

## קליניקה משפטית לזכויות אנשים עם מוגבלויות

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### The clinic for people with disabilities Summary of academic year 2008 activities

#### **I. Introduction**

At the beginning of 1999 the law for people with disabilities was introduced in Israel. The new law shifts the discussion about people with disabilities from revolving around benefits and charity to using civil rights and especially the right to equality as the foundation of the discussion.

The Bar-Ilan University clinic for people with disabilities was founded for the purpose of advocating the rights of people with disabilities while also promoting this important topic among the law students within the faculty.

The Clinic operates as a legal aid center and is run by the university students. The clinic's primary focus is to assist people with disabilities, their families and other supporting organization with legal issues related to ensuring the legal rights of people with disabilities and advancing new related legal issues.

The clinic's academic activities focus on the theoretic aspects of human rights, equality and the social aspects of people with disabilities and their families and also include the ethical aspects of the clinic's activities. The clinic's activities include a variety of lectures that are provided by a broad range of industry professionals, members of the academia and practitioners that deal with all the peripheral aspects of the rights of people with disabilities. This includes psychiatric experts, social workers,

communication and education experts. This activity provides the students with a vast understanding of the legal status of people with disabilities in Israel and internationally and provides a platform for discussing the legal and social cases that the student are activity working on.

The students' practical activities at the clinic are performed under the supervision of the clinic's legal counsel and in cooperation with the social authorities. These activities consist of dealing with applications that are brought forward by or on behalf of people with physical, mental and emotional disabilities with regards to the legal challenges that they face as a result of their unfortunate situation.

## **II. The types and magnitude of applications that are dealt with at the clinic**

The clinic's applicants are typically referred to the clinic by the organizations that specialize in aiding people with disabilities, the municipal welfare departments and individuals with disabilities seeking assistance.

During the academic year of 2008 the clinic received approximately 100 applicants per month.

The clinic dealt with a broad variety of applications ranging from individual representation of people in front of various authorities to dealing with fundamental issues of national importance. An example of such a national issue was a petition filed against the Israeli ministry of education's decision to stop assigning and funding personal schooling assistants for children who learn in special education programs. In addition to these activities, the clinic has taken on broader activities for advancing the rights of people with disabilities and sharing the clinic's knowledge and expertise with various audiences who can benefit from it.

## **III. The clinic's students**

This year 24 third year students participated in the clinic's activities. The students attended the theoretical lectures on "The rights of people with disabilities" and took an active role in the legal aid activities at the clinic. The students typically worked in pairs with each pair specializing in a different area. The students operated the clinic's

hotline and dealt with the applications independently under the supervision of the clinic's legal counsel. In addition to the legal aid activities, the students were assigned to assist with the broader activities that the clinic had undertaken. During their work, the students are encouraged to proactively identify reoccurring patterns that reflect broad and systematic deficiencies in how the "system" deals with people with disabilities and consider the impact of their efforts on the broader population.

#### **IV. The clinic's main focus areas**

##### Education

The clinic petitioned against the ministry of education's decision to stop the funding for personal assistants for children who learn in special education programs. This decision has created a situation in which children with severe physical disabilities are unable to receive the appropriate treatment that will enable them to receive their lawful education. The petition was filed on behalf of two students and claimed that the decision violated the rights of the plaintiffs to receive an equal education and is against the administrative law that the ministry of education needs to abide by. In September 2008, the court ruled that the ministry of education's decision is to be canceled and the ministry is required to re draft its regulation which permits the funding of personal assistance in severe cases. Furthermore, the ministry is to establish a committee that can evaluate special requests for personal assistants and authorize them.

In September 2007 the ministry of education appointed a public committee headed by the retired judge, Daliya Dorner, to examine the deficiencies in the special education programs and requested input from organizations who deal with such topics. Due to the clinic's vast expertise in this area it participated by compiling a position statement and sent representatives to appear in front of the committee.

During the summer of 2008 the clinic filed an administrative petition calling for the appropriate committees to reconvene and rule on cases in which children were diagnosed, past due, with disabilities. As a result of the petition, the ministry of education changed its decision and convened the required committees to evaluate these cases. This enabled many children to be placed in special education programs according to their special needs.

### Day care centers and safe transportation

The clinic filed a petition, on behalf of a 3 year old child with disabilities, against the ministry of welfare and appropriate municipalities. The essence of the petition was the refusal of the authorities to assume the responsibly of assigning the child to a rehabilitating day care center and provide him with transportation to and from the center as required by law. This petition is now awaiting the court's ruling.

Throughout the year, the clinic dealt with several parent complaints in which the inefficiency of the safety transportation services prohibited the children from receiving paramedical treatments, impairing their rehabilitation progress.

The clinic also dealt with filing requests for a dedicated chaperone to accompany children in extreme cases where the law does not mandate such assistance.

### Employment

The clinic assisted a father of an autistic child who worked as a CPA to receive severance payments from his employer after resigning from his job to take care of his son. According to law, in the case where a parent or relative resign from their work to provide treatment for a family member, their resignation should be considered as termination by the employer which entitle the employee to severance payments. After filing suit against the employer, the father approached the clinic to assist in the proceedings. After negotiating with the employer's legal counsel, the case was settled with the employer paying the severance payments in full.

### Accessibility

For the past two years, the clinic has been working with the "Israeli Accessibly Association" to improve accessibility and enable the participation of people with disabilities in day to day activities. An example of such an activity was assisting a Petach Tikva resident, who is confined to a wheelchair, in a complaint against the local municipality. This complaint was about the fact that the sidewalks in the resident's neighborhood were not built according to law, with the required wheelchair ramps. After the clinic brought this to the attention of the mayor's office, the required alterations were made and the resident can now move freely about his neighborhood.

In another case, as a result of a complaint, the clinic approached the manager of an event hall where the accessibility facilities did not comply with the law, requesting the improvement of the accessibility facilities. Shortly after the request, the accessibility, was improved and is now as required by law.

The clinic was also instrumental in the establishment of a committee at Bar-Ilan University that is chartered with reviewing all the accessibility topics of the university. Since its establishment, the committee has convened several times and has raised several physical and educational accessibility improvements.

### Guardianship

The clinic assists in upholding the legal rights of wards according to law. The clinic was approached by a woman who was appointed to be the guardian of a family member. In the case, the general custodianship administrator refused to release funds that were allocated by the ward's parents and intended for the ward's treatment, prior to the woman being appointed as the legal guardian. As a result of the clinic's intervention and after providing the necessary explanations that the funds would be used to treat and take care of the ward, the general custodianship administrator agreed to release the funds. Today the ward is receiving all the necessary care and treatment with the aid of his guardian.

The clinic also provides legal counseling to parents who are seeking advice about future custodianship options for their children who suffer from physical or mental disabilities.

### Social security

Just as in previous years, the clinic provided legal aid to people seeking to be recognized as suffering from a disability by the social security office. The clinic's students took part in consultations, filing objections to medical committees and appeals to the regional work courts that deal with social security compensation eligibility.

### Autism Spectrum Disorders (ASD)

During 2006, the clinic and the law office of Ron Gazit, petitioned to the high justice court against the social security administration (SSA). The petition called for the SSA to grant pensions to all children diagnosed with ASD. On the 11th of Dec 2006, the high justice court accepted the petition and issued an intermediate order stating that until the matter is fully resolved, the SSA is required to pay the pensions according to the highest disorder level. During the previous semester, complaints were received at the clinic stating that the SSA was disregarding the court's order and had stopped paying the pensions. The clinic approached the SSA's legal counsel with the matter and as a result, the pension payments were resumed. In addition, the clinic joined the law office of Ron Gazit in the complaint to the high court that the SSA's acts were in contempt of the court.

The clinic also assisted adults who suffer from ASD in their cases against the SSA. The pension level of an adult depends on his or her level of autism and their earning capabilities. Adults with ASD typically face challenges with these two criteria: When determining their level of disability there is a significant legislation deficiency and therefore practically people with ASD are classified as mentally retarded or mentally ill or alternatively with no disability at all. When determining their earning capabilities, those suffering from ASD and especially those who are fully functional (and typically highly intelligent), typically face a lack of understanding from the SSA and their employers about their special situation. This situation prevents them on the one hand from receiving a pension from the SSA and on the other hand from being accepted to work.

The clinic filed an appeal, on behalf of an adult who was diagnosed with ASD, on the decision to set his lack of earning capacity level at 74% (while 75% entitles a full, 100% level pension). After the court's ruling, the appeal committee granted the plaintiff a full, 100% level pension.

### National Health Services (NHS)

Last year, the clinic received many complaints from parents of children with disabilities, about the fact that the NHS had stopped providing the children with paramedical treatments which is against the National Health Services insurance laws.

The clinic approached the ombudsman and the NHS management requesting to resume providing these treatments. After not receiving satisfactory responses, the clinic brought this to the attention of the state comptroller and requested the investigation of the matter.

#### The rights of people with emotional disabilities

The clinic dealt with several cases of people with emotional disabilities. Several of the complaints dealt with the SSA process for determining their level of disability. The level of disability is the criteria used by a rehabilitation committee to determine the appropriate aid in housing, education and other activities. In one example, the clinic assisted an individual in filing his request with the SSA in order to be recognized as suffering from an emotional disability which will entitle him to rehabilitation services. After the medical committee made its determination, the clinic further assisted in his representation with the rehabilitation committee.

Another request that the clinic dealt with was related to the implementation of the decisions of the rehabilitation committee about work placement of people with emotional disabilities. In this case, the assessments that the individual who approached the clinic underwent determined that he was able to work anywhere but that he needed assistance and guidance that would be provided by the SSA and welfare services. Despite this determination, the SSA and welfare services refused to provide such assistance claiming that his assessment stated that he was fit to work anywhere. In this case, the clinic approached the rehabilitation committee within the SSA and the welfare services with the request to grant the individual with the assistance that was determined as rightful.

#### Welfare

The clinic assisted a woman who suffered from a vision impediment and other physical disabilities in approaching the welfare agencies in her town in order to receive her lawful disability pension. The clinic's representatives met with a group of social workers at the woman's home who has mobility difficulties. This meeting resulted in the woman receiving the maximal and full disability pension.

## V. External Cooperation and Distribution of Information

We are pleased to inform that this year the clinic started cooperating with the legal firm Gross, Kleinhendler, Hodek and co. This cooperation included providing a full day of lectures to the firm's lawyers on the topics that the clinic deals with. In addition, several of the firm's lawyers have volunteered to work with the clinic and have since taken on several cases that were brought to the clinic.

The clinic also cooperated this year with the clinic for women's family rights and provided legal aid to a couple who recently got divorced and had a difference of opinion regarding the schooling program of their 3 year old son who was diagnosed with autism. After a long legal battle, a court appointed committee determined that the child should attend a special education program what is most suited for his needs.

In addition, the clinic continued to support the Keshet organization's website - "a special place" and the Asperger and PDD online forums by providing answers to legal questions that the readers post about taxation, mobility, national health insurance, education, housing, pensions, social security and others.

Clinic representatives also provided several lectures to section heads of the Social Security Administration (SSA) office in order to increase the cooperation between the SSA and the clinic in order to increase the knowledge within the SSA and improve the service to those individuals seeking assistance.

Moreover, the clinic has joined forces with the clinic for women's family rights and the school for social working studies at Bar-Ilan University to commence joint projects during the current school year. As part of this cooperation, social working students will participate in the legal clinic's activities by closely accompanying those who seek aid from the clinics and participating in other community projects for the wellbeing of those who require the clinic's services.