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At the Supreme Court
Sitting as the High Court of Justice

H CJ 8031/12
Scheduled for: June 20, 2013

In the matter of:

1. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.**
2. **Physicians for Human Rights Israel - R.A.**
3. **Israel Religious Action Center – the Israel Movement for Progressive Judaism – R.A.**

All represented by counsel, Adv. Sigi Ben-Ari et al.
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Director General of the National Insurance Institute**
2. **Minister of Social Affairs and Social Services**

Represented by the State Attorney's Office
Ministry of Justice Jerusalem
Tel: 02-6466463; Fax: 02-6467011

The Respondents

Respondents' Response

1. According to the decision of the Honorable Justice U. Shoham dated November 6, 2012, and in preparation for the hearing scheduled for June 20, 2013, the respondents respectfully submit their response to the petition, as follows.
2. This petition concerns petitioners' request to include professional interpreters in sessions held by committees that review claims for disability benefits filed by residents of East Jerusalem, including medical committees and incapacity committees, and that protocols concerning the obligation to include a professional interpreter as aforesaid be published;

Alternatively, the petitioners request to staff the medical committees with Arabic speaking physicians, and in the case of incapacity committees and other committees - to staff them with fluent Arabic speakers.

3. It should already be noted, at the outset of this response, that respondents' position, as will be specified in detail herein below, is that in view of the current circumstances and in view of the changes which are expected to occur shortly, *inter alia*, following petitioners' application which was submitted to the respondents before this petition was filed, this petition became redundant and should be rejected.

In a nutshell, it is hereby noted, that as of mid October 2012, when sessions of medical committees are held in the Jerusalem branch, in which applications of East Jerusalem residents are reviewed, one of the employees of the East Jerusalem branch who speaks Arabic, is appointed to act as an on-call interpreter, and is called to provide interpretation services in relevant cases. In addition, in the near future, each insured person summoned to appear before a committee in the East Jerusalem branch, will receive written information in Arabic, in which it will be clarified that if he does not speak Hebrew, he will be entitled to receive, during the session held by the committee, assistance in Arabic and that he may bring with him an escort, who speaks Hebrew. In addition, the National Insurance Institute constantly acts to staff the medical committees with Arabic speaking certified physicians, in addition to those who currently serve in these committees.

Services rendered by the National Insurance Institute to Arabic Speakers - General

4. The National Insurance Institute acts in diverse ways in rendering services to the various population segments, including, the Arabic speaking population. In this context, of all forms designated for the use of insured persons which appear on the website of the National Insurance Institute (currently, about 170 forms), all forms relevant to the Arab population were translated and put on the Institute's website in the Arabic language. The National Insurance Institute makes arrangements, on additional levels, for the purpose of assisting the Arabic speaking population, including, a telephone number of an answering service in Arabic; translation of information handbooks into Arabic, including on the issue of medical committees regarding general disability and work injury; the installation of "kiosks" outside the branches in which services are provided in Arabic; reference in Arabic to a telephone number of an answering service in Arabic, which provides assistance to those who need it was added to the policies that are sent to insured persons. In addition, the National Insurance Institute employs interpreters whose duty is to assist the Arabic speaking population to fill out forms.

In addition, in its Jerusalem branch, the National Insurance Institute operates a sub-branch for East Jerusalem residents, which is fully accessible to the Arabic speaking population. **The branch employs 47 employees, out of whom 39 speak Arabic.**

The translation of the National Insurance Institute claim forms into Arabic, was performed, *inter alia*, as specified in the affidavit which was filed on behalf of the National Insurance Institute in HCJ 2203/01 **Defence for Children International – Israel v. National Insurance Institute et al.** (reported in "Takdin" January 7, 2009). Said proceeding concerned three issues: a request to have the claim forms filled out by the Arab population in the East Jerusalem branch translated into Arabic; a request to enable East Jerusalem residents to fill out the claim forms submitted to the National Insurance Institute in Arabic; and a request that the response letters sent by the National Insurance Institute branch in East Jerusalem be in the Arabic language. And it was so held by the court in said case:

On December 1, 2008 a supplementary affidavit was submitted to us, signed by the Director General of the National Insurance Institute, which reported of the instructions given to translate the forms to be filled out by the insured persons and which appear on the Institute's website in Hebrew (120 forms). It was stated that all forms would be bi-lingual. A report was given concerning the number of forms which have already been translated and added to the website and a detailed schedule for the completion of the translation and the publication of the forms to be presented on the Institute's website in Arabic by the end of June 2009. We were also advised that all applications submitted to the Institute in Arabic are received by it. We therefore issue an *Order Absolute* in the petition before us, according to which the National Insurance Institute should uphold its undertaking to receive forms in Arabic, and it will also have to complete the translation of the forms and make them available on its website, all as specified in the affidavit of the Director General and the appendix attached thereto which should be regarded as an integral part of this order. With respect to the third issue which was discussed in this petition concerning the request that all responses be sent in the Arabic language, the requested remedy is hereby denied, in view of the fact that the applicants have interpreters available to them in the offices of the National Insurance Institute, for any clarifications and inquiries they may have and service is provided to them accordingly."

5. Some of the diverse ways taken by the National Insurance Institute to make its services accessible to the Arabic speaking population in general, and in East Jerusalem, in particular, were also described in a letter dated July 15, 2012 in which the Deputy Director General for benefits at the National Insurance Institute responded to petitioner 1's letters concerning translation into Arabic in sessions of medical and disability committees held by the National Insurance Institute for East Jerusalem residents (see exhibit P/6 of the petition).

The medical committees according to the National Insurance Law

6. The medical committees acting according to the National Insurance Law are quasi-judicial tribunals. They act as professional independent bodies which exercise statutory powers in professional issues in their area of expertise. The nature of the medical committees was described by this honorable court in H CJ 2874/93 **Kamal v. National Labor Court et al.** IsrSC 48(2), 673 (1994):

"... the medical committees, although they operate under the organizational and budgetary auspices of the Institute, they do not constitute an integral part of the Institute. Rather, these are statutory bodies which are regarded as independent ones, the responsibility of which is to decide on the rights of the insured persons pursuant to the law and resolve medical disputes between the insured persons and the Institute. Thus, the medical committees fulfill a clear quasi judicial role. Their members are not subordinate to the Institute's authority and they do not bear a fiduciary duty toward it. They are subordinate to the law and the

public at large and their obligation, as prescribed by law, is to adjudicate medical issues brought to them according to professional and pertinent standards. It should be noted, that a similar obligation is also imposed on office holders in the Institute itself, who are authorized to make decisions in certain matters."

7. The working procedures and authorities of the medical committees and disability committees of the National Insurance Institute are regulated by various provisions in the National Insurance Law (and regulations promulgated there under), which concern the right to certain benefits and pensions. We shall shortly specify below, a summary of the laws which entrench the establishment and operation of the medical committees under the National Insurance Law, including:
 - a. In the **general disability insurance area** which is regulated by chapter 9 of the National Insurance Law, the degree of medical disability is initially determined by a physician of the National Insurance Institute (section 208 of the law). Thereafter, the National Insurance Institute's claims officer determines the loss of working capacity degree (section 209 of the law). This procedure constitutes, in fact, a committee of first instance. The decisions of the first instance on medical issues and working incapacity may be appealed by the claimant, on medical issues, to the medical committee of appeals, and on working incapacity issues, to the appeals committee (section 211 of the law). The working procedures and composition of these committees are set forth in section 211 of the National Insurance Law and their decisions may be appealed to the regional labor court (on questions of law only), as stipulated in section 213 of the law.
 - b. In the **work injury** area, which is regulated by chapter 5 of the National Insurance Law, when a claimant submits a claim for the purpose of being recognized as an injured person pursuant to section 79 of the law, the claims officer determines, by virtue of his authority under section 298 of the law, whether the event which caused the disability, is a "work injury". To the extent it is a work injury, and the insured person submitted an application for the determination of the disability degree which arises from such injury, such disability degree is determined by a certified physician or a medical committee, as a decision of first instance rather than within the framework of an appeal, according to section 118 of the law. Thereafter, section 122 of the law provides that a person, who is dissatisfied with the decision made by the committee of first instance, may appeal said decision to the **medical committee of appeals**. The decisions of the medical committee of appeals may also be appealed to the regional labor court (on questions of law only), as stipulated in section 123 of the law.
 - c. **Disabled child pension and special services** is a pension payable to an insured person who needs personal treatment and help at home (pursuant to section 206 of the law). The right to appeal a decision on this matter is established in section 122(c) of the National Insurance Law, to a medical committee, as specified above.
8. It should be emphasized that in the various medical committees, the insured persons are asked very basic questions, the purpose of which is to provide medical indication of their health condition – similar to a medical examination routinely conducted by a treating physician. Namely, these are not questions with respect of which the insured person needs to have any medical knowledge or expertise.

Meetings held by the medical committees in Jerusalem in claims of the Arabic speaking population

9. Each month, the Jerusalem branch of the National Insurance Institute holds about 1000 meetings of different committees, the meetings of which are held at the same place, in the main branch in Jerusalem, in matters of residents who obtain service in the sub-branch in East Jerusalem as well as in matters of residents who obtain service in the main branch in Jerusalem. It is estimated that between 20% - 25% of the meetings held by the committees concern insured persons whose mother tongue is Arabic.
10. The National Insurance Institute has received different applications concerning difficulties in language accessibility of the Arabic speaking population in the context of the medical committees sessions held in the Jerusalem branch, including the applications of petitioner 1. As described above, the response letter to petitioner 1 dated July 15, 2012 (exhibit P/6 of the petition) stated that interpretation services should also be made available to the Arabic speaking population during sessions held by the medical committees, and that the director general of the National Insurance Institute requested the relevant officials to examine the needs in order to make the necessary arrangements for this purpose.
11. After such examinations were conducted as foresaid, it was decided to make available the services of on-call interpreters appointed among the employees of the East Jerusalem branch, who would be present in the Jerusalem branch while sessions of the committees are being held, and who would act as an interpreter in the medical committees, whenever required. When the committee's secretary notices that the discourse between the committee or the certified physician and the insured person requires interpretation, said on-call interpreter is requested to join the committee so as to enable the interpretation of the discourse, both for the benefit of the insured person as for the benefit of the committee or the certified physician. This service has been rendered in the Jerusalem branch as of mid December 2012.

The list of on-call interpreters designated for this purposes consists of 20 employees. Commencing from the date on which the Jerusalem branch started to make available the service of on-call interpreters as aforesaid, their services have actually been required in between five to ten cases per month. In this context it is important to note that out of 118 certified physicians who serve in the committees and are allocated to the Jerusalem branch, 12 physicians speak Arabic, and that out of the 44 secretaries of the committees in the Jerusalem branch, six speak Arabic. Clearly, this also affects the number of cases in which there is indeed a language difficulty which requires interpretation as aforesaid.

This is the place to note that a "request for proposals" has been recently issued for the engagement of certified physicians in the context of which it was stated that in areas in which the vast majority of the population speaks Arabic, preference would be given to Arabic speaking physicians, in an attempt to encourage Arabic speaking physicians to apply for the position. It should be pointed out that to date, the response by Arabic speaking physicians was quite slim, and despite the Institute's will to engage their services.

A copy of the "request for proposals" for certified physicians is attached and marked **R/1**.

12. In addition to the interpretation services specified above, the National Insurance Institute has recently acted to translate the information attached to the letters sent to residents of East Jerusalem, summoning them to the general disability and work injuries medical committees. In

the context of this information, the insured person receives information regarding the relevant medical committee which summoned him, including information concerning the interpretation services into Arabic which are available during the committee's session as aforesaid. It should be noted that no information is attached to the letters which summon insured persons to disabled child pension and special services committees (no such information is attached in Hebrew either).

Furthermore, in addition to the information provided to the insured persons, the invitations sent to residents of East Jerusalem who are summoned to medical committees, bear a stamped notice in Hebrew which states as follows:

"If you do not speak Hebrew, you may bring with you an escort who speaks Hebrew."

Along with the translation of the attached information as described above, it was also decided to translate, into Arabic, the stamped notice which appears on the summoning forms, and to change the way it was drafted as follows:

"If you do not speak Hebrew, you may either receive assistance in Arabic by the committee or you may bring an escort on your behalf."

13. In this context it should be noted that the dispatch of the invitations to the medical committees is made by a mechanized system, which gives each document a reference number for the purpose of its automatic location and dispatch to the relevant insured person. The implementation of the above acts requires some time. Therefore, the above change has not yet been completed, and the National Insurance Institute estimates that it will be completed within about two months.

Conclusion

14. In view of all of the above, the respondents will argue that the steps which were taken and the changes that were specified above, answer the need which occasionally arises in sessions held by the medical committees in matters of insured persons, residents of East Jerusalem. As aforesaid, the sub-branch of the National Insurance Institute which serves the residents of East Jerusalem is fully accessible to Arabic speaking residents. Currently, in cases in which a language difficulty arises in the discourse between the Arabic speaking insured person and the medical committee or the certified physician, the committee's secretary uses the services of the on-call interpreter who was appointed for this purpose among the branch's employees. As specified above, the possibility to receive assistance in Arabic, will be shortly made known to the insured persons, residents of East Jerusalem, in the information attached to the invitation sent to them and in the notice stamped thereon.

Moreover, the National Insurance Institute constantly acts to staff the medical committees with additional Arabic speaking certified physicians. The fact that a candidate speaks an additional language is a positive attribute for the purpose of his appointment.

15. As specified above, the discourse conducted in the medical committees does not require any medical expertise or professional know how. The on-call employees, who provide assistance in Arabic in the Jerusalem branch when required, speak Arabic fluently and certainly to a

sufficient degree which enables to conduct a conversation with the insured persons who have difficulties to converse in Hebrew.

16. In view of all of the above, the respondents will argue that this petition became redundant and the honorable court will be requested to reject it.

17. This response is supported by the affidavit of Mrs. Eti Raanan-Ezer, manager of the East Jerusalem sub branch of the National Insurance Institute.

Today, 5 Tamuz 5773

June 13, 2013

(signed)

Michal Michlin-Fridlander, Advocate

Senior deputy at the State Attorney's Office