

**Summary Report for 2020: The Marty Jacob Holocaust Survivors and Elderly Rights Clinic , submitted to Mr. Joel Jacob**

As every year, we are honored to submit the annual summary report of the work conducted at the clinic for the year 5720 (2019-2020).

In the 2019-2020 academic year, the clinic worked tirelessly in various areas – individual and public, legal and social, pedagogic and research – to promote the rights of the elderly and of Holocaust survivors in Israel. We also held activities involving the general public, professionals, and organizations to promote and disseminate the rights of the elderly. With the outbreak of the COVID-19 epidemic, the activity of the clinic gained additional importance in light of the severe vulnerability of the elderly population to the virus.

In this summary, we report on the intensive activity of the clinic over the past year, out of deep gratitude for your generous contribution and long-standing support of the clinic, which makes possible this important endeavor.

# Clinic activity during the COVID-19 crisis

Following the global COVID-19 crisis, in March 2020, Israel began to apply emergency measures and restrictions to fight the outbreak of the virus. One of the consequences of the epidemic was that the elderly population became particularly vulnerable, being at risk of serious illness and mortality from the virus.

Aside from the important goal of protecting the health and life of older people from contracting the virus, the crisis revealed the ageist and paternalistic attitudes toward the elderly, making the elderly population helpless and isolated, as elderly people were denied various basic rights and decision-making.



For example, at the beginning of the epidemic, the freedom of movement of residents of institutional housing was drastically restricted, and they were forbidden to leave the institution where they were staying. They were also forbidden to receive visitors, becoming, in a way, prisoners within these institutions. In addition, older people were prohibited from going to work strictly because of their age. Moreover, elderly individuals from weak and disadvantaged populations, such as residents of nursing homes or those who are forced to continue working even in an advanced age to ensure minimum subsistence, became even more vulnerable in time of crisis, and their rights to life, health, and dignity needed to be defended.

This acute change required the staff and students to respond quickly and flexibly to be able to adapt the activities of the clinic to the many and varied needs that kept emerging from the field. The clinic worked with several government ministries, such as the Ministry of Health and Ministry of Welfare, representing different groups, from family members of the elderly residing out of home to Holocaust survivors receiving nursing care, while adapting the clinic services to the challenges posed by the period.

The following are the main activities the clinic engaged in to protect the rights of the elderly in relation to the COVID-19 crisis.

*Establishment of an interdisciplinary coalition in the field of aging*

At the beginning of the COVID-19 crisis, the clinic was one of the initiators and founders of an interdisciplinary coalition, the first one in Israel, of civil society organizations and experts in gerontology and geriatrics, working together to defend and advance policy on issues concerning the rights of the elderly in time of crisis.



The coalition worked to make heard the voices of the elderly and of their families based on the needs in the field, and to raise the awareness of the public and of decision makers regarding the needs and rights of the elderly on issues related to autonomy and health in out-of-home settings. As the crisis continued, the coalition expanded, enabling the ongoing work of mapping the needs of the elderly in normal times as well, dividing the members into work groups, and taking action to find appropriate solutions.

*Protecting the right to freedom of occupation, and the social security of the elderly in the labor market*

The COVID-19 crisis has exposed the vulnerability of the elderly in the labor market. On one hand, the economic crisis led to the dismissal of many workers in the labor market, including the elderly who are forced to continue to work in old age for subsistence. On the other hand, restrictions were imposed on the freedom of elderly workers left in the labor market to physically return to their workplaces. We detail the activities of the clinic in this area below.

# Filing a petition with the High Court of Justice (HCJ) against the illegality of a directive that outright banned all 67-year-olds and older from returning to work

At the end of April 2020, a petition to the HCJ was submitted by the clinic and several other organizations against the regulations adopted by the government to guide the reopening of the economy, which prohibited senior citizens aged over 67 (the legal retirement age in Israel) to return to work (unless they could continue working from home).



The petition was filed on behalf of elderly people, who included the CEO of an NGO, a part-time sales person, and an orderly at a real estate company, who, because of regulations, were barred from entering their workplace strictly because of their age, although other workers in those jobs were allowed to return to work under certain limitations. In the petition, we argued that the denial of the petitioners' right to return to work exclusively because they were old constitutes a violation of basic human rights, such as the right to equality, the right to work, and to freedom of occupation. We also detailed in the petition how in the process of establishing emergency regulations, the factual, medical, and social infrastructure were ignored, indicating that there was no justification for relying on chronological age as the exclusive criterion for distinguishing between different groups of employees in the return to normal functioning. The petition was also based on the opinion of two leading experts in the field, both in geriatric medicine and in gerontology, who reviewed the existing scientific knowledge in the field, and pointed out that there was no scientific justification to "single out" elderly people strictly because of their age. Finally, we outlined several possible alternatives for addressing the COVID-19 challenge with respect to securing the right to freedom of occupation of elderly people still in the labor market. This could be accomplished either by differentiating between the various types of work or by making adjustments – rather than by sweeping prohibitions – regarding older workers' functioning in the job market because of the coronavirus.

Shortly after the petition was filed, the government announced its decision to repeal

the said regulation, and elderly employees were allowed to return to work like other workers.



# Ensuring the social security of elderly in the labor market who had been fired from their jobs because of the COVID-19 crisis

The COVID-19 crisis has led to a widespread wave of layoffs in the Israeli economy. Among the workers who have been laid off or sent on unpaid leave were the elderly who worked after retirement age. Until the outbreak of the COVID-19 crisis, the legal situation in Israel has been such that after retirement age, workers who have been fired were not entitled to unemployment benefits. With the outbreak of the COVID-19 crisis, a special legislative amendment was passed for the period of the epidemic that ensured unemployment benefits until June 2021 for employees whose pensions are low or who have no pension at all. The clinic worked to help the elderly past retirement age who were fired or sent on unpaid leave receive these dedicated unemployment benefits from the National Insurance Institute (NII). For example, the clinic assisted a 69-year-old client referred by the Office of the Minister for Social Equality, a single mother without a pension, who had to work even after retirement age and who was sent on unpaid leave by her employer when the COVID-19 crisis broke out, in March 2020. The social worker of the clinic guided the client throughout the crisis and assisted her in exercising her rights with the NII for receiving the unemployment benefits to which she is entitled.

*Protecting the rights of the elderly in out-of-home settings*

From the beginning of the COVID-19 crisis, one of the most vulnerable populations, from the point of view of morbidity and mortality caused by the virus, and of deterioration in overall health due to sweeping social isolation, was the elderly population living in out-of-home settings. In this area, the clinic operated on two main levels: to ensure the basic freedoms of this population and to address the overall management by the State of Israel of the prevention of infections and widespread illness in these institutions.



# Protection of the freedom of the elderly in out-of-home settings: Comments on a legal memorandum intended to restrict the arrival and leaving of guests and residents in out-of-home settings

At the end of March 2020, at night, a legal memorandum was published seeking to significantly restrict the liberty of elderly people living in out-of-home settings operated by the Ministry of Welfare. According to the bill, in practice, the elderly would not be allowed to leave the premises of the institution or meet with their family. In partnership with other rights organizations, we issued a sharp and immediate response to the Ministry of Welfare against the move, calling for alternative, less restrictive ways of preventing infection, and for protecting the freedom of older people, especially in emergency situations. Following this request and further inquiries, an announcement was received that the memorandum was not being acted upon.

# Ensuring the right to life and health of the elderly in out-of-home settings:

Representing the families of the elderly residing in out-of-home settings

On April 14, the clinic addressed the Ministers of Health and Welfare on behalf of sons and daughters of the elderly living in out-of-home settings, to demand measures to protect the lives and health of the residents and nursing staff in out-of- home housing. Among other things, we demanded that guidelines be established regarding visits by family members in out-of-home settings, central management of nursing home care, and conducting routine screening tests even without detection of clinical symptoms in people on the premises. Following the letter and further inquiries, a policy plan was designed with the aim of establishing comprehensive guidelines regarding the protection of the health and life of the occupants of out-of- home settings. The plan included, among others, a recommendation to create a unified administration for all out-of-home housing institutions for the elderly for this critical period, as well as a recommendation regarding regulating visits by family members of the residents in these settings.



## Adapting health services in the community to the needs of the elderly during the COVID-19 period: Request to the Ministry of Health regarding the assessments of the COVID-19 crisis by HMOs

In April 2020, the Ministry of Health published a draft of its guidelines for establishing criteria for providing budgetary support to HMOs, to adapt the medical services they provide so as to deal with the problems posed by the COVID-19 crisis. Following the publication of the document, the clinic, together with other organizations, wrote a letter emphasizing the great importance of HMOs assessing the adaptation of the services they provide to the unique needs of the elderly during the crisis. This was necessary because the elderly belong to populations that are at increased risk of harm from the virus, and in view of the expected harm to their overall wellbeing following social isolation. In the letter, we sought to ensure that the Ministry of Health provides budgetary support to the HMOs to create an efficient mechanism for distributing medicines and delivering paramedical services, as part of a broad solution for maintaining the overall health of the elderly, providing mental health services, and ensuring services in the geographic and social periphery of Israel.

## Assistance for the elderly in the community in situations of sickness and crisis

The COVID-19 crisis also made it a challenge to secure nursing care for the elderly living in the community. Among others, this was because of a shortage of nursing caregivers, which has been exacerbated by the crisis. The clinic provided legal advice through the clinic's hotline, to individual clients and to professionals in the field. For example, the clinic handled legal proceedings aimed at continuing the provision of care to a 90-year-old Holocaust survivor, whose caregiver, living with the survivor in her home, was about to be deported. In May 2020, we initiated proceedings on behalf of Ms. D. D., a resident of the city of Tiberias.



Ms. D. suffers from various health problems, therefore for several months she employed a foreign caregiver from India, who assisted her in her day-to-day functioning. Under the laws of immigration to Israel and the restrictions that apply to the stay of foreign workers in Israel, the caregiver was required to return to India.

Ms. D. applied to the Humanitarian Committee for approval to extend her caregiver’s stay in Israel, as she was satisfied with the work done by her, and was not interested in replacing her with another employee, especially during the COVID-19 period. After the Humanitarian Committee denied Ms. D.’s request, we filed an appeal on her behalf. In the appeal, we emphasized both the humanitarian needs of elderly people who require nursing assistance, and the difficulties that the COVID-19 epidemic caused for entry into Israel and for the employment of foreign caregivers in nursing. In parallel with the appeal, we submitted a request for temporary relief, to delay the deportation of the caregiver from Israel. Our request for interim relief was granted, but in September 2020, the court dismissed the appeal we filed. Subsequently, in 2021, we filed an appeal to the District Court. This appeal is still pending.

# Representation of clients in matters within the areas of expertise of the clinic

## Responding to individual requests

In addition to working on the urgent issues related to the COVID-19 crisis, the clinic continued to operate in many general and particular areas where it had acquired expertise, including representing Holocaust survivors on medical committees of the Holocaust Survivors' Rights Authority, representing elderly clients before the NII, and providing guidance to elderly victims of crime. The expertise and reputation acquired by the clinic in these matters have led those who need help with these issues to contact us directly, by telephone and through the website, in addition to clients referred to the clinic by MKs, lawyers in legal aid and general prosecution, community social workers, and others.



## Representation of Holocaust survivors before the medical committees of the Holocaust Survivors' Rights Authority

As part of clinic activities, a project has been underway for the third year to represent Holocaust survivors before medical committees of the Holocaust Survivors' Rights Authority. The project is intended to make the procedures accessible to Holocaust survivors and to assist them in exercising their rights. Representation is provided by law students, supervised by an attorney and the social worker of the clinic. A meeting is held, usually at the survivor's home, during which information is collected and guidance provided before appearing in front of the committee. Assistance includes preparing materials for submission to the committee, contacting caregivers to emphasize legal aspects in writing medical opinions, obtaining the appropriate medical documents, and representation before the committee. In the past year, within the framework of this project, we represented five Holocaust survivors who were children and adolescents during the Holocaust, for the purpose of increasing the government support they receive, necessitated by the worsening of their health and mental condition in old age. As a result of the involvement of the clinic, the allowance of four out of five clients represented by the clinic was increased.

For example, as part of the project, we represent two spouses, both Holocaust

survivors, suffering from dementia and fibromyalgia, whose request to raise their disability rating was denied several times by the Holocaust Survivors' Rights Authority. Following the request submitted to the Authority by the clinic, which included relevant information collected by contacting family members and medical caregivers in the community, the disability ratings of the couple were raised by a significant percentage, together with their monthly allowance and alongside significant additional benefits.



## Representation of the elderly in receiving long-term care allowances from the NII

The clinic worked to assert the eligibility of elderly people whose medical condition had worsened, to receive nursing benefits from the NII. The work of the clinic in this area included informing the clients regarding the required medical documents, contacting medical entities in the community, and instructing them about the submission of the documents to the NII. Within this framework, the clinic assisted several clients who were not even aware of their eligibility, to receive nursing benefits for the first time or to increase the nursing allowance in the wake of the worsening of their health condition. For example, we were approached by a 69-year-old woman who stopped working after being diagnosed with an advanced oncological disease, and we helped her receive senior citizen and nursing benefits in the amount of approximately NIS 3,500 (some 1,000 USD) per month.

## Providing legal guidance to elderly victims of crime

In recent years, the clinic has been conducting a unique project, which provides holistic legal and social support to elderly victims of crime through criminal proceedings. Within the framework of this project, this year we participated again in a national forum established by the Commissioner for Crime Victims in the State Attorney's Office, together with the law enforcement authorities and organizations involved in this issue. At the forum discussion, which was conducted by the Deputy Attorney General, we raised issues uniquely related to elderly victims of crime, and created new collaborations with representatives of the prosecutors’ office and other crime victims' organizations. One of these collaborations led to a lecture delivered by Adv. Tzafrir to dozens of police prosecutors, in which she introduced the issue of elderly victims of crime and initiated a discussion of difficulties encountered in police prosecution work involving elderly victims of crime.



As part of the activity, and to make the topic accessible, the students prepared a short video intended for distribution to professionals and the general public. [link to video](https://www.youtube.com/watch?v=Tw4_fjFIicQ)

In parallel with working with professionals, we continued to receive and handle individual requests from elderly victims of crime. For example, we were approached by the Police Department of Prosecution about three elderly victims of crime, who were injured in a violent street attack. The three victims are low-income new immigrants from the former Soviet Union, who do not speak Hebrew and suffer from various medical problems. Emotionally, the face-to-face meeting with the attorney and the social worker of the clinic, provided the elderly with a one-time opportunity to process the severe injury they experienced. The processing of the injury helped them close the circle emotionally. Legally, we assisted the victims in formulating their statements to the court, which allowed them to make their voices heard by the court – for the first time in the criminal proceedings – and describe the harm they suffered, as well as present their position regarding the appropriate punishment for the crime. The writing of the statement helped formulate the sentence imposed on the defendant, and provide punitive damages to two of the victims.

## Precedent-setting ruling of the Labor Court regarding the income tests by the NII

In a lawsuit filed by the clinic, which lasted for over a year, the Tel Aviv Regional Labor Court decided in a precedent-setting ruling that the Social Security Law should be interpreted broadly, equating two different rights relating to the support and nursing care of people with disabilities, in the context of calculating their income in accordance with the law.



The lawsuit dealt with Ms. S. M.'s request to receive a long-term care allowance. In cases of long-term care allowance, eligibility depends on the level of income of the applicant for the benefit, so that income exceeding the threshold set by law is liable to cause the benefit to be cut by half, or the application to be rejected altogether. Therefore, the method of calculating the income is critical for the purpose of determining eligibility and the amount of benefit to be paid. This ruling allowed Ms. M. to receive long-term care allowance and a retroactive refund of tens of thousands of NIS. It is hoped that this ruling will also help other people who are in a similar situation.

# Research activity

The advantage and uniqueness of the clinic as a center for legal and social assistance to the elderly and their families, together with it being part of a leading academic-legal institution in Israel, made possible studies that combine needs emerging from the field with systematic, highest-level academic research. In this context, last year the clinic operated in two main directions:

# Publication of an article by the clinic director in Maase’i Mishpat, the TAU Journal of Law and Social Change of the Faculty of Law at Tel Aviv University, on the subject "Elderly victims of crime in criminal proceedings"

The article is based on the unique experience of the clinic in promoting the rights of victims of crime in criminal proceedings, and it calls for the recognition of the unique rights of the elderly population in criminal proceedings. Adv. Keren Tzafrir also recorded a podcast based on the article in the Bar Daat application, the podcast app of Bar-Ilan University.



# Advancing research on "Promoting the rights of people with dementia," led by the Dean of the Faculty of Law, Prof. Oren Perez

The study is an initiative of the Dean of the Faculty, Prof. Oren Perez, who set up a research group with the participation of the clinic, as well as that of researchers from the Faculty of Medicine and the Big Data Center of the University, aiming to improve the rights of people with dementia. This is a long-term project, designed to examine how the process of exercising the rights of dementia patients can be streamlined in light of the scientific knowledge about the development of the disease, using information available at the HMOs and state authorities, and data science tools. The intention is to build the research in a way that leads to the development of practical tools that can be used both by the medical system that treats patients and by the patients themselves and their families. As part of the division of roles between the research partners, the clinic deals with mapping the various rights to which patients with dementia are entitled, understanding the needs of patients and the difficulties in exercising the rights. The team met with the competent bodies in the Ministry of Health and the various HMOs, and created collaborations for the purpose of obtaining information and assistance in developing the project.

# Public activity and access to knowledge

Last year the clinic continued to disseminate important information to the elderly regarding their rights and ways to exercise them. In light of the COVID-19 crisis, the clinic also expanded its means of propagating information, alongside the traditional tools such as lectures at day centers for the elderly. These innovative tools included, among others, lectures on rights for housebound elderly individuals based on a digital platform established in partnership with an Israeli startup company; a collaboration in creating a search engine of government information, to make rights accessible to the elderly; and distribution online of animated videos about the rights of Holocaust survivors.



These new ways of disseminating knowledge enable students, in addition to their legal knowledge, to use their diverse creative abilities and technology, and to significantly increase the target audience benefitting from the knowledge and expertise of the clinic. The following is a list of activities for making knowledge accessible and for disseminating information about rights in the community, in 2020.

* **Lectures on rights for the community delivered on a technological platform** The connection of the students at the clinic to the world of technology led to a collaboration, initiated by the students and guided by the professional staff of the clinic, with Uniper Care. This Israeli startup provides lectures and lessons on an easy-to-use technological platform to the housebound elderly individuals. A lecture was delivered by several students at the clinic to the general public of Uniper subscribers on the topic of protecting the consumer rights of the elderly in distance shopping transactions. The lecture was praised by both the Uniper staff and the viewers. We are pleased that the cooperation with Uniper will continue in 2021.

# Digital Israel Project: Partnership in creating a government search engine for the rights of the elderly

Toward the end of 2020, a collaboration was established between the clinic and the Israel Digital Enterprise. This is a government initiative intended to make the connection with the state authorities accessible by digital means, and to make accessible the information on various rights to which the residents of the state are entitled. The first rights accessibility project conducted within the framework of Digital Israel was the one dealing with the rights of older people by means of an advanced search engine. The project approached the clinic, as an expert on the rights of the elderly, and asked it to conduct a professional examination of the rights uploaded to the advanced search engine they created. Following this request, a professional collaboration was established between the project and the clinic, which continued in 2121. The beta version of the project can be accessed at this link.



* **Access to knowledge about the rights of Holocaust survivors through videos** A pair of students at the clinic made two animated videos designed to inform Holocaust survivors and their families about Holocaust survivors’ rights and the ways to exercise them.

# Delivering student lectures on the consumer rights of the elderly in day centers and at the Amkha organization for Holocaust survivors.

1. **Participation in professional forums**

As part of the vision to promote the rights of the elderly and Holocaust survivors, the clinic attributes great importance to participating in professional forums, connecting with experts and policy promoters in the field, and making the needs of the elderly population part of the public agenda. In the past year, and even more so since the outbreak of the COVID-19 epidemic, representatives of the clinic participated in the forum of Meirav Cohen, Minister for Social Equality, where various issues were discussed, including the implementation of the Magen Avot Veimaot (Fathers’ and Mothers’ Shield) program, providing care to Holocaust survivors, adapting HMO services to the COVID-19 crisis, and more. The clinic participated also in other forums: an NII forum, forum of organizations initiated by the JDC, and more.

This year the clinic continued its activities within the framework of a coalition of organizations to repeal the Compulsory Retirement Age Law. The clinic participates in drafting the law that will cancel the mandatory retirement age and provide guidelines for the continued employment of older workers.

In addition, as part of the implementation of the Legal Competence Law, working committees were established, and the clinic was a partner in a committee dealing with urgent medical matters.



# Educating students and exposing them to old age

In 2020, 17 students studied at the clinic, most of whom were exposed for the first time to the world of old age and to the elderly in Israel.

In the course of the year, the students participated in various classes, in addition to lectures by the academic director, Dr. Shiri Regev Messalem, and the professional advisors at the clinic: Adv. Keren Tzafrir, Adv. Naama Heller, Social Worker Adva Mesilati. All the guest lecturers who participated in the program of the clinic this year are key activists in their field. They exposed the students to their extensive activities: Adv. Sari Vardi on legal assistance to Holocaust survivors; social worker Dafna Golan Shemesh, on the subject of dementia and Alzheimer's; Adv. Inbar Bornstein-Liabok on the subject of the rights of the elderly in labor law. In addition, a joint class with the Clinic for Workers' Rights in Tel Aviv was held, and a staged mediation on the issue of overtime pay for foreign workers, which exposed the clinic students to the mediation tool and students from the mediation clinic to the domain of old age.

As every year, in preparation for Holocaust Remembrance Day, the clinic organized the presentation of a testimony by a Holocaust survivor, Mr. David Ben Shlomo, who survived the Holocaust as a child and currently lives in a kibbutz in the north of the country. The presentation of the testimony, which took place at the height of the COVID-19 crisis, in May 2020, was delivered on Zoom, in front of dozens of law students and members of the survivor’s family living in the US and Europe. Thanks to Zoom technology, they were all able to hear the testimony and be part of this exciting event.

At the end of the first semester, we visited the Shikma Day Center for the elderly, in Ramat Gan, where the students met with the elderly attending the Center, delivered a lecture, and accepted requests. This visit resulted in a welcome initiative by a student to make legal knowledge accessible in a novel way, through the Uniper company, which operates day centers by digital means for the housebound population.