STATE OF ISRAEL

Ministry of Justice

ANNEX NO. III

Case Law

Attached to the 6th Periodic Report Concerning

THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

According to the List of Issues under the Simplified Reporting Mechanism

2017

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Marital Age and Polygamy

1. ***Rq.F.A. 7252/14 Anonymous Deceased Estate et. al. v. Anonymous (15.12.2014))***

On December 15, 2014, the Supreme Court ruled upon the question of whether a woman can be seen as a cohabitating partner of a married man. The deceased was married to the plaintiff until he passed away in May 2013, and they had six (6) children together. At the same time the deceased had intimate relations with the respondent, and together they had nine (9) children. In spite of the fact that it was proved in a paternity test that the deceased was the father of the children, he never recognized them as his.

In 1983, when both the respondent and the deceased were married to others, a matrimonial ceremony took place between them, and the religious validity of which remained unresolved to this day.

In 2009, the respondent filed a request to the Family Matters Court to be recognized as the cohabitating partner of the deceased, which entitles her to half of his assets and properties. The Family Matters Court rejected her request, stating, among others, that the two did not share family life and did not run a joint household. The respondent appealed to the District Court which accepted her appeal partially and ruled that the relationship between the deceased and the respondent was not incidental, and the fact that the couple had nine (9) children together and held a wedding ceremony, whether it had any religious validity or not, was an indication to the couple's desire to be in a committed relationship.

Following the District Court's decision, the deceased's wife appealed to the Supreme Court. The Supreme Court rejected the appeal and ruled that the respondent should be regarded as a cohabitating partner of the deceased.

The Supreme Court elaborated on the grounds that lead to this complex decision; The Court stressed that polygamy and bigamy are criminal offences according to the *Penal Law* and has severe implications. In this regard, the Court even cited General Recommendation No. 21 of the CEDAW Committee.

However, the Court noted that the main reason that lies in the rational for prohibition on polygamy - is protecting on children and women, who are usually the first to be harmed by this kind of a relationship.

In such a case, where the deceased had "double life", and the non-married couple have nine (9) children together, the Court must take into consideration not only the legal aspect of polygamy relationship. It should also consider the child best interest, who will be harmed if the couple will not be (retroactively) recognized as cohabitating couple.

2. ***M.R. 58940-10-15 Anonymous et. al. v. The Haifa District State Attorney's Office (15.11.2016)).***

On November 15, 2015 the Haifa Family Matters Court ruled in favor of a minor plaintiff's mother and the minor's adult partner who requested a permit for the minor's marriage. The plaintiff's noted that the minor, a young woman at the age of 17.5, is at early stages of pregnancy, and that a marriage date has already been set, following the approval of the minor's parents and the consent of the couple themselves. The permit was required in order to open a marriage file. The Court noted that it asked for and received a social worker's assessment concerning the minor. Both the social worker and the representative of the Attorney General noted that there were no special circumstances which relates to the minors best interests that justifies issuing the permit.

The Court noted, *inter alia*, that minimal age for marriage is also regulated in the CEDAW and the *Marital Age Law* 5710-1950 (hereinafter: *Marital Age Law*) that was amended in accordance.

However, the Court decided that in this case there are special circumstances relating for the minor's best interests that justifies issuing a marriage permit. The Court stated that the couple's decision to marry was made after thoughtful consideration, freely, without pressure, their relationship are stable of two (2) years, and the two (2) have support from both families, including financial support and in light of the fact that the minor is to be 18 in six (6) months. The Court also noted that the minor's partner repeatedly noted that he will support the minor in completing her studies.

3. ***M.Rq. 22973-01-15 Anonymous et. al. v. The Attorney General (23.2. 2015))***

On February 23, 2015, the Haifa Family Matters Court rejected a request filed by two minors to permit them to marry each other. The two minors requested to be married due to the girl's pregnancy and claimed that the girl's religious family will not accept her unless she is married. A social worker's assessment that was rendered to the Court found the couple not ready for marriage and life as well as the responsibility of raising a baby. The Court noted, *inter alia*, that the CEDAW provides equal right for men and women in relation to marriage and determines that engagement and marriage of minors shall have no legal effect. The Court further noted that in Israel, according to the *Marital Age Law*, marriage of minors under the age of 18 is prohibited, however the law further prescribes that a Family Matters Court is authorized to permit a marriage of a male or female minor if they are above the age of 16 and the Court is of the opinion that there are special circumstances linked to the minors best interest. The Court also noted that according to the Law, a decision will only take place after hearing the minor and that a Court shall not rule on the issue of a marriage of a minor between the ages of 16-17 without a social worker assessment.

In the circumstances of this case, the Court determined that the reason for requesting an authorization for marriage is the shame of out-of-wedlock pregnancy which led to the families pressure on the minors to get married. The Court rejected the request and noted that the minors will be able to marry in due time, in accordance with their emotional and mental maturity after the age of 18.

Discrimination - Pregnancy

4. ***H.C.J. 11437/05 Kav La'Oved v. The Ministry of Interior et. al 2009(3), 1688 (13/4/2011)***

A prominent ruling, in which the High Court of Justice drew explicitly from the International Human Rights Conventions, including CEDAW, was an April 2011 decision involving what was known as the "The Procedure for Foreign Pregnant Workers".

According to this procedure, foreign workers who were at least six (6) months pregnant while living in Israel, were required to leave the country within three (3) months after giving birth, with the possibility to extend their stay by another three (3) months in humanitarian cases only. The petitioners claimed, *inter alia*, that this procedure harms the right of parenthood and should be examined in accordance to the *Basic Law: Human dignity and Liberty*, that it violates the *Women's Employment Law 5714-1954*, and the Equal *Employment Opportunities Law* 5748-1988 (hereinafter: *the Equal Employment Opportunities Law*), and that terminating the employment of women due to their pregnancy is also prohibited by the international law, including the CEDAW. The High Court of Justice stated that the Foreign Pregnant Worker Procedure is unconstitutional, on the grounds that it violates women's rights under the *Basic Law: Human dignity and Liberty*. The Court cited International human rights Conventions, in support of its ruling. On December 12, 2011, the Supreme Court rejected the State's request for an additional hearing to review the aforesaid ruling, revoking "The Procedure for Foreign Pregnant Workers". The Court stated that the HCJ. ruling is well founded on the internal and international law and thus, although the HCJ ruling holds significance regarding the formation and implementation of local and foreign workers' rights, it does not constitute a new rule that requires further hearing on the matter. The Court further noted that the constitutional rights for parenthood and non-discrimination on the ground of childbirth are based in the *Basic Law: Human dignity and Liberty* and in the labor laws. Moreover, the Court's conclusion that these rights apply equally on foreign workers is not to be reviewed by an additional instance, as the jurisdiction to form a new arrangement, balancing the interests and rights of both parties, is given to the authority responsible for the matter (Ad.h. 3860/11 *The Ministry of Interior v. Kav La'oved et. al* (8.12.2011)).

5. ***A.La.D. 14082-08-14 Zipor v. Ail Maikiage Cosmetics Ltd (16.3.2017)***

On March 16, 2017 the Tel Aviv-Jaffa Regional Labor Court ruled in favor of a Plaintiff, a pregnant woman, who applied for a job at the defender's company but when reaching the final stages in the application process, just before a contract

was signed between the parties, and after revealing her pregnancy, she was eventually rejected.

After hearing both sides and reviewing the evidence, the Court determined that the plaintiff was well-matched to the relevant position, and had the relevant qualifications for the job. The Court determined that the negotiations between the parties reached an advanced stage in which the respondent decided that the plaintiff is suitable to fill the position and wanted to hire her, however no contract was signed. The Court rejected the respondent claims according to which the plaintiff will not be able to work additional hours, that the plaintiff's absence during her maternity leave will cause an exceptional damage or the her lack of good-faith.

The Court determined that the respondent violated the *Equal Employment Opportunities Law* and awarded the plaintiff with compensation for non-pecuniary damage in the total sum of 85,000 NIS (22,980 USD). The Court did not award compensation for pecuniary damage since in was not proven that the plaintiff was accepted for the position.

6. ***A.La.D. 40058-09-13 Linoy Dabach v. Poultry and Turkey Bareket LTD. (18.1.2016))***

On January 18, 2016 the Tel Aviv-Jaffa Regional Labor Court ruled in favor of a plaintiff who claimed she was discriminated and not hired to work as a cashier due to her pregnancy. The Court rejected the counter-suit of the employer for slander.

The Court ruled that the plaintiff was illegally discriminated against due to her pregnancy, in violation of the *Equal Employment Opportunities Law*. Moreover, the Court stipulated that the defenders behavior and its counter-claim where found to be in lack of good faith and served as evidence in support of the plaintiff's claim. The Court ordered compensation in the total sum of 70,000 NIS (18,900 USD). An appeal is currently pending.

7. La.D. 1867-06-11 Neomi Moskowitz v. M Dizengoff and Partners LTD. (1.4.2015))

On April 1, 2015 the Haifa Regional Labor Court ruled in favor of a plaintiff who was discriminated against in the process of an application for a position at the respondent. The plaintiff applied for a position of a lawyer at the respondent, and claimed that she was asked in the interview about her family status, including number and ages of her children, plans for future children, while implying stereotypic remarks, such as how would she manage to work "like a man", "in a man's world there are no reliefs". The plaintiff further claimed that she was told she held the relevant qualifications, however her family status may harm her acceptance. When she was not hired for the job, the plaintiff filed a suit for compensation under the *Equal Employment Opportunities Law*. The respondent rejected these claims and noted that the position was never filled due to financial cutbacks. The Court noted that the plaintiff proved she was suitable for the position and that the respondent did not manage to refute that claim and that it did not discriminate against her for due to her gender and for being a religious mother (*inter alia*, due to the stereotypical remarks, the invasion of her privacy regarding family planning etc.) and by that violated the *Equal Employment Opportunities Law*. The Court ordered compensation in the total sum of 58,000 NIS (15,675 USD).

8. A.La.D. 48309-09-13 Natalia Slomonov v. Electrolucs (1998) LTD. (1.9.2015)

On September 1, 2015 the Be'er-Sheva Regional Labor Court ruled in favor of a plaintiff who claimed she was illegally discriminated due to her pregnancy. The plaintiff worked as a salesperson in one of the respondent's stores for three (3) years.

Following a change of employers within the Company, the respondent initiated an application process for all former employees; all former workers were hired again, apart from the plaintiff. Subsequently, the plaintiff filed a claim stating that her candidacy was rejected due to her pregnancy, in violation of the *Equal Employment Opportunities Law*.

The Court noted that the plaintiff proved that her qualification is suited for the position, and that the respondent failed to prove that the plaintiff was rejected for other relevant reasons but rather, it was persuaded that the plaintiff was not hired due to her pregnancy in violation of *Equal Employment Opportunities Law*. The court ordered that the plaintiff will be compensated in a total sum of 75,894 NIS (20,500 USD).

9. ***A.La.D. 31777-05-13 Ortal Peretz Yogev v. Lights, Values, Torah and Tradition Association (27.7.2016).***

On July 27, 2016 the Jerusalem Regional Labor Court ruled in favor of a plaintiff that was fired illegally during her pregnancy. Here, the plaintiff was employed by the respondent for two (2) terms as an instructor, and received positive feedback regarding her employment, and the employment method was established on an annual contract which was renewed at the beginning of each school year. During the second employment term, the plaintiff gave birth to her first child. When the plaintiff asked to renew her contract at the beginning of the third year, the respondent refused to do so. The plaintiff claimed that this refusal was due to her motherhood and is in violation of the *Equal Employment Opportunities Law*. The Court accepted the suit and noted that if the respondent decided not to renew the plaintiff's contract, it was obligated to summon her to a hearing according to the *Women Employment Law* 5714-1954, which it did not do, and also ruled that in accordance with the *Equal Employment Opportunities Law*, the respondent was prohibited from firing or not renewing the plaintiff's contract. The Court therefore determined that the plaintiff was discriminated against due to her pregnancy and for being a parent and ordered compensation in the total sum of 41,750 NIS (11,280 USD).

10. ***L.A. 19943-10-11 Hadas Silvering-Shemesh v. G Helga LDT. et. al. (6.9.15)***

On 6 September, 2015, the Tel Aviv-Jaffa Regional Labor Court ruled in favor of a plaintiff who claimed her dismissal was done in order for the employer to evade the protection given under the *Women's Employment Law* and since she was pregnant. The Court noted that there is no doubt that the dismissal was conducted

due to the employee's pregnancy, in breach of the law and the basic principle of equality.

The Court noted that at the time of her dismissal, the employee was employed by the employer for less than six (6) months and therefore the *Women's Employment Law* was not applicable to her. Nevertheless, the *Equal Employment Opportunities Law* was applicable in the sense that the dismissal was based upon a wrongful and discriminatory consideration, and in order to avoid the protections provided to women and working mothers by the Law.

The Court thus granted the plaintiff compensation in the sum of 94,710 NIS (25,600 USD) in accordance with the provisions of the *Women's Employment Law*, as it concluded that even if this law does not apply to the case, it can be used to calculate the compensation.

11. La.D. Odelya Maoz v. Beauticare E.G. LTD. (25.11.15)).

On 25 November, 2015 the Haifa Regional Labor Court ruled in favor of a plaintiff who was fired only two (2) weeks after the beginning of her employment as soon as her employer was notified of her pregnancy. The plaintiff was pregnant when she was hired by the respondent and did not reveal the fact she was pregnant. After she had to miss a few working days she was asked whether she was pregnant, at first she did not disclose her pregnancy, but two (2) days later she approached the manager of the store and revealed she was pregnant. The manager claimed that she found her behavior as untrustworthy and soon after she was called for a hearing. The Court ruled that both the hearing and the dismissal were carried out due to the employee's pregnancy. Since at the time of her dismissal she worked less than six (6) months, the employee was not entitled for compensation in accordance with the *Women's Employment Law*, but rather in accordance to the *Equal Employment Opportunities Law*. The Court ruled that the hearing procedure was meaningless and the dismissal was therefore illegal, since the decision of dismissal was taken prior to the hearing conducted to the plaintiff. The Court ruled that the employee's pregnancy was a consideration relating to the dismissal decision and therefore the plaintiff was entitled to compensation in accordance to the *Equal Employment Opportunities Law*. The Court awarded the

plaintiff with compensation of 17,500 NIS (4,730 USD) due to the balance made between the plaintiff's behavior in concealing the pregnancy after she was asked about it and since she refused the respondent's offers to rehire her.

12. La.D. 13844-12-12 Hadasa Rahme v. Gas Menta Road Retail LTD. (13.1.16)

On 13 January, 2016 the Jerusalem Regional Labor Court ruled in favor of an employee who claimed for discrimination in working conditions due to her pregnancy and upon her return to work following her maternity leave. The plaintiff managed a gas station, from which she was reassigned to a much smaller and remote station due to her pregnancy, and following her return from her maternity leave, without her consent. The Court ruled that reassigning the plaintiff to a different workplace and position than the one she worked in prior to her maternity leave, without providing her with an opportunity to voice her position regarding these changes, and by assigning another employee to her previous position, constitute illegal termination, contrary to the *Women's Employment Law*. The Court further noted that the respondent also violated the *Equal Employment Opportunities Law*, both before and after the employee's giving birth, while the plaintiff managed to prove that she was a good and valued employee. The Court granted her compensation in the sum of 187,423 NIS (50,650 USD).

On 8 February, 2016 the Be'er-Sheva Regional Labor Court ruled in favor of a plaintiff who claimed that the scope of her work was reduced during her pregnancy contrary to Section 9A of the *Women's Employment Law*. The Court ruled that according to the *Women's Employment Law,* there is an absolute prohibition to reduce the employment scope of an employee during her pregnancy regardless of the employer good faith or if the deduction is related to the pregnancy. If such reduction is made without receiving a permit to do so by the supervisor Enforcement and Licensing Administration, regardless of the reasoning, the act will be illegal. The Court determined however, that the reduction of the employment scope of the plaintiff was not made because of her pregnancy, but only at the pregnancy period and noted that no causative link was proved between the pregnancy and that reduction, therefore the provisions of the

Equal Employment Opportunities Law were not violated. The Court granted the plaintiff compensation in the sum of 25,683 NIS (6,950 USD).

13. La.D. 4815-12-13 *Limor Bar v. MedLab Medical and Scientific Equipment LTD. et. al.* (8.2.16)

On 8 February, 2016 the Tel Aviv-Jaffa Regional Labor Court ruled in favor of the plaintiff who claimed she was fired due to her pregnancy. The plaintiff worked at a company that imports and distributes medical supply and provide technical support for pacemakers. The plaintiff, who has the relevant academic knowledge worked at marketing and technical support department. Part of her job was to be present at operation rooms. A few weeks after she started working she notified her supervisors of her pregnancy and thereafter she was prevented from attending operation rooms. At a certain point the respondents demanded that she will quit her job and eventually she was fired. The plaintiff requested to annul her dismissal which was conducted without a permit from the Supervisor Enforcement and Licensing Administration. The respondents requested a permit for dismissal, and notified her that her dismissal is conditioned on the outcome of that request, however the Supervisor denied the request since she was of the opinion that the pregnancy was the reason for the plaintiff's dismissal. The Court ruled that the application to the Administration was in violation to Section 9(a) to the *Women's Employment Law* since the defendant tried to fire the plaintiff prior to seeking authorization. The Court further ruled that there is no dispute that the defendants, who were aware of the plaintiff's pregnancy, were obligated to receive a permit for her dismissal, but did so without receiving such a permit in violation of the *Women's Employment Law*. The Court noted that the defendants refused to post the plaintiff, who was prevented from performing certain actions due to her pregnancy, in a position that suited her qualifications, and by such refusal discriminated her due to her pregnancy and demanded her to quit and after she refused, fired her for a general reason. According to the Court, these actions violated the provisions of the *Equal Employment Opportunities Law*. The Court further noted that the hearing held to the plaintiff, which included substantial flaws, was not made in good faith, while the decision on her dismissal was taken

prior to the hearing. The Court granted the plaintiff with compensation in the sum of 153,132 NIS (41,400 USD).

14. ***La.D. 11288-06-13, Reut Abramovits v. The State of Israel – Ministry of Education (23.2.16)).***

On 23 February, 2016 the Be'er-Sheva Regional Labor Court ruled in favor of the plaintiff who claimed that the scope of her work was reduced during the protected period following her return from maternity leave. The plaintiff claimed that her employment was illegally reduced during the protected period and claimed the she was discriminated against for being a mother to four (4) children. The Court noted that in the case's circumstances as presented to it, the reduction in the plaintiff's position without a permit, is a violation of the *Women's Employment Law*. The Court further noted however, that due to the plaintiff's request and flaws in her actions, 50% of this reduction can be attributed to the plaintiff herself. In addition, the Court ruled that the reduction of the plaintiff's employment was conducted, *inter alia*, upon the consideration that she is a mother of four (4) children, a consideration that is contrary to the provision of the *Equal Employment Opportunities Law*. The Court granted the plaintiff with compensation in the sum of 58,861 NIS (15,900 USD).

Discrimination – Fertility Treatments

15. ***La.D 25231-10-12 Naama Shahar v. Doron Haffet (19.04.2015)***

On April 19, 2015 the Haifa Regional Labor Court ruled in favor of a plaintiff who claimed she was illegally fired by her employer (the respondent), without a hearing or a notice of dismissal during fertility treatments. The plaintiff claimed that she is entitled to compensation as she was fired in violation of *Women's Employment Law* and the *Equal Employment Opportunities Law*. The respondent argued that the plaintiff was fired due to her problematic behavior and unwillingness to work in evening shifts. The Court ruled that in the circumstances of this case, the *Women's Employment Law* does not apply as the plaintiff did not provide a medical certificate verifying she was undergoing fertility treatments as requested in Section 9(e)(3) of the Law. The Court further ruled that there is no doubt the responded was informed of the fact that the plaintiff was undergoing

fertility treatments before and near the date on which she was fired, and noted that Section 2 of the *Equal Employment Opportunities Law* establishes that a worker shall not be discriminated due to fertility treatments. The Court further ruled that the considerations which the responded has presented for firing the plaintiff were proven to be false, and it was established that the cause of the dismissal was that the plaintiff was beginning fertility treatment and the respondent feared that she will be absent from work frequently. As the plaintiff was not given an early notice of termination and no hearing was held, the Court ordered that the plaintiff will be compensated in the amount of 29,306 NIS (7,920 USD).

16. ***La.D 17150-11-10 Keren Michaelli v. Moris and Berta Guinness Cultural Center LTD. (23.12.2013))***

On December 23, 2013 the Tel Aviv-Jaffa Regional Labor Court accepted the petition of a plaintiff who claimed she was fired from her work as an assistant in an after-school childcare facility due to her absence from work due to fertility treatments she was undergoing. The plaintiff requested damages due to violation of the *Women's Employment Law* and the *Equal Employment Opportunities Law*. The respondent argued, *inter alia*, that the fertility treatments were not the reason for the employee's absence from work, as she did not provide supporting medical documents. The Court rejected the respondent's claims, and ruled that it was notified and aware of the fact that the plaintiff was undergoing fertility treatments, and determined that the respondent did not manage to refute the claim that at least one (1) of its considerations at the time of the plaintiff's dismissal was her fertility treatments, which is a prohibited consideration in accordance to *Equal Employment Opportunities Law*. The Court further ruled however that since the plaintiff did not produce medical certificates regarding her fertility treatments, and due to the fact that the plaintiff worked at the respondent for less than six (6) months as required by law, the *Women's Employment Law* does not apply in her regard. The Court awarded the plaintiff with compensation in the sum of 10,312 NIS (2,790 USD).

17. *A.La.D 25753-10-14 Anonymous v. Afek Human Resources LTD., (16.06.2016)*

On June 16, 2016, The Be'er-Sheva Regional Labor Court has partially accepted a petition of a plaintiff who claimed she was fired from her job at the respondent, due to fertility treatments she was undergoing. The plaintiff argued that she provided the employers with medical certificates that confirmed this fact and that by firing her without a permit from the Supervisor, the respondent violated the law. The respondents argued that the plaintiff was fired due to financial cutbacks in which all of that branch's employees were fired. The respondent also claimed that the plaintiff was not absent due the fertility treatments and did not provide medical documents as required by the *Women's Employment Law*. The Court noted that according to the *Women's Employment law*, when an employee is absent from the workplace due to fertility treatments, there is no requirement to present medical certificate unless the employer so requests, however, when an employee undergoes fertility treatments without being absent from the workplace, the employee must present medical certificate as soon as he/she is informed that they are being fired. Here, the Court determined that Section 9(e) to the Law is appropriate here, as the plaintiff was absent from work and proved that the responded knew about her fertility treatments. Therefore, the Court ruled that the plaintiff was fired without a permit and in violation of the *Women's Employment Law*. The Court ruled however, that the respondents proved that it did not fire the plaintiff due to her undergoing fertility treatments, but only due to financial cutbacks and manpower reduction, and therefore, rejected her suit in accordance to the *Equal Employment Opportunities Law*. The Court awarded the plaintiff compensation in the sum of 8,030 NIS (2,170 USD).

18. La.D 14601-10-14 Alina Robinov v. Dr. Illan Gilboa, (19.09.2016)

On September 19, 2016, the Tel Aviv-Jaffa Regional Labor Court ruled in favor of a plaintiff who claimed that her employer harassed her and exacerbated her employment conditions due to her absence from work while undergoing fertility treatments. The plaintiff claimed that after she notified the respondents that she is undergoing fertility treatments, she has been harassed in various ways that worsened with time and included insults, exclamations of contempt in front of customers and other employees, a demand to speak with her fertility physician,

transferring her to other assignments while reducing her position by 25%, prohibiting her from drinking coffee etc. The respondents rejected these claims and noted that the plaintiff did not provide any medical document regarding her treatments or other medical certificates.

The Court ruled that the plaintiff proved that the circumstances in which she was working warranted her resignation and recognized that she was entitled to dismissal compensations. The Court noted that respondent No. 1 did not apply to the Ministry of Economy and Industry in order to receive a permit for the plaintiff's dismissal and rejected the respondents' claims for damages caused by the plaintiff. The Court ruled that the respondent violated the *Equal Employment Opportunities Law* by insulting and harrsing the plaintiff due to undergoing fertility treatments. The Court further ruled that by swearing at the plaintiff in front of other people, respondent No. 1 violated the *Prohibition of Slander Law* and rejected the respondent's counter suit regarding this matter. The Court ruled however, that the plaintiff did not notify in advance of her treatments as required by law and did not provide the relevant medical certificates, despite requests made by her employer, and in fact was not undergoing fertility treatments at the time of her resignation. The Court therefore ruled that the respondents did not violate the *Women Employment Law and* awarded the plaintiff with compensation in the sum of 61,464 NIS (16,600 USD).

19. La.D 38946-08-10 Adi Roznold-Dantes v. Mentor Proffesional Training Ltd., (08.08.2013).

On August 8, 2013 the Tel Aviv-Jaffa Regional Labour Court ruled in favor of a plaintiff who resigned from her work due to substential deterioration of her employment conditions. The question here was whether the plaintiff was forced to resign due to worsening of her employment conditions and due to harresments by her managers after they found out that she began undergoing fertility treatments. The plaintiff argued that since this notification, she experienced infringments in her rights, insults and harresements, including sexual harresments until she could not remain at her work place and was forced to resign. Therefore, she claimed that she is entitled for compensation from the respondent. The Plaintiff based her suit, *inter alia,* on the *Women's Employment Law*, *Equal*

Emoployment Opportunities Law. After reviewing all the relevant materials and evidence, the Court held that the respondent became aware that the plaintiff's began undergoing fertility treatments in June 2009 and only one (1) month later the worsening of her employment conditions began. The Court rejected the respondent claim that the change in the plaintiff's working conditions was based upon her abscence for considereable number of working days due to her fertility treatments, as this claim was refuted by the plaintiff. The Court noted that according to Regulation 2(1) to the *Women's Employment Regulation (Abscence Due to Fertility Treatments)* 5751-1990, the plaintiff was entitled to be absent for 16 days during each series of treatments, a total of 64 days a year. The Court further ruled that the respondent violated both the *Women's Employment Law* and the *Equal Emoployment Opportunities Law*, and noted that in this case's circumstances, which include substential worsening in the plaintiff's employment conditions, the plaintiff was entitled to resign, but to be considered as legally fired in accordance with Section 11(a) of the *Compensation due to Termination of Employment Law* 5723-1963. The Court awarded the plaintiff with compensation in the sum of 102,276 NIS (27,650 USD).

20. A.La.D 10530-09-13 Aniya Gachtman v. Kaleidoscope LTD. (21.9.2015)

On September 21, 2015, the Tel Aviv-Jaffa Regional Labor Court ruled in favor of a woman who claimed that she was fired from her job as a conference producer and operator as a result of fertility treatments she was undergoing during her work for the respondent. The plaintiff claimed, *inter alia*, that she was fired adjacent to her notification to her employer of undergoing fertility treatments during the period protected by law, and therefore requested damages due to violation of the *Women's Employment Law*, and the *Equal Employment Opportunities Law*. The Plaintiff further claimed that at the time of her dismissal she was pregnant and therefore the respondent should compensate her accordingly. After examination of the relevant materials and hearing all witnesses, the Court determined that the plaintiff was fired in violation of the *Women's Employment Law*, *inter alia*, since she was undergoing fertility treatments and in violation of the *Equal Employment Opportunities Law*. The Court determined that no hearing was conducted to the plaintiff and rejected the respondent claims that it had no knowledge of the

fertility treatments. Nevertheless, the Court rejected the plaintiff's argument that she was fired due to her pregnancy, since the employer had no knowledge of her pregnancy. The respondents argued it fired the employee because they were not satisfied with her work but did not prove this claim while the plaintiff managed to refute this claim by presenting commendation letters from several customers. The Court compensated the plaintiff in the sum of 172,046 NIS (46,500 USD).

Personal Status and Women in the Public Sphere

21. H.C.J 9261/16 Anonymous and "Dead End" (Mavoy Satum) Ngo v. The Great Rabbinical Court et. al.

In this recent case law the Supreme Court approved a Regional Rabbinical Court (in Safed) ruling which approved a divorce for a woman whose husband is in a vegetative state, and reversed a Great Rabbinical Court ruling who agented a third party the right to appeal this decision. Following the Regional Court in Safed decision to grant the women with a divorce, a third party filed a petition on this decision which was approved by the Great Rabbinical Court. A petition was filed on this decision, and the Supreme Court approved the Regional Court in Safed ruling, who determined that the petitioner lacks standing - since it is not an involved party. The Attorney General has submitted his position in this proceeding that the Great Rabbinical Court has no jurisdiction to discuss the appeal. The Supreme Court approved the petition and rendered that the Great Rabbinical Court decision was *ultra-vires*. In its decision, the Supreme Court emphasized that an effort to try and make the woman *Aguna* again (after the rabbinical court granted her with divorce) violates her basic right for human dignity, as enshrined in the *Basic Law*: *Human Dignity and Liberty*, and takes her liberty. Such violation, the Court concluded, is unconstitutional.

22. F.M.C. 11264-09-12 Anonymous et. al. v. The Ministry of Interior (21.11.2012)

On November 21, 2012, the Tel Aviv-Jaffa Family Matters Court ruled on a case where it was asked to end the marriage of a same-sex couple who were married in Canada, and were registered as married in the Population Registry. The couple concluded a separation agreement which received the Court's approval and the Court recommended the Ministry of Interior to delete the couple's registered status

as married, however the Ministry of Interior refused. The Court added the MOI as a respondent in this case since it is the responsible authority for personal status registry. The Court noted that the couple originally applied to a religious court but did not receive a reply and ruled that a Family Matters Court is the authorized instance for this purpose and that a religious court lacks the authority to handle such a case, since according to the Jewish religious law, a religious court does not recognize same-sex marriages. The Court further noted that the rational for this decision stems from the principle of inherent authority given to the courts.

23. A.Cr.Rq. 2137/16 Anonymous v. Anonymous et. al. (20.03.2017))

On March 20, 2017 The Supreme Court ruled that the Rabbinical Court has the authority to impose sanctions (including imprisonment) on a father of a husband who refuses to grant his wife a Jewish writ of divorce ('Gett') after it was proven that he influenced his son to do so, thus violating a court order (according to Sections 6 and 7 to the *Contempt of Court Ordinance*). According to the facts of this case, the plaintiff and respondent No. 1 were married in 1997 and resided in the United States. In 2005, plaintiff and her children arrived to a visit in Israel, during which the plaintiff suffered from a stroke which left her with severe disability. Following this incident, the plaintiff and her children were abandoned by her husband and remained to live in Israel. In July 2014, the Regional Rabbinical Court issued a decision obligating respondent no. 1 to grant a Gett to the plaintiff. Respondent No. 1 ignored this decision, and the Court summoned his parents to testify. After hearing the relevant testimonies, the Regional Rabbinical Court determined that the husband's father (Respondent No. 2) orchestrated his son's refusal to grant the Gett to the plaintiff and ordered that he will be imprisoned for a period of 30 days, since no other sanction can end his violation of the Court's order. The Court further issued a stay of exit order against the husband's parents. The respondent appealed these decisions to the Great Rabbinical Court which upheld the lower court's decision.

In accordance with section 7A(b) to the *Religious Court (Compelling Compliance and Procedures) Law* 5716-1956, a notice on the imprisonment was given to the Supreme Court. In the course of the case before the Supreme Court, the opinion of the Attorney General was filed to the Court, in which the Attorney General

stated that the Regional Rabbinical Court has the authority to sanction respondent No. 2, in accordance with the *Contempt of Court Ordinance*, however if it will be proven that the father is acting to encourage his son to provide the plaintiff with a Gett, the Court should cancel the imprisonment order against him and return the case to the Lower Court for further examination. The Supreme Court noted that the judicial order issued by the Regional Court was violated by the father, and that the father was the reason for not issuing the Gett. The Court further noted that the goal of the sanctions according to the Ordinance is not punitive but only for the future enforcement of a court judgment. The Supreme Court examined if there was a less harmful way to compel the father to comply, but noted that since new evidence were gathered that the father changed his mind and currently demand his son to provide the plaintiff with a Gett, the case should be returned to the Regional Rabbinical Court for further examination, including in regard to the necessity of the father's imprisonment.

24. <u>C.C 41269-02-13 Nilli Phillip et. al. v. Moshe Abutbul et. al. (25.01.2015)</u>

On January 25, 2015 The Beit-Shemesh Magistrate Court ruled in favor of several female plaintiffs residents of the city of Beit-Shemesh against the Beit-Shemesh mayor and municipality. The plaintiffs claimed that the respondents should compensate them for the harm and humiliation they suffered since the respondent did not act, as they were requested, to remove signs posted in various public places in the municipality calling women to dress modestly or to refrain from stalling or from walking on certain pavements, as they were requested to dress in a certain way as a condition for walking on the city's main streets where they live, or not walking on certain pavements at all. Each plaintiff testified that she had experienced various incidents of violence by ultra-Orthodox Jews such as name calling, spitting and the throwing of eggs and rocks at them. These incidents led to their complete avoidance of entering the areas were the signs were positioned. The respondents argued that prior attempts to remove the signs required unreasonable amount of resources from the municipality and the Police, as the events caused violence and violation of public order. In addition, even if the signs were removed, new signs were placed immediately. The Court ruled that the relevant signs were placed illegally in various place in the municipality while carrying a harmful and discriminatory message and that the respondents has the authority to

supervise this matter including issue a permit for placing signs and enforcement against illegal signs. The Court further noted that the respondents were negligent, as they ignored their authority their obligation by virtue of Section 249 of the *Municipalities Ordinance (New Version)* and the Beit-Shemesh By-Laws. The Court ruled that the municipality did not exercise sufficient efforts towards the removal of the discriminatory and offensive signs, and awarded each plaintiff compensation is the sum of 15,000 NIS (4,050 USD).

25. ***Rq.C.A 6897/14 Radio Kol Berama v. "Kolech" - Religious Women's Forum (9.12.2015)***

On December 9, 2015 the High Court of Justice rejected an appeal filed by "Kol Barama" radio station (a radio station for an ultra-Orthodox audience) over the decision of the Jerusalem District Court to allow a religious women organization, to file a class action against the station, claiming that it acted by a declared policy of banning women from being heard in their broadcasts between 2009-2011, and that this policy constitute unlawful discrimination under the *Prohibition of Discrimination in Products, Services and in Entry into Places of Entertainment and Public Places Law* 5761-2000. The main question that the Court was concerned with was whether the policy of the radio station constitutes sufficient ground for the submission of a Class Action and under what conditions such action can be submitted. The Court ruled that there is difficulty to find ultra-Orthodox woman who would file a personal suit on the issue, due to their fear of harming their position in the community. The Court noted that if the organization would not have filed a petition with the request to approve a class action, it would not have been filed at all. The Court added that even if it would have been possible to track a plaintiff with a personal cause of action that could have filed the petition herself, the class action should still be approved. The Court noted its revulsion and contempt from the existence of such phenomena in cases where it constitutes unlawful discrimination and mentioned that such phenomena "critically harms the human dignity" and harshly violates the basic rights of women. According to the Court, the exclusion of women includes the perception that public life naturally belongs to "men only", and as a result perpetuate gender gaps and behaviors that are naturally humiliating, degrading and diminishing women. It is especially prominent when women are forced to turn to the authorities and to legal proceedings in order for a declaration to be made,

"allowing" them to perform basic acts in the public sphere. The Court rejected the appeal and ruled that the petition can be classified as Class Action both in its essence and in the way it was filed.

26. ***H.C.J. 5185/13 Anonymous v. The Great Rabbinical Court in Jerusalem, (28.02.2017)***

On February 28, 2017 the High Court of Justice rejected two (2) appeals that were merged together, filed by two (2) appellants who refused to grant Jewish writ of divorce (Gett) for a long time.

The appellants appealed (separately) against the decision of the Great Rabbinical Court to approve various social sanctions that the Rabbinical Courts imposed on them, based on Jewish religious law, including alienating them from their communities and shaming them in public in order to force them to agree to give the writ of divorce. These sanctions were given in decrees by the Rabbinical Courts as part of their judgments and included: preventing them from receiving passports and driving licenses, limiting their bank activities, instructing the Israeli consulates abroad to refrain from assisting them, approving the publication of the appellants' photograph and details, public shaming (tagging them as "criminals") in the community, prohibiting the community from assisting them, visiting them in hospitals, sitting them in the synagogues, trading with them, showing them respect, and even the Jewish burial of one (1) of the appellants (when he will pass away). The appellants claimed, *inter alia*, of lack of legal authority for issuing such recommendations. The High Court of Justice ruled that such social sanctions constitute only recommendations that are not enforceable and there is no obligation to implement them. Therefore, The Court ruled that due to the appellants' behavior, including violation of judicial decisions obligating them to provide their wives with a Gett, the Rabbinical Courts had the authority to impose most of these sanctions, except from the recommendation to prohibit Jewish burial. The Court cancelled the Rabbinical Courts' decision regarding the prohibition of a Jewish burial, but the rest of the social sanctions remained valid.

Equal Salary

27. (La.D. 49329-03-14 Alexandra Gandel et. al. v. National Insurance Institute et. al. (12.07.2016)).

On July 12, 2016, the Jerusalem Regional Labor Court accepted the claim of two (2) women working as investigators in the Fraud Investigations Unit in the Israeli National Insurance Institute (NII), and ordered the NII (respondent no.1) to compensate them due to severe gender discrimination they faced at their workplace.

The Plaintiffs claimed that they had suffered gender-based discrimination that was expressed by the various statements towards them by their male co-workers in the unit, and refusal of the male investigators to work and conduct field investigations with them. They claimed that the NII did not act in order to prevent or stop that discrimination, and even published a guidance enabling the male investigators not to work with women.

The Court held that Section 2 of the *Equal Employment Opportunities Law* bans employers from discriminating their employees for reasons of gender. The Court stated the plaintiffs encountered discriminatory treatment and the refusal to work with them was because of their gender, since most of the investigators were male. The Court noted that the plaintiffs proved their case, and that the respondents did not make a sincere effort to examine the plaintiff's complaint or take any action to stop this discrimination. The Court rejected the respondents' claim that the investigators did not refuse to work with the plaintiffs, but asked to consider their request when possible. The Court stated that partial refusal to work with women also accounts to gender-based discrimination. Furthermore, the Court stated that the respondent No. 1, as a public institute, was obliged to represent women equally in the employment market, especially in professions that are recognized as "manly". It was further stated that the NII chose to ignore all the plaintiffs' claims and did not find it appropriate at any stage to explain to the male workers that the female investigators are their equal. The Court awarded plaintiff no. 1 with compensation in the sum of 80,000 NIS (21,600 USD) and plaintiff no. 2 with compensation in the sum of 90,000 (24,300 USD).

28. A.La.D. 12554-06-14 Eti Aleshvili et. al. v. Ashdod Harbor Company LTD. (29.3.2017)).

On March 29, 2017 the Be'er-Sheva Regional Labor Court of Ruled in favor of two (2) plaintiffs who filed a suit against their employer, the governmental company which operates the Ashdod Port, for paying them a lower salary than that of a male associate employee in a parallel status and position and working in the same team. After reviewing all the evidence before it, the Court determined that the work carried out by the two (2) female employees were of the same equal value to the work carried out by the male employee, in accordance with the terms set by Section 3 to the *Male and Female Workers (Equal Pay) Law* 5756-1996 and relevant case law on this matter. The Court further determined that the status of the three (3) positions is equal and that the status of the male employee is not senior than that of the plaintiffs. The Court rejected claims made by the respondent in order to prove that the gaps were made pursuant to relevant reasons, *inter alia*, regarding to the male employee seniority and management experience, academic education etc. The Court accepted the plaintiffs suit, in accordance to the *Male and Female Workers (Equal Pay) Law*, however it rejected their suits pursuant to the *Equal Employment Opportunities Law*, since the respondent proved that the determination of the salary for these positions was made before the identity and therefore gender of the employees that will manage these two (2) positions was known. The Court ordered the respondent to equalize the positions of the plaintiffs to the relevant position of a department manager commencing of the day they were chosen in the relevant tender, and to equalize their salary to the male employee, including all salary supplements, persons or not, monetary or not, and without consideration to seniority, overtime etc. The Court further ordered the compensation in the amount of 15,000 NIS (4,050 USD) as non-pecuniary damage for each of the plaintiffs.

29. La.Ap. 1842-05-14 The Jerusalem Municipality v. Galit Keidar, (28.12.2016).

On December, 28 2016 the National Labor Court ruled on two (2) counter appeals in regard to a decision of the Jerusalem District Labor Court that partially accepted the lawsuit of two (2) female employees of the Jerusalem Municipality, over gender-based salary gaps contrary to the *Male and Female Workers (Equal*

Pay) Law and *Equal Employment Opportunities Law*. The lower court plaintiffs claimed that their work is almost identical to the work of the two (2) male employees that serve the same position as them, and their range of responsibilities is even wider than that of the male workers, however their salaries and position is lower than that of the male employees. The Equal Employment Opportunities Commission also filed a suit against the municipality claiming that all of the women working as human resources managers at that department were discriminated against compared to the two (2) male employees. The Court stated that the principle of equality is fundamental in the legal system of Israel, and according to *Equal Employment Opportunities Law*, gender-based discrimination in work conditions (including wages) is prohibited. The Court ruled that the plaintiffs proved that they carried out exactly the same work as their male co-workers, but received different salary. The Court rejected the appeal filed by the municipality and noted that it did not present any grounds that could justify these wage gaps. The Court further accepted the plaintiff's appeal and ruled that the plaintiffs were discriminated for their gender and therefore each is entitled for compensation in the sum of 75,000 NIS (20,270 USD) in addition to 25,000 NIS (6,750 USD) each as legal expenses.

Employment

30. ***La.D 4450-01-12 June Yaffe v. Raz Matmon Customers Relations LTD. (30.12.2014)).***

On December 30, 2014, the Jerusalem Regional Labour Court ruled in favour of a plaintiff who began working at a store at the age of 62, and has resigned her job at the age of 67, only to find that her employer refuses to pay her severance compensation payment contrary to Section 11(e) to the *Severance Pay Law* 5723-1963 (hereinafter: "the Law"). The Law establishes that resignation from job due to retirement age (age of 67) would be considered as termination of employment. The employer argued that since the plaintiff began working at the age of 62 (which is the age in which women are entitled to retire in Israel according with the *Retirement Age Law* 5764-2004) she is not entitled for severance payment. The plaintiff claimed that there is certain discrimination under the Law, as the age of retirement for men is 67 years old only, and so if a man would have been in a

similar situation, he would have been entitled for severance payments. The Court determined that the interpretation given to the Law by the employer is a prohibited discrimination contrary to the principle of equality and stated that the fact that the Law entitles women to retire at the age of 62 was not meant to be harm women and the Law should not be interpreted in such a way. The Court ruled that the fact that the woman began working at the age of 62 has no significance and cannot be seen as if she had started working after the retirement age, as the only obligating retirement age is 67. The Court ruled that it cannot allow a situation in which a man that began working at the age of 62 and resigns his job at the age of 67 would receive severance payments, but a woman in a similar situation would be denied of such payments. The Court noted that interpretation of Section 11(e) that entitles the plaintiff with severance payments is compatible with this Section's purpose – affirmative action for elderly persons, as well as the principle of gender equality and the prohibition of discrimination based on gender.

31. ***Ad.P. 30136-03-14 Tzahor Association v. Nir Barkat – Mayor of Jerusalem (12.05.2015)***

On January 12, 2015 the Jerusalem District Court residing as a Court for Administrative Affairs partially accepted a petition against the Jerusalem Municipality regarding appointment of representatives for municipal corporations by the municipal council. The plaintiffs argued for an appropriate representation of women in the municipality's committees and the municipal corporations as required by Section 249(a)(3a) of the *Municipalities Ordinance* which determines that there shall be an appropriate representation of both genders among the municipality representatives. Moreover, this Section stipulates that prior to the election of representatives for the municipal corporations, the municipality should take into consideration the legal opinion of the municipality's legal advisor regarding appropriate representation among the municipality's representatives. The respondents argued that since the ultra-Orthodox population constitutes the majority of Jerusalem's population, there are not enough women that are willing to serve as public representatives. The Court rejected the respondents' claims, and stated that the fact that certain communities in Jerusalem do not find it

appropriate to appoint women for public roles, cannot exempt the municipality from its legal duties for women and its obligation towards this gender. The legal opinion shall examine whether there is appropriate representation of both genders in each municipal corporation. Nevertheless, the Court rejected the plaintiffs request to instruct the respondents to appoint additional women representatives and noted that the lack of legal opinion prior the municipality's decision on appointing representatives to the municipal corporation constitutes a violation of the *Municipalities Ordinance.* The Court therefore ordered the cancellation of the appointments that were made for the municipal corporations.