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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCI 8031/12**

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 (Lic. No. 37566) et al.

Of HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
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**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

**The Respondents**

### **Petitioners' Response**

According to the decision of the Honorable Court dated December 17, 2013, the petitioners hereby respectfully submit their response to respondents' updating notice which was submitted to the Honorable Court on February 27, 2014.

1. 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 (hereinafter: the **committees**). Alternatively, the petitioners request to staff the medical committees with Arabic speaking members, and that the respondents establish and publish protocols concerning the obligation to include a professional interpreter in sessions held by the committees being the subject matter of the petition.

2. The petitioners argue that in refraining from including a professional interpreter in the committees, the respondent breaches his obligation as an administrative authority, in view of the official status of the Arabic language and contrary to his obligation to exercise his powers under the law equally, reasonably and fairly. In addition, the respondent may prevent East Jerusalem residents from exercising their right to social security, which constitutes part of the right to dignified minimum existence.
3. In respondents' responses to the petition which were submitted to the Honorable Court on June 13, 2013 and December 9, 2013, the respondents notified that as of December 2012 "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".
4. In a hearing held in the petition on December 16, 2013, the honorable justices expressed their opinion that the solution presented by the respondents was not satisfactory, in view of the fact that the on-call officers appointed to act as interpreters in the committees, were not professional, and that a potential conflict of interests may exist in view of their being employees of the Institute (protocol of the hearing, the words of the Honorable President Grunis in the bottom of page 1, bottom of page 2 and top of page 3). The Justices have also emphasized the special status of the Arabic language. Upon the conclusion of the hearing, the court gave a decision according to which the respondents should review and examine the court's comments concerning the interpretation into Arabic in sessions held by the committees and submit an updating notice within 60 days.
5. On February 27, 2014 respondents' updating notice was submitted, in which the respondents presented five options which were examined by them with respect to the interpretation issue. By the end of the day, **the respondents are of the opinion, that the preferable option is the option which has already been presented to the Honorable Court – the assignment of on-call officers among the employees of the East Jerusalem branch, who will act as interpreters in the committees – an option which was not regarded by the court as providing a satisfactory solution to the problem.**

#### **Review of the options which were examined by the respondents**

6. Firstly, it should be noted that the respondents, in their response, take into account six branches which render extensive services to Arabic speaking population – Jerusalem, Nazareth, Beer-Sheva, Karmiel, Netanya and Hadera – and present the needs and costs of interpretation in the committees accordingly.
7. The petitioners embrace the widening of the scope by the respondents and their acknowledgment of the need to provide interpretation services in all branches in which services are rendered to the Arabic speaking population. However, the petitioners wish to remind, that the remedy which was requested in the petition pertained only to the East Jerusalem branch, in

view of the unique social and linguistic characteristics of the population, which requires special attention as far as interpretation services are concerned (from paragraph 9 of the petition onwards). Hence, with respect to the cost and budgetary concerns pertaining to the interpretation services which were presented by the respondents, and to the extent weight is given by the court to said considerations, then, for the purpose of the petition at bar, only the relative cost of interpretation services provided in the East Jerusalem branch, should be taken into account.

8. For convenience purposes the petitioners will present the options reviewed by the respondents in the following table:

Options	The interpreter	The manner by which the service is rendered	Institute's employee?	Professional interpreter?	Monthly cost for six branches	Relative monthly cost Jerusalem branch
A	On call officer of the Institute	Present in the branch, on demand	Yes	No	25,800	4,300
B	The Institute's call center in Zefat – Teleall Ltd.	By phone, on demand	No	No	42,621	7,103.5
C	External interpretation company	By phone, on demand	No	Yes	55,685	9,280
D	External interpretation company	Present in the branch, on demand	No	Yes	91,332	15,222
E	Institute's employee	Present in the branch, on demand	Yes	Yes?	34,500	5,750

9. As argued by the petitioners and specified above, and has also been suggested by the Honorable Court in the hearing which was held in the petition, the interpretation in the committees should be professional, and the interpreter should not be an employee of the National Insurance Institute so as to prevent any potential conflict of interests. **Of all options examined by the respondents, only options C and D comply with these conditions.** Under option C the interpretation would be provided by an external interpretation company by phone, and under option D the interpretation would be provided by a professional interpreter, an employee of an external interpretation company, who would attend the committee's sessions.

10. With respect to the costs involved in the interpretation by an external interpretation company, either by phone or by an interpreter who attends the session held by the committee, the petitioners wish to make two comments. In view of the large number of sessions held by the committees for East Jerusalem residents on a monthly basis – between 200 to 250 sessions (constituting 20%-25% of the entire sessions held in the branch as indicated by the respondents in paragraph 8 of their response before the hearing dated December 9, 2013) – respondents' argument that the sessions of the committees in which claims of East Jerusalem residents are reviewed cannot be scheduled for specific days in view of the fact that the assignment to the committees is made based on the expertise of the required physician rather than according to claimant's language – is unclear. Why isn't it possible to schedule consecutive sessions for Arabic speaking claimants who come to see a certain specialist, so that the interpretation may be ordered for specific hours rather than for all work hours, which may save costs?
11. Either way, the second and decisive comment is that the weight of budgetary concerns is diminished in view of the rights of East Jerusalem residents to dignity, equality and economic and social rights of the first degree (as specified in paragraph 75 of the petition and onwards). In view of the fact that respondents' preferable option is option A, which of the first part, is the cheapest option, and of the other, does not comply with the two essential conditions for an adequate and proper interpretation – a professional interpretation rendered by an external party who is not an employee of the Institute – it seems that the budgetary concern was the only one which was taken into account by the respondents, or which was at least given an unreasonably exaggerated weight.

**Assignment of an on-call employee to act as an interpreter in sessions held by the committees**

12. The petitioners wish to emphasize again the difficulties posed by respondents' preferable option – interpretation by an on-call employee of the National Insurance Institute.
13. As specified above, an on-call interpreter who is not a professional interpreter with all ensuing consequences, who is an employee and trustee of the National Insurance Institute, may be in a potential conflict of interests.
14. With respect to the professionalism of the on-call employee, a person holding this or another position with the East Jerusalem branch, who is called to act as an interpreter in sessions held by the committees, has not undergone any classification or examination of his linguistic skills and the level of his command of Hebrew and Arabic, and even if he is relatively knowledgeable of these two languages, it does not attest to his interpretation skills. It is unacceptable that an occasional employee, who has no experience in a bidirectional simultaneous interpretation and does not engage in this kind of interpretation for a living, will act as an interpreter in committees that review claims for disability benefits.
15. An expert opinion of Dr. Michal Shuster which was attached as exhibit P/2 to the petition emphasizes that an unprofessional interpreter may impede the diagnosis or cause an inadequate diagnosis, interpret medical terms erroneously, add and omit information without comprehending the boundaries of his position. This may occur when an on-call interpreter acts *in lieu* of a professional interpreter, as suggested by the respondents.
16. In addition, an unprofessional on-call interpreter is not bound by basic principles or ethics of professional interpretation such as objectivity and medical confidentiality. This is even more so when the on-call interpreter constitutes an integral part of the National Insurance Institute and may be found in a potential conflict of interests.

17. As indicated in the hearing of the petition by the Honorable Justice Vogelman (top of page 2 of the protocol), an example of proper interpretation may be taken from the interpretation services provided to the courts by a company which provides interpretation services and is selected under a tender published by the courts' management. Under the tender, the company is required to examine the suitability of the interpreter for the required service, the level of his command of the languages and his ability to interpret in both directions fully and accurately. Each interpreter must sign a code of ethics and professional conduct, which includes a fiduciary duty and accuracy, lack of bias and conflict of interests and a confidentiality undertaking. In addition, the interpreter undergoes a short apprentice, which includes training and watching a senior interpreter at work. These are only some of the tender's requirements which are intended to ensure the interpreter's professionalism.

The tender in its entirety may be viewed in the following link:

[elyon1.court.gov.il/heb/dover/html/michraz/1212.pdf](http://elyon1.court.gov.il/heb/dover/html/michraz/1212.pdf)

18. NIApp 53103-01-12 **al-Sau v. National Insurance Institute** (reported in Nevo) concerned, *inter alia*, an appeal against the decision of a medical committee of the National Insurance Institute which included a psychiatrist who did not speak Arabic and therefore, an occasional interpreter was called in to provide assistance. The honorable judge Eyal Avrahami regards gravely the absence of a professional interpreter in the session held by the committee:

It is unclear who this occasional interpreter is, what is the level of his knowledge of Arabic, what is his relationship with the plaintiff or with the Institute. The appellate committee acts as an administrative quasi-judicial authority. It is an authority established by law. **The interpretation may not be rendered haphazardly and occasionally by a person whose skills are vague.** It is not a "conveyance of things" as argued by the respondent, but rather a very thorough understanding of the language is required including very fine nuances of terms and definitions. Therefore it cannot be ascertained whether things were adequately clarified... the failure to make available an interpreter into Arabic, in fact, prevents the committee and especially the psychiatrist who served therein, from performing a clinical examination as required, and from examining appellant's claims pertaining to her mental-psychiatric condition... **it should be remembered that the Arabic language is an official language in the state of Israel and that a large population is concerned, especially in Jerusalem. This language barrier deprives them of their right to general disability and in fact impinges on their social security and human dignity which was entrenched in the Basic Law: Human Dignity and Liberty. Relying on an occasional interpreter, whose relation with the insured person as well as his knowledge of Hebrew and Arabic are unclear, may bring about erroneous results. Under these circumstances it would be proper to permanently have an interpreter into Arabic** (emphases added by the undersigned).

19. The judgment given in Committee Appeal 26009-05-13 **S v. State of Israel** (reported in Nevo) by the Honorable Judge Ben Zion Grinberger concerned the right of a patient who appears before a psychiatric committee to obtain the services of a professional interpreter and his words are also relevant to our case. Among other things the Honorable Judge holds in his judgment that in the context of that case, full and professional is required:

"Under the circumstances, and notwithstanding the fact that this issue is not governed by specific legislation, I am of the opinion that the appellant has an inherent right to obtain full and professional interpretation into the language that he speaks and understands, while appearing before a psychiatric committee in a proceeding according to the Treatment of the Mental Patients Law, 5751-1991, if he cannot take part in the committee's discussion in Hebrew, to enable him to understand what is being said and to express his opinion and properly respond to questions directed at him by the members of the committee.

20. The Honorable Judge Grinberger rejects the argument that a hospital staff member may be used for interpretation purposes:

Respondent's argument that a hospital staff member may be used for interpretation purposes is unacceptable; since I do not see the difference between a hospital staff member (regardless of the ward from he comes) and an "occasional interpreter"... In my opinion the interpretation of a hospital staff member is not sufficient, even if he speaks the patient's language, for two reasons: firstly – because said staff member is not a member of the medical team which has been trained to serve on the psychiatric committee, and there is no certainty that said staff member is thoroughly familiar with the psychiatric terms, in a manner which enables him to properly interpret the committee's proceedings. And secondly, because the meetings of the committee concerning the patient usually take place in the same institution in which he is hospitalized, and therefore, as far as the patient is concerned, **the staff member who will be requested to provide interpretation services is completely identified with said institution; and under such circumstances the patient will probably have no confidence in the interpretation provided to him, and the objectives of the meeting may be impaired...** (*ibid.*, emphases added by the undersigned).

21. Towards the end of his judgment, the Honorable Judge Grinberger also comments on the costs involved in the engagement of a professional interpreter:

... I do not ignore the fact that the use of interpretation services involves costs; however, it has not been proved that such costs have a significant budgetary effect... and even if the rendering of interpretation services imposes any financial cost on the Ministry of Health, then, as held in HCJFH 4191/97 **Recanat v. National Labor Court** (reported in Nevo) (December 10, 2000), "**Human**

**rights cost money. Ensuring equality costs money. In most cases the government is demanded to pay the 'price'" (*ibid.*, emphases appear in the original).**

22. Hence, in the case of the committees being the subject matter of this petition, when the members of the committee do not speak Arabic and the claimant does not speak Hebrew, the services of a professional interpreter should be made available to the claimant, the former being an integral part of the committee who is an employee of the National Insurance Institute.
23. In view of all of the aforesaid in the petition and in this response, the honorable court is hereby requested to issue an *order nisi* as requested in the petition. In addition, the honorable court is hereby requested to order the respondents to pay petitioners' costs and legal fees.

March 12, 2014

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Sigi Ben Ari, Advocate  
Counsel to the petitioners

[File No. 72335]