the regulation of individual decisions made within the framework established by the 8th amendment, and the additional provisions which forbid the rejection of an application on illegitimate grounds such as race or religion, are grounds that render the debate about the constitutionality of the law premature at this time, prior to the examination of individual decisions by the courts over a period of time.

20. The case is pending a Supreme Court decision.

The Regional Councils Law (Date of General Elections) 5764 – 1994 (the “Regional Councils Law”)

21. Contrary to the concerns expressed in this Concluding Observation regarding a possible restriction of the political participation of non-Jewish minorities, the *Special Amendment to the Regional Councils Law* does not and was not meant to restrict the political participation of non-Jewish minorities but rather to enable the Minister of Interior the flexibility to conduct elections only after the specific condition of the regional council allows it. As far as this Concluding Observation is directed towards Abu Basma regional council, it is important to give the proper details concerning this matter.

22. The Abu-Basma Regional Council was established on 28 December 2003. It includes ten rural localities with around 30,000 residents and provides municipal services for additional 40,000 residents of unauthorized villages in the Negev. The Minister of Interior appointed a temporary council that will govern the administrative and municipal needs of the residents. According to the *Regional Councils Law (Time of General Elections) 5754-1994*, the first elections to the Regional Council should have taken place, at the latest, six years after the establishment of the Council. The aforementioned law was amended in November 2009 to allow the Minister of Interior to postpone the first elections indefinitely. The amendment does not specify the conditions for such measures. After the amendment of the Law, the Minister of Interior postponed the elections for the Abu-Basma Regional Council.

23. These events led to the filing of a petition to the High Court of Justice (*H.C.J. 3183/10 Alrfiaa et. al. v. The Minister of Interior*). The applicants claim that the amendment is unconstitutional since it harms the basic principles of a democratic regime, which require democratic election to be held in fixed and given times. This causes violations of additional constitutional human rights such as the right to take part in conduct of public affairs and the right to equality. After deliberations between the parties, both sides came to an agreement that the elections would be held on December 4, 2012.

24. On April 2012, the Director General of the Ministry of Interior, appointed a professional Committee in order to examine and make recommendations in regard to the municipal boundaries and the local planning areas of the Bedouin population in the Be'er-Sheva region, in light of the Goldberg Committee Report, with the aim of promoting the Government's goals detailed in Government Resolution No. 3707 regarding acceleration of the efforts to regulate the Bedouin housing in the Negev. The Committee, headed by

Prof. Eran Razin, was given a wide mandate which encompassed the examination of the municipal structure of the Bedouin population in the Be'er-Sheva region, namely in three main elements: Municipal ascription of authorized Bedouin localities, including examination of the future regulatory situation of the Abu-Basma regional council, including the possibility of its partition, the addition of additional areas and localities to this regional council or detraction of part of its territory and changes in areas of jurisdiction of existing Bedouin localities.

25. The Committee met with professionals, representatives of the Bedouin community and with representatives of the Bedouin local authorities and localities, both authorized and unauthorized. The Committee also visited the area in question in order to see firsthand the situation on the ground.

26. In August 2012, the Committee issued its preliminary recommendations, in which it recommended that the Abu-Basma regional Council should be divided into a number of separated local councils, since its current structure is of an operational state organ and not of a regional council and specifically of a Bedouin regional council. The Committee requested an additional time to examine the right manner by which to perform this division. The Committee made no recommendations in regard to the local elections in the Abu Basma regional council.

27. In October 2012, the Minister of Interior adopted the Committee's recommendations and the Abu Basma regional council was divided into two local councils with appointed committees: Al-Kasum and Neve Midbar (according to a geographic north and south partition).

28. An election will be held in these two local councils, following a decision of the Minister of interior.

Concluding observation No. 18:

The Committee reiterates its concern at the maintenance of discriminatory laws especially targeting Palestinian citizens of Israel such as the Citizenship and Entry into Israel Law (Temporary Provision). The Law suspends the possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing in the West Bank, including East Jerusalem, or the Gaza Strip, thus greatly affecting family ties and the right to marriage and choice of spouse. The Committee is particularly concerned at the recent decision of the High Court of Justice, which confirmed its constitutionality (Articles 2 and 5 of the Convention).

The Committee urges the State party to revoke the Citizenship and Entry into Israel Law (Temporary provision) and to facilitate family reunification of all citizens irrespective of their ethnicity or national or other origin.

29. As mentioned in the 14th Periodic Report (2010), on July 31, 2003, the Knesset adopted the *Citizenship and Entry into Israel Law (Temporary Provision) 5763 – 2003* (the “*Citizenship Law*”) which restricts family reunification of Israeli citizens with Palestinian spouses living in the West Bank or Gaza strip or with spouses living in several enemy states.

30. The Law was initially enacted for a period of one year. In view of the continued security threat it has been renewed at regular intervals. The Law was amended in 2005 and again in 2007 in to order expand the humanitarian exceptions contained in it. At the moment, the Law is valid until April 30, 2014.

31. The Law's constitutionality has been scrutinized and upheld by the Supreme Court sitting in an extended panel of eleven judges. A number of petitions on the legality of the Law were rejected.

32. On May 14, 2006 the High Court of Justice upheld the *Citizenship Law*. An expanded panel of 11 justices split six to five in rejecting petitions to overturn the Law. The majority ruled that the law does not harm Israelis' constitutional rights, stating that if the law does to some extent cause such harm, it was proportional (H.C.J. 7052/03 *Adalah - the Legal Center for Arab Minority Rights in Israel et. al. v. The Minister of Interior et. al.*).

33. On January 11, 2012, the High Court of Justice published its decision to reject a further petition against the legality of the *Citizenship Law*. Six of the extended panel of eleven judges found the Law to be constitutional. It is important to note that both the majority and the minority decisions determined that the purpose of the law is to mitigate the security threat posed by terrorist organizations seeking to harm Israeli citizens. The majority judgments also held that, given this purpose, the Law is proportional in that it is a rational means to attaining this end and that the security benefits of this law outweigh the negative impact of the restrictions that it places on family unification (H.C.J. 466/07, 544/07, 830/07, 5030/07 *MK Zehava Galon et. al. v. The Minister of Interior et. al.*).

Concluding observation No. 30:

Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

34. In September 2012, the Israeli Government ratified the Convention on the Rights of Persons with Disabilities.

35. Israel signed the Convention on the Rights of Persons with Disabilities on March 30, 2007, and since then has been conducting extensive work in order to ratify this important Convention, which included among others, examination of relevant legislation, required legislation amendments and more.

36. The ratification procedure was led by the Commission for Equal Rights of Persons with Disabilities in the Ministry of Justice, with the participation of other relevant Government Ministries, such as the Ministries of Social Affairs and Social Services, Foreign Affairs, Finance and others.

37. This ratification is an important step in enhancing the protection provided to human rights in Israel.

38. The ratification of further international human rights treaties is considered by the State of Israel on a regular basis.