



SHALOM HARTMAN INSTITUTE מכון  
OF NORTH AMERICA שלום הרטמן

# How Israelis Understand a Jewish and Democratic State

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## 1. Israeli Declaration of Independence (1948)

ERETZ-ISRAEL [the Land of Israel] was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped. Here they first attained to statehood, created cultural values of national and universal significance and gave to the world the eternal Book of Books.

After being forcibly exiled from their land, the people kept faith with it throughout their Dispersion and never ceased to pray and hope for their return to it and for the restoration in it of their political freedom.

Impelled by this historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland. In recent decades they returned in their masses. Pioneers, *ma'pelim* [(Hebrew) - immigrants coming to Eretz-Israel in defiance of restrictive legislation] and defenders, they made deserts bloom, revived the Hebrew language, built villages and towns, and created a thriving community controlling its own economy and culture, loving peace but knowing how to defend itself, bringing the blessings of progress to all the country's inhabitants, and aspiring towards independent nationhood.

In the year 5657 (1897), at the summons of the spiritual father of the Jewish State, Theodore Herzl, the First Zionist Congress convened and proclaimed the right of the Jewish people to national rebirth in its own country.

This right was recognized in the Balfour Declaration of the 2nd November, 1917, and re-affirmed in the Mandate of the League of Nations which, in particular, gave international sanction to the historic connection between the Jewish people and Eretz-Israel and to the right of the Jewish people to rebuild its National Home.

The catastrophe which recently befell the Jewish people - the massacre of millions of Jews in Europe - was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Eretz-Israel the Jewish State, which would open the gates of the homeland wide to every Jew and confer upon the Jewish people the status of a fully privileged member of the comity of nations.

Survivors of the Nazi holocaust in Europe, as well as Jews from other parts of the world, continued to migrate to Eretz-Israel, undaunted by difficulties, restrictions and dangers, and never ceased to assert their right to a life of dignity, freedom and honest toil in their national homeland.

In the Second World War, the Jewish community of this country contributed its full share to the struggle of the freedom- and peace-loving nations against the forces of Nazi wickedness and, by the blood of its soldiers and its war effort, gained the right to be reckoned among the peoples who founded the United Nations.

On the 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz-Israel; the General

Assembly required the inhabitants of Eretz-Israel to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable.

This right is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign State.

ACCORDINGLY WE, MEMBERS OF THE PEOPLE'S COUNCIL, REPRESENTATIVES OF THE JEWISH COMMUNITY OF ERETZ-ISRAEL AND OF THE ZIONIST MOVEMENT, ARE HERE ASSEMBLED ON THE DAY OF THE TERMINATION OF THE BRITISH MANDATE OVER ERETZ-ISRAEL AND, BY VIRTUE OF OUR NATURAL AND HISTORIC RIGHT AND ON THE STRENGTH OF THE RESOLUTION OF THE UNITED NATIONS GENERAL ASSEMBLY, HEREBY DECLARE THE ESTABLISHMENT OF A JEWISH STATE IN ERETZ-ISRAEL, TO BE KNOWN AS THE STATE OF ISRAEL.

WE DECLARE that, with effect from the moment of the termination of the Mandate being tonight, the eve of Sabbath, the 6th Iyar, 5708 (15th May, 1948), until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish State, to be called "Israel."

THE STATE OF ISRAEL will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.

THE STATE OF ISRAEL is prepared to cooperate with the agencies and representatives of the United Nations in implementing the resolution of the General Assembly of the 29th November, 1947, and will take steps to bring about the economic union of the whole of Eretz-Israel.

WE APPEAL to the United Nations to assist the Jewish people in the building-up of its State and to receive the State of Israel into the community of nations.

WE APPEAL - in the very midst of the onslaught launched against us now for months - to the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.

WE EXTEND our hand to all neighboring states and their peoples in an offer of peace and good neighborliness, and appeal to them to establish bonds of cooperation and

mutual help with the sovereign Jewish people settled in its own land. The State of Israel is prepared to do its share in a common effort for the advancement of the entire Middle East.

WE APPEAL to the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream - the redemption of Israel.

PLACING OUR TRUST IN THE "ROCK OF ISRAEL", WE AFFIX OUR SIGNATURES TO THIS PROCLAMATION AT THIS SESSION OF THE PROVISIONAL COUNCIL OF STATE, ON THE SOIL OF THE HOMELAND, IN THE CITY OF TEL-AVIV, ON THIS SABBATH EVE, THE 5TH DAY OF IYAR, 5708 (14TH MAY, 1948).

*David Ben-Gurion*

<i>Daniel Auster</i>	<i>Rachel Cohen</i>	<i>David Zvi Pinkas</i>
<i>Mordekhai Bentov</i>	<i>Rabbi Kalman Kahana</i>	<i>Aharon Zisling</i>
<i>Yitzchak Ben Zvi</i>	<i>Saadia Kobashi</i>	<i>Moshe Kolodny</i>
<i>Eliyahu Berligne</i>	<i>Rabbi Yitzchak Meir Levin</i>	<i>Eliezer Kaplan</i>
<i>Fritz Bernstein</i>	<i>Meir David Loewenstein</i>	<i>Abraham Katznelson</i>
<i>Rabbi Wolf Gold</i>	<i>Zvi Luria</i>	<i>Felix Rosenblueth</i>
<i>Meir Grabovsky</i>	<i>Golda Myerson</i>	<i>David Remez</i>
<i>Yitzchak Gruenbaum</i>	<i>Nachum Nir</i>	<i>Berl Repetur</i>
<i>Dr. Abraham Granovsky</i>	<i>Zvi Segal</i>	<i>Mordekhai Shattner</i>
<i>Eliyahu Dobkin</i>	<i>Rabbi Yehuda Leib Hacoheh Fishman</i>	<i>Ben Zion Sternberg</i>
<i>Meir Wilner-Kovner</i>		<i>Bekhor Shitreet</i>
<i>Zerach Wahrhaftig</i>		<i>Moshe Shapira</i>
<i>Herzl Vardi</i>		<i>Moshe Shertok</i>

**2. The Israeli Supreme Court sitting as the High Court of Justice:  
5016/96 – Horev v. Minister of Transportation [Bar-Ilan Blvd. Case]  
(1997)**

Case:

The Minister of Transportation, assuming the powers of the Traffic Controller, ordered the closure of Bar-Ilan Street in Jerusalem to motor traffic on Sabbaths and Jewish holidays during hours of prayer. Petitioners are secular residents of the area and representatives of the secular population in Jerusalem, who claim that the decision of the Minister infringes their right to freedom of movement. One petitioner—the Association for the Rights of the Religious Community in Israel—counter-petitioned that Bar-Ilan should be closed to motor traffic for all hours on the Sabbath and Jewish holidays.

Decision:

That The Traffic Controller Has to weigh the freedom of movement of those who chose to use Bar-Ilan Street against the possible injury of such traffic to the religious sensibilities and lifestyle of the local residents. The Court noted that the latter consideration was a valid one in a democratic society. The Court held that the Minister of Transportation, in his capacity as the Traffic Controller, did not adequately consider the interests of the local secular residents of Bar-Ilan Street. As such, the Court struck down the Traffic Controller's decision. Several dissenting Justices contended that the Minister had no authority at all the close Bar-Ilan Street to traffic.

Judge Barak writing the opinion of the majority:

Bar-Ilan Street has ceased to be just a road in the Israeli public discourse. It has instead become a social issue. It reflects the deep political divide between the ultra-orthodox and the secular. This isn't a debate on the freedom of movement on Friday and Shabbat on Bar-Ilan Street. It is, in essence, a difficult debate about the relationship between religion and state in Israel; it's a poignant debate on the character of Israel as a Jewish state or as a democratic state; it's a bitter debate on the character of Jerusalem.

The values of the State of Israel are its values as a “Jewish and democratic state.” It appears beyond dispute that consideration of religious sensibilities is commensurate with the values of the State of Israel as a Jewish state. This is true, a fortiori, when these feelings are connected to the Sabbath itself. Sabbath observance is a central value in Judaism. The fourth of the Ten Commandments, the Sabbath constitutes an original

and significant Jewish contribution to the culture of mankind. It is a cornerstone of the Jewish tradition and a symbol, an expression of the Jewish message and the character of the Jewish people. Deprive Judaism of the Sabbath, and you have deprived it of its soul, for the Sabbath comprises the very essence of the Judaism's nature. Over the generations, throughout its blood-soaked history, our nation has sacrificed many of its children in the name of the Sabbath.

Is it consistent with democratic values to restrict human rights for the purpose of protecting religious feelings? The answer to this question is quite complex. Taking into account human feelings, including religious feelings, as grounds for restricting human rights is particularly problematic under the democratic conception. Thus, democracy finds itself in a dilemma when broaching the issue of whether the desire to protect human feelings can justify infringing on human rights. Indeed, democratic considerations seem to pull in opposite directions. On the one hand, protecting human feelings is natural to the democratic system, for society exists in order to give expression to these. This is the principle of tolerance, a basic tenet of democratic theory, vital to a pluralistic democracy.

Furthermore, a democratic society is prepared to recognize that rights—such as freedom of expression or worship—must be restricted when allowing them to be fully realized would harm human life or physical integrity. Thus, for instance, we recognize the possibility of limiting the freedom to protest if it is nearly certain that allowing the demonstration to occur threatens physical harm, either to participants or to bystanders. A democratic society, which is prepared to restrict rights in order to prevent physical injury, must be equally sensitive to the potential need for restricting rights in order to prevent emotional harm, which, at times, may be even more severe than physical injury. A democratic society seeking to protect life, physical integrity and property, must also strive to protect feelings.

On the other hand, in a democratic and pluralistic society such as our own, there is no choice but to “absorb” offensiveness. In a democratic society, endeavoring to foster tolerance, there is no substitute for tolerance, even in the face of that which offends, as a means for preserving human rights.

Which interests and values clash in the case at bar? On the one hand, we have society's interest in preventing offense to the sensibilities of the local religious population. The population in question, residing immediately around Bar-Ilan Street, is Ultra-Orthodox. Seven synagogues are found along Bar-Ilan Street. The area boasts over one hundred synagogues and institutions for Torah study. On the Sabbath, the neighborhood residents customarily attend synagogue, Torah lessons, visit rabbis, family and friends who live in the adjacent Ultra-Orthodox neighborhoods. To these residents, the desecration of the Sabbath on Bar-Ilan Street is offensive and infringes

their observant lifestyle. Indeed, from their perspective, the offense is both bitter and severe. This is the interest in question on one side of the issue. This having been said, let it be emphasized that I am not convinced that Sabbath traffic on Bar-Ilan Street infringes the freedom of religion of the residents. These residents are free to observe the religious commandments. Sabbath traffic does not serve to deny them this freedom. Even so, traffic on the Sabbath does harm the residents' religious feelings and their observant lifestyle.

On the other hand, we have freedom of movement, to which each citizen is entitled. Freedom of movement is a basic right, guaranteed to each and every Israeli. It is entrenched in the Basic Law: Human Dignity and Liberty. It is derived from the principle of human dignity, which is enshrined in our constitution... And so, closing Bar-Ilan Street to traffic on the Sabbath—either a full or partial closure—infringes the public's constitutional right to freedom of movement. Moreover, preventing the free-flow of traffic on city streets injures the public interest in the free-flow of traffic.

Closing Bar-Ilan Street to traffic on the Sabbath both inconveniences and financially harms those members of the public wishing to travel along Bar-Ilan Street on the Sabbath. It harms secular Israelis seeking to use Bar-Ilan Street as a traffic artery connecting various Jerusalem neighborhoods. It particularly harms the secular residents residing in Ultra-Orthodox neighborhoods surrounding Bar-Ilan Street. For them, Bar-Ilan Street serves as a traffic artery permitting them to access their lands directly. Closing Bar-Ilan will compel these members of the public to walk from one end of Bar-Ilan Street to the other—a distance of one kilometer and two-hundred meters—in order to reach their homes. Their family and guests will be forced to do the same.

Consideration of people's sensitivities – including sensitivities to religious people and those who lead religious lives – as a justification for infringing upon human rights is far more problematic from the perspective of democratic values. Democracy finds itself in internal conflict with this. Naturally, a democracy must be very careful in regards to this conflict. The "Israeli style" solution to this is that consideration of people's sensitivities as grounds for overriding human rights is allowed if the following three conditions are met: First, that this consideration [of people's sensibilities] is consistent with the special purpose of the legislation [on human freedom and dignity], which is what gives authority to legislating such a consideration; Second, that this consideration of religious sensibilities is allowed only insofar as it does not mean constitute religious coercion; Third, this consideration of sensitivities is allowed only to the extent that the infringement is so substantial that it exceeds the tolerance threshold. This level varies from right to right. As it relates to the infringement upon freedom of movement, the consideration of religion and people who lead religious lives exceeds the tolerance threshold if the following conditions are

met: First, the harm done to religion and the sensibilities of religious people is severe, grave and serious; Second, the probability that this harm will occur is at a level close to certainty; Third, there is an essential social interest in protecting, in this instance, religious sensibilities and people who lead religious lives; Fourth, the degree of harm to the freedom of movement does not exceed the degree of the demand [for keeping the road open]. Of the harmful measures, we must choose the option that generates the least harm; the harm to the freedom of movement needs to be proportionate to the benefits incurred from such a restriction. Against this general, normative framework, we now turn to the special matter that is before us.

The proper balance is arrived at through examination of the limitation clause of the Basic Law: Human Dignity and Liberty. The State of Israel's values as a Jewish state require us to consider religious sensibilities, and indeed attach significant weight to this factor. The essence of the problem is in the State of Israel's values as a democratic state. In this context, it is proper to take into account the religious feelings of the religious public residing around Bar-Ilan Street, if the Sabbath traffic arrangements aimed at safeguarding these constitute a substantial social need, if allowing traffic to travel on the Sabbath and festivals offends religious feelings in a manner that is severe, grave and serious, and if the probability of this harm materializing is nearly certain. Then and only then does it become possible to say that the harm to religious sensibilities and the observant lifestyle of the Ultra-Orthodox residing around Bar-Ilan Street exceeds the threshold of tolerance which is acceptable in a democratic society. Is this the case here?

To my mind, the harm to the Ultra-Orthodox public's religious feelings ensuing from the free-flow of traffic on the Sabbath in the heart of their neighborhood is severe, grave and serious. Indeed, to the religious Jew, the Sabbath is not merely a list of the permitted and the forbidden. Rather, the observant Jew perceives the Sabbath as a normative framework, intended to create a particular atmosphere. Our Rabbis, of blessed memory, described this special atmosphere as the additional soul which man is granted upon the entrance of the Sabbath, which leaves him as it exits (Babylonian Talmud, Tractate Beitza 16a).

This rest is intended to bring the routine of daily life to a halt, and relieve man of daily worries. This rest seeks to permit a person to fully dedicate himself to his family and to his most cherished values. Moreover, rather than merely a private or family affair, the Sabbath is a community matter. Thus, an observant community's expectation is that the Sabbath rest is not restricted to the private domain of its members, but that it will envelop the public realm as well. With the coming of the Sabbath comes rest, not only to one's backyard but throughout the neighborhood. The hustle and bustle of daily life is replaced by prayer, family walks and the like. A crowded street that traverses the heart of the neighborhood, with the sounds of honking and engines,

stands in stark contrast to the Sabbath atmosphere, as the majority of the local residents understand it. In effect, severe, grave and serious harm to a religious Jew observing the Sabbath ensues upon encountering traffic on one's way to synagogue or to a Torah institute.

At the same time, freedom of movement—the right infringed by Bar-Ilan's closure on Sabbaths—must not be restricted beyond what is strictly necessary. Is this condition met in this instance? This matter is difficult to resolve. This having been said, it appears to me that Bar-Ilan Street's absolute closure throughout the Sabbath, from beginning to end, is excessive. As the harm to religious feelings and lifestyle is inflicted during prayer times, closing the street beyond those times would infringe the freedom of movement more than is necessary. Indeed, it is incumbent on the authorities to opt for the least restrictive means at their disposal. For our purposes, the least restrictive means would be a partial closure, during prayer times, at which time religious feelings are most offended, rather than imposing an absolute closure. This is undoubtedly the case from the perspective of the secular residents, who would be unable to reach their homes throughout the Sabbath, were an absolute closure to be imposed.

This having been said, is closing the street to traffic only during prayer hours excessive? To this end, we must distinguish between harm to the interests and values of those secular individuals residing outside the Ultra-Orthodox neighborhoods crossed by Bar-Ilan Street, and the harm caused the interests and values of their counterparts, residing within these neighborhoods. The partial closure of Bar-Ilan Street severely infringes their freedom of movement. And will compel secular residents to park at the northern or southern end of Bar-Ilan Street, and to walk the length of Bar-Ilan. This walk, which is by no means short, does not constitute a reasonable alternative.

Is this infringement lawful? Can it not be said that the infringement on the secular residents' freedom of movement is excessive? Every effort should be made in order to minimize injury to these secular residents. Consequently, it is only appropriate to consider the possibility of granting special permission to the secular residents to use Bar-Ilan Street even when it is closed. Just as security and emergency vehicles are permitted to use the street on the Sabbath, the same possibility should be extended to local secular residents.

In all that relates to the use of Bar-Ilan Street as a main artery, serving to connect various Jerusalem neighborhoods, the Minister's decision (to close the road during prayer hours) is within the zone of reasonableness. In contrast, the Minister's decision is flawed in its failure to address the plight of the secular residents living in Ultra-Orthodox neighborhoods and, as such, must be struck down. There is no alternative save to declare the Minister's decision ordering the street's partial closure null and

void. It will be incumbent on the Minister to reconsider his policy respecting Bar-Ilan Street's partial closure, bearing in mind that it is a traffic artery, providing direct access to the adjacent lands.

**3. The Israeli Supreme Court sitting as the High Court of Justice:  
5317/08 – Baruch Marzel v. Jerusalem District Police Commander, Mr.  
Aharon Franco [Gay Pride Parade Route in Jerusalem] (2008)**

Case:

Two petitions aimed at preventing the members of the gay-lesbian community from holding the Gay Pride Parade scheduled to take place in Jerusalem on June 26, 2008.

The petitioners in the two petitions are seeking a total ban on holding the Gay Pride Parade through the streets of Jerusalem, on the grounds that it would deeply offend the sensibilities of significant portions of the public in Jerusalem who see the content and style of the parade as violating principles of religion and morality. The petitioner petitioned alternatively to have the parade take place in Kiryat HaLeom [the National Quarter], which is far removed from the city center and densely populated residential neighborhoods, in order to minimize the alleged offense to Jerusalem residents.

Judge A. Prokacha writing the opinion of the majority:

The main rationale behind the petitioners' arguments in this petition is that although one may not disregard freedom of expression and the freedom to demonstrate, a proper balance must be maintained between that freedom and the value of protecting public sensibilities. Holding the parade in central Jerusalem, on the main city streets, and the potentially provocative nature of the event could seriously harm the sensibilities of significant sectors of the public, disrupting the proper balance between conflicting values. The disruption of this balance justifies withholding a permit for the parade, or alternatively permitting it to be held in another venue that is removed from any active urban center.

The respondents explained in their answers that holding the parade, and the parade's venue and route, are consistent with previous court rulings; and there are no legal grounds for cancelling it. They clarified that although the parade route runs through a central area of Jerusalem, it does not pass close to densely populated residential neighborhoods, is far from ultra-Orthodox communities, and is very similar to the parade route that was approved last year. The respondents furthermore stated that the gay-lesbian community intends to hold the event in a restrained and non-provocative manner.

As part of the basic right to freedom of expression, members of the gay-lesbian community, like all citizens of the state, are guaranteed the right to express their unique identity as they see fit, subject to and within the framework of the law. Assembling and holding a procession through city streets are an accepted and natural means of exercising the constitutional right to freedom of expression, which is one of the most important human rights. The gathering of members of the gay-lesbian community and their participation in an event at a central location in the city are intended to bring this community's message to the public and build public sympathy for the community, promote the general public's acquaintance with and acceptance of the community, and establish the community's right to integrate in the overall human fabric of the city and its residents. The mingling of the community's members at the event also plays an important role in strengthening internal ties and building up the community's social fortitude.

The gay-lesbian community's constitutional right to self-expression by means of a procession and rally is objected to on the grounds of a possible offense to the sensibilities of a broad section of both the religious and secular public in Jerusalem. The opponents maintain that holding the Gay Pride Parade in the center of the city offends deep-seated religious and moral sensibilities and deeply contradicts the values unifying the city's residents. The possibility of serious harm to sensibilities is a relevant concern that cannot be overlooked when considering the constitutionality of the scope of the protection given to the community's members to exercise their right to freedom of expression in the context of the parade.

The broad scope of the right to freedom of expression, from which the right to hold a parade and rally is derived, does not mean that the protection accorded to this right is absolute and that it necessarily coincides with the full extent of that right. The clash between the constitutional right and the conflicting public interest – in this case, protection against serious harm to public sensibilities – requires striking a balance between the conflicting interests in a way that might lead to a certain narrowing of the protection accorded to the freedom to hold a parade or procession.

We have already ruled that although holding the Gay Pride Parade is likely to offend public sensibilities; nevertheless, the anticipated offense does not cross the high threshold of public tolerance that would justify curbing personal and collective freedom of expression. It follows that there is no legal justification under constitutional principles for completely banning the parade. Nonetheless, by the very nature of the required balance, the community's right of expression does not enjoy absolute protection and it can be restricted. Such restrictions are an outcome of the proper balance between the constitutional right to exercise freedom of expression and the protection afforded against serious harm to public sensibilities, which is a public interest recognized by law.

Hence, on one hand, the Gay Pride Parade should not be prevented from taking place, but, at the same time, public sensibilities should be taken into account and the harm to them should be mitigated as much as possible in various relevant aspects, including timing, venue, route length, event duration and content, and the manner in which the event participants are expected to behave and conduct themselves. It appears to us that, in this case, controlling these aspects serves to maintain the required balance between the conflicting values which should be accorded their appropriate proportional weight.

The parade is set to take place for approximately three hours on a weekday, within the precincts of Jerusalem, in a central area by and large containing public buildings, and not within crowded residential neighborhoods, whether secular, religious or ultra-Orthodox. The parade route is comparatively short; it begins and ends at two public parks and passes mainly along King David Street where there are mostly public buildings. We basically approved this route last year in our decision for similar petitions; the only difference between the route set then and the one decided on this year lies in a short segment added this year: Independence Park has been designated as the meeting point from which the participants will march to King David Street. Adding this segment to the parade route is of no material significance and does not change the character of the route in terms of the extent of potential harm to public sensibilities.

It should be noted that the community's representatives have, through their attorneys, pledged that the event will be conducted in a restrained and non-provocative manner, and this commitment should be taken into account when considering the requirement for proper balance.

For all of the above reasons, we find that the conditions for holding the Gay Pride Parade in Jerusalem in 2008 satisfy the required constitutional balance. We furthermore find that the petitioners' alternative request, to hold the parade in Kiryat HaLeom rather than along the route in the city center, should not be granted. One of the parade's purposes is to convey the gay-lesbian community's messages to the public and gain public acceptance. This purpose will not be achieved by holding the parade under wraps or in the city peripheries, far from the public eye. Imposing a restriction of the kind requested, in the absence of a near certain danger to public peace, which was neither claimed nor proven, would disproportionately limit the community's freedom of expression. Were it to be imposed, it would disrupt the required proper balance that was achieved through the parade format chosen by the organizers and authorized by the police.

#### **4. The Israeli Supreme Court sitting as the High Court of Justice: 4112/99 – Adallah Legal Center for Minority Rights (2009)**

The petition deals with the municipal signs posted within the respondents' territorial jurisdiction. What typifies these respondents is the Arab minority that resides within their bounds (6% of Tel Aviv-Jaffa residents, 19% of Ramle residents, 22% of Lod residents and 13% of Upper Nazareth residents). According to the petitioners, most of the municipal signs posted within the respondents' territorial jurisdiction include lettering in Hebrew and English, but not in Arabic. The petitioners approached the respondents in this regard, noting that, in their opinion, municipal signs should also include Arabic lettering.

In the context of the petition and the responses to it, what is the contention between the parties? The disagreement is fundamentally this: The petitioners maintain that in municipalities with an Arab minority, all municipal signs must also include lettering in Arabic. The respondents counter that there is no such general obligation, and that the matter is subject to the discretion of the various municipalities. On the practical level, there is a consensus that in areas with an Arab minority, all municipal signs should also include lettering in Arabic. The disagreement concerns those parts of the city that do not have an Arab population. Here it is agreed that at main crossroads and on thoroughfares the signs should include lettering in Arabic. It is also agreed that safety and warning signs in parts of the city that do not have an Arab population should include lettering in Arabic. Finally, it is agreed that signs directing to, as well signs inside, municipal institutions should include Arabic lettering. The point of disagreement relates to all other municipal signs in areas where there are no Arab residents. The main focus of the disagreement is on the names of side streets.

The first general purpose relevant to this matter relates to protecting a person's right to his own language. A person's language is a part of his personality. It is the tool with which he thinks; it is the instrument by which he communicates with others...

In fact, language plays a central role in the human existence of the individual and of society. We express ourselves, our uniqueness and our social identity through language. Take away a person's language, and you have taken his self.

Language is of special importance in the case of a minority group. Language reflects culture and tradition. It is an expression of social pluralism. Hence the notion that a minority is entitled to freedom of language.

Israel's Declaration of Independence states that the State of Israel "will guarantee freedom of religion, conscience, language and culture... Thus, the individual is given the freedom to express himself in whatever language he prefers. He is given the freedom to express his thoughts (personal, social and commercial) in whatever

language he wishes" (Civ. App. 105/92 *supra*, p. 202). This freedom is derived from the constitutional right to freedom of expression as well as the constitutional right to human dignity.

The second general purpose that must be taken into account in our matter is the guarantee of equality. It is well known that equality is one of the state's basic values underpinning societal existence. Any infringement on equality can lead to humiliation and the violation of human dignity. This is certainly the case when discrimination is due to a person's religion or race. Such "generic" discrimination "mortally wounds human dignity"... In the matter at hand this means that the local authority must guarantee equitable use of its services. If some of the public is unable to understand the municipal signs, its right to equitable enjoyment of municipal services is infringed upon. Indeed, given the great importance of language to the individual and his development, it must be ensured that the possibilities open to him as an individual are not restricted because of his language.

The third general purpose that must be considered is the status of the Hebrew language. The State of Israel is a "Jewish and democratic" state (see section 1A of the Basic Law: Human Dignity and Liberty). An important expression of the State of Israel's character is that its primary language is Hebrew. Thus "the existence, development, flourishing and strengthening of the Hebrew language constitute a key value of the State of Israel. Any (municipal) governmental act that is detrimental to the Hebrew language violates one of the fundamental values of the State of Israel and is contrary to the (general) purpose of the law that confers on the (local) government authority to perform that act.

The fourth general purpose to be considered is recognizing the importance of language as a component of national cohesion and the definition of a sovereign state. Language is not only an expression of an individual's identity, but also an expression of the society's identity as a whole. It is the foundation that links individuals into a single society. It is a key to social cohesion in Israel. Hebrew is a force that unifies us as people belonging to the same state. Hebrew is not the preserve of one group or another in Israel: "The Hebrew language is an asset of the entire nation" (Civ. App. 294/91 *supra*, p. 518). Indeed, just as French is the language of the French people and the basis for defining France as a sovereign state, and just as English is the language of the English people and the basis for defining England as a sovereign state, so too Hebrew is the language of the Israeli people and the basis for defining Israel as a sovereign state. Furthermore, a common and uniformly spoken language in a country is important since language is the means by which members of society communicate with each other while developing the individual and society as a whole. Therefore, the general purpose of unity and cohesion also include preventing the development of a "Tower of Babel" of languages, with people unable to understand each other.

No interpretive difficulty arises when the purposes (both specific and general) all point in the same direction. A difficulty arises when, as in the case before us, the different purposes conflict with each other. In this state of affairs, it is necessary to strike a balance between the conflicting purposes.

The issue that must be decided in the petition before us is whether to add Arabic lettering to municipal signs on side streets in parts of the city where there is no concentration of Arab residents. The specific purpose of providing proper and safe service leads to the conclusion that there should be Arabic lettering in these areas as well. As part of the service provided by the municipality, Arab residents should be able to find their way also in parts of the city where they do not live. An Arab resident who wishes to find his way about the city, to benefit from its services or to participate in a private or public event that is being held on a side street in an area without an Arab population, is entitled to have the municipal signs enable him to reach his destination. This conclusion is also supported by the general purpose of protecting a person's right to his language and the need to guarantee equality. A Jewish resident can find his way in all parts of the city by using his own Hebrew language. An Arab resident cannot find his way in all parts of the city by using his own Arabic language. He is denied the possibility of benefiting equitably from the municipality's services, especially if Arabic is his only language. His ability to use his own language to express himself is impaired. His scope of action is limited because of his language. And what about the other general purposes? The status of Hebrew as the primary language is not substantially affected. There is no argument – and had there been one, we would have categorically rejected it because of the importance of the value assigned to the Hebrew language – that in municipal areas in which there is a concentration of Arab residents, the municipal lettering should be only in Arabic. The argument is that besides the lettering in Hebrew, lettering in Arabic should be added on municipal signs in areas without a significant Arab population. It is difficult to see how the Hebrew language is harmed by this. At any rate, even if such harm exists, it is minimal compared to the injury to a person's right to his language and the need to guarantee equality and tolerance.

In this context, the following question may arise: What sets the Arabic language apart, and why should it be deemed different from other languages – apart from Hebrew – that are spoken by Israelis? Does it not follow from our approach that residents of towns that have a minority of speakers of various languages will now be able to demand that the signs in their town appear in their language as well? My answer is in the negative, since none of those languages are like Arabic. Arabic is doubly unique: First, it is the language of Israel's largest minority that has lived in Israel since long ago. It is linked to cultural, historical and religious attributes of the Arab minority in Israel. This is the language of citizens who, despite the Arab-Israeli conflict, seek to

live in Israel as loyal citizens with equal rights, and whose language and culture are accorded respect. The desire to ensure dignified coexistence between the descendants of our forefather Abraham, in mutual tolerance and equality, justifies recognition of the Arabic language in municipal signs – in those cities in which there is a substantial Arab minority (between 6% and 19% of the population) – side by side with its senior sister, Hebrew. Second, Arabic is an official language in Israel. Numerous languages are spoken in Israel, but only Arabic – alongside Hebrew – is an official language in Israel. Thus Arabic has been accorded a special status in Israel.