

# Effects of the Changes in the Legal System in Israel on People with Disabilities

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By

**The Civil Society Organizations, PWD, Family Members, Academics and Social Activist Listed Below**

In the past few months the Government of Israel has been advancing a number of legislative initiatives designed to change the Israeli legal system. We, representatives of social organizations, academics and social activists in the cause of promoting the rights with people of disabilities in Israel, wish to warn against the implications of the emerging legal changes for the rights of people with all kinds of disabilities.

The signers of this letter come from all sides of Israel's political spectrum. Over the years, we have succeeded in promoting the rights of people with disabilities, thanks, among other things, to our fruitful cooperation with Members of Knesset from the rightist and leftist camps. At the same time, we are united in our concern that the proposed changes will have a severely adverse effect on the rights of one of the most weakened and most excluded population groups in Israel.

**We are therefore calling for an immediate end to the advancement of the legislation intended to give rise to far-ranging changes in Israel's legal system, and for the holding of an in-depth discussion of its implications for people with disabilities.**

People with disabilities constitute approximately 17% of Israel's population. In the last three decades, far-ranging changes have taken place in the state of their rights – among other things, thanks to the enactment of the Equal Rights for People with Disabilities Law in 1998 and the ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2012. Nonetheless, many barriers still impede their full participation in society. People with disabilities still do not fully and equally benefit from human rights and basic liberties and continue to suffer discrimination, exclusion, and deprivation of rights in many areas of life, including housing, education, employment, legal competence and more. People with disabilities who also belong to an additional weakened population group (Arabs, women, people of Ethiopian origin, and more) encounter even more severe discrimination. In addition, the infringement of the rights of people with disabilities affects others as well, especially their family members.

True, in recent decades, the Knesset has contributed to promoting equal rights for people with disabilities. Nonetheless, people with disabilities have been forced, again and again, to apply to the courts for help as well. This happens, for example, in cases where governmental or bureaucratic institutions violate those rights – for budgetary reasons, for example – or when significant gaps are revealed between progressive legislation and the actual situation, because the implementation and enforcement of those laws are incomplete.

Therefore, the existence of **a strong and independent legal system** is vital for safeguarding the rights of people with disabilities. This need is reinforced by the fact that this group has little political power and, on many occasions, its position vis-à-vis the various authorities is weak.

Given the foregoing, we are profoundly anxious and gravely concerned in light of the expected weakening of the ability of people with disabilities to exercise even their most basic rights – the right to personal safety, equality, liberty and dignity, as a result of the processes being instituted by the Government of Israel. A summary of the situation appears below:

## Change in the composition of the Judicial Selection Committee

People with disabilities are often forced to turn to various courts in order to exercise their rights: actions regarding entitlement to National Insurance Institute benefits or in matters of employment discrimination; petitions and appeals from decisions pursuant to the Special Education Law or the Rehabilitation in the Community of Persons with Mental Disabilities Law, and more. The Supreme Court, sitting as a High Court of Justice, has also protected the rights of people with disabilities on more than one occasion, especially in cases where a financial expenditure was required and the Government attempted to avoid allocating it. Thus, for example, the Supreme Court ruled that schools should be made accessible even before the Knesset established that obligation by statute; it determined that ensuring equal opportunities for people with disabilities costs money and that, in a society which values human dignity, liberty and equality, budgetary considerations are not the only important thing.<sup>1</sup> Even after the Knesset enacted the accessibility chapter in the Equality of Rights for People with Disabilities Law, it was necessary to petition the Supreme Court so that Israel's Government ministries would fulfill their obligation and would enact regulations under that law.<sup>2</sup> The Supreme Court required the State to divert resources to the integration of children with disabilities into mainstream education,<sup>3</sup> and demanded that the Ministry of Education use Braille and additional means to make study materials and tests accessible for children with visual disabilities.<sup>4</sup> The High Court of Justice was the first to recognize the right of people with severe intellectual and cognitive disabilities, who require assistance in their daily lives, to live in the community and not in segregative institutions,<sup>5</sup> and more.

At times, petitioning the High Court of Justice is enough to cause Israel's Government ministries to change their policies regarding people with disabilities. This was what happened when the activity of the rehabilitation committees, pursuant to the Rehabilitation in the Community of Persons with Mental Disabilities Law was terminated for budgetary reasons, which meant that people contending with a mental disability could not obtain rehabilitation services. Following the filing of a petition, the committees went back to work.<sup>6</sup> An additional example is a petition that was filed on behalf of people with mental disabilities living in institutional frameworks, demanding that they be given rehabilitation services that would hasten their discharge from the institutions into the community.<sup>7</sup>

The foregoing indicates the importance of an independent court system. A change in the composition of the Judicial Selection Committee, in a way that gives the coalition control of the Committee, could significantly reduce the ability of people with disabilities to obtain assistance from the various courts in exercising their rights.

The proposed change in the method would enable Israel's Government to select judges who are expected to lean toward the authorities, and who tend to favor the State's position over that of the citizen. Judges in the lower courts, knowing that their promotion depends on political representatives from the coalition, and not on Committee members whose expertise enables them to evaluate their judicial record, may hesitate – consciously or not – to issue rulings that oppose the authorities' position, especially in cases with broad implications. Even so-called "moderate" versions of the proposal, that would allow the Government to appoint only some of the judges or that would allow Knesset members from both the coalition and the opposition to make judicial appointments, will politicize the system and jeopardize the independence and the professionalism of the Judicial Branch. The politicization of the court system and a preference for judges who are less inclined to rule against the administration create a special risk for weakened population groups, for people whose daily existence frequently depends on material assistance and services that are provided by the State authorities, and for people struggling for liberty and equality in the face of a government policy at times dictated by budgetary considerations or by stereotypes.

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<sup>1</sup> HCJ 7081/93, *Shahar Botzer et al. v. Maccabim-Re'ut Local Council*, PV 50 (1) 19, 27 (1996).

<sup>2</sup> HCJ 5833/08, *Access Israel (Registered NGO) et al. v. Minister of Transport et al.*

<sup>3</sup> HCJ 2599/00, *Yated v. Ministry of Education*, PD 56 (5) 834 (2002).

<sup>4</sup> HCJ 8536/11, *Bizchut et al. v. Ministry of Education* (December 19, 2013).

<sup>5</sup> HCJ 3304/07, *Lior Levi et al. v. State of Israel* (February 3, 2010).

<sup>6</sup> HCJ 4015/06, *John Doe et al. v. State of Israel, Ministry of Health and Ministry of Finance*.

<sup>7</sup> HCJ 5531/10, *Bizchut et al. v. State of Israel and Ministry of Health*.

## **Removal of the grounds of reasonableness in administrative law**

The Knesset recently adopted an amendment to the Basic Law: The Judiciary which prohibits the courts from intervening in decisions by the Government and of Ministers on the grounds of extreme unreasonableness. This is the first step in the program to weaken the protection of the public, and particularly disadvantaged groups, from arbitrary actions by the authorities.

The principle of reasonableness in judicial review constitutes a significant tool in the protection of human rights. The reasonableness doctrine is what required the Government to take considerations of human rights into account, and not to give unequivocal preference to budgetary considerations. One example of this is a High Court of Justice ruling that the hourly rate that the Ministry of Health had set for NGOs providing treatment for children on the autism spectrum was eroded over the years, until it became so unreasonable as to require the intervention of the court, which therefore ordered that the rate be updated and significantly raised.<sup>8</sup> An additional example is the petition claiming, among other things, that the decision to isolate institutions for people with disabilities during the COVID-19 pandemic in a way that did not allow family members to visit them was unreasonable, because it did not attribute sufficient weight to the emotional well-being of residents of those institutions and their right to meet with members of their families. In fact, following (among other things) the filing of the petition, the Ministry of Social Welfare updated the procedures and allowed visits to institutions.<sup>9</sup>

In addition, the laws that guarantee the rights of people with disabilities, in many cases, merely outline general principles and a framework, while allowing the executive branch to determine the detailed arrangements that will transform intentions into reality. Thus, for example, the Social Services for People with Disabilities Law, which was recently enacted and has not yet taken effect, determines that the Ministry of Social Welfare is required to develop services that will enable people with disabilities to exercise their right to live in the community, and to prepare a plan and timetable for reducing institutions for people with disabilities. If the Ministry of Social Welfare applies the law to only a minor extent, and does not adequate services within the community, and prepares only minimalistic program for reducing institutions – the only way to guarantee the realization of the aims of the law will be to apply to the court and ask it to rule that the course of implementation by the executive branch is patently unreasonable.

The amendment to the Basic Law explicitly says that the prohibition on judicial intervention on the grounds of patent unreasonableness includes decisions to abstain from exercising legal authority. This is particularly concerning when it involves the rights of people with disabilities. Protection of these rights often requires government action, whether in implement the statutes, such as the recent Social Services for People with Disabilities Law, or by using regulatory powers vis-à-vis service providers or institutions. If the relevant Ministers fail to exercise their authority without any reasonable basis, the courts will not be able to intervene on those grounds.

Moreover: the very knowledge that citizens have the possibility of applying to the courts is, at times, sufficient to affect the authorities' conduct vis-à-vis the citizens themselves. The weakening of the court system through the political appointment of judges and the cancellation of the principle of reasonableness may give the bureaucrats a free hand to act in a way that will harm people with disabilities, without the legal deterrence that exists today.

## **Limitation of judicial review and the Override Clause allowing a majority of 61 Members of Knesset to set aside a Supreme Court judgment**

Another initiative that the Government has advanced is an amendment to the Basic Law: The Judiciary which will make it much more difficult to declare a statute unconstitutional because of a violation of human rights. Furthermore, if the Court does so, the Knesset will be able to override that decision by a vote of a majority of Knesset members.

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<sup>8</sup> HCJ 2902/11, *Society for Children at Risk et al. v. Ministry of Health* (September 4, 2015).

<sup>9</sup> HCJ 3046/20, *Shmuel Meron et al. v. Minister of Labor, Social Welfare and Social Services et al.* (May 21, 2020).

As stated, the Knesset, on many occasions, has taken measures to advance the rights of people with disabilities. At times, however, it has also harmed their rights. In such cases, the Supreme Court has been the protector of that population group. This is what happened, for example, when the father of a blind child who needed a vehicle in order to transport her, a woman with a hearing disability, and single mothers, filed a petition challenging the law that denied the right to guaranteed income payments to people who had the use of a car. The Supreme Court granted the petition and ruled the law unconstitutional due to the law's disproportionate violation of the basic right to exist with a minimum of human dignity.<sup>10</sup>

Only in rare cases has the court invalidated laws passed by the Knesset. Nonetheless, the very existence of this power requires the Knesset to take human rights into consideration in the legislative process. This power is of extreme importance to people with disabilities, whose political strength is limited and whose representation in the Knesset is extremely scanty and, at times, nonexistent.

### **Transformation of legal advisors of Government ministries into political appointments**

**The Government has also sought to turn the position of the legal advisors to the Government Ministries into political appointments rather than their current status as civil-service positions. It is also proposed to allow the Government to act contrary to the legal determinations of the legal advisors.**

Organizations active in the advancement of rights of people with disabilities frequently turn to the legal advisors of Government ministries and ask them to instruct the executive branch to act according to the principles of the Equality of Rights for People with Disabilities Law, the United Nations Convention on the Rights of Persons with Disabilities, and additional legislation that enshrines the rights of people with disabilities. Such requests often obviate the need to apply to the courts. Transforming legal advisors of Government ministries into "positions of trust" – that is, positions staffed by political appointees – and weakening the status of their legal opinions would limit the possibility of acting in this way. The threat to the status of the legal advisors is even greater after the amendment regarding the reasonableness doctrine, laying the way for the appointment of people to these critical posts with no regard to their qualifications, without redress to the courts in such a situation.

### **Conclusion**

The changes listed above are only part of the changes that the Government of Israel plans to institute in the legal system. This document does not include comments on additional draft laws, such as limiting the standing in the courts of civil society organizations and a proposal to impose a special tax on organizations receiving donations from a "foreign state entity" (Such as the E.U. and the U.N.), which include a variety of organizations, among others organizations for the rights of people with disabilities.. We will briefly comment that such laws, if enacted, will also severely harm people with disabilities, and we will address them at the proper time, if and when the Government attempts to advance them.

The changes in the court system were not intended to harm people with disabilities. Nonetheless, there is good reason to fear that this will be one of the serious outcomes of these changes. As a weakened population group that depends upon the administrative authorities for the exercise of its most basic rights, this group needs a strong, independent court system, with the powers and tools to protect its rights.

People with disabilities need change in the court system, primarily regarding the accessibility, simplification and acceleration of court proceedings. We, the undersigned, call for the strengthening of the court system in a way that will enable it to provide complete and efficient protection of the rights of people with disabilities, and for the immediate cessation of any action that may lead to the weakening of that system.

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<sup>10</sup> HCJ 10662/04, **Hassan v. National Insurance Institute**, PD 65 (1) 782 (2012).

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**Signed by the following Civil Society Organizations, PWD, Family members, Academics, and Social Activists:**

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- ALYN Hospital Pediatric Rehabilitation Center
- Argaman institute
- ASSAF - Aid Organization for Refugees and Asylum Seekers in Israel
- Bakehila-integrating people with autism in the community
- Bizchut, The Israel Human Rights center for People with Disabilities
- Ehad Haam
- ENOSH-The Israeli Mental Health Association
- Forum of Special Needs Families in the Sharon
- ISPRA, Israeli Psychiatric Rehabilitation Association
- Keshet - The Home for special Families
- Kfar Saba's special families leadership
- Mishpachot Briut Hanephesh
- Myasthenia Gravis Israel
- Ofek Liyladenu - Israel National Association of Parents of Children with Visual Impairment
- Shulamit barshay
- Social workers for democracy
- Special Education Consumers
- Spectrum of Inclusion
- Support for people in a nursing situation
- The National Health Forum of Leaders with Disability
- The Northern Goals Association (NGO)

- The Rights of People with Disabilities Clinic at The Clinical Legal Education Center at The Hebrew University in Jerusalem
- TSAI - Tourette Syndrome Association in Israel
- Tzeadim-Israeli Association for Joint Disease and Joint Implanted People
- Yated - the Down Syndrome Society of Israel

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