

Equality in Rights and Appointments:

The position of the we power Association in the petition for the appointment of female directors in the public service

Justice Daphne Barak-Erez:

1. Over thirty years ago, this court issued a ground-breaking ruling in HCJ 453/94, *The Women's Lobby in Israel v. The Government of Israel*, P.D. 48(5) 501 (1994) (hereinafter: *The First Women's Lobby Case*). This ruling established the precedent recognizing the government's duty to implement the principle of adequate representation as mandated by legislation—not merely as a lofty declaration with no practical impact, but as a binding legal principle requiring real enforcement. In essence, the petition before us, once again submitted by *The Women's Lobby in Israel*, reiterates the demand that the principle of adequate representation, as enshrined in legislation, not remain theoretical. The goal is to bridge the gap between the law as written and its actual implementation. Granting the requested relief is therefore necessary—based on statutory law, judicial precedent, and principles of justice and equality. Consequently, I concur with the comprehensive and persuasive judgment of my colleague, Justice N. Sohlberg, which holds that the petition should be granted.
2. At first glance, the principle of adequate representation was explicitly enshrined in legislation many years ago—first regarding the boards of government-owned companies in 1993, and later regarding appointments in the civil service in 1995. As my colleague, Justice Sohlberg, has demonstrated, there is no formal dispute regarding this principle, and over the years, the government has adopted policy decisions in support of it. However, regrettably, this is one of those areas where commitments are not always followed by actions. Grand statements about the importance of gender equality and the implementation of the principle of adequate representation repeatedly collide with reality. A close examination of the judgments issued by this court over the years reveals that the implementation of this principle is often qualified with “yes—but” or “yes—but not in this case.” The real test of embedding legal norms lies in ensuring their application without requiring repeated judicial interventions, especially regarding a legislative norm that is ostensibly clear and straightforward.
3. In fact, even in *The First Women's Lobby Case*, the precedent that established the legal doctrine on this matter, the discussion centered on legislation regarding adequate representation as a rule that should be practically applied. Accordingly, it was determined at the time that the legislation imposed an active duty on the authorities to identify suitable female candidates for positions, and appointments made without fulfilling this duty were annulled. Nevertheless, decisions continued to be made while ignoring the principle of adequate representation, necessitating petitions that were, in essence, unnecessary, as the legal situation was clear but not implemented. For instance, in HCJ 5660/10 *Itach v. Prime Minister of Israel*, P.D. 64(1) 501 (2010), which concerned the appointment of members to what became known as the *Tirkel Committee*, Justice U. Vogelman wrote:

“The legal obligation to provide adequate representation for women within the committee was not overlooked by the respondents even before its deliberations began...”

However, as we have seen, the respondents did not exercise due diligence in identifying potential female candidates, and no list of candidates was presented to the respondent for consideration alongside the selected male candidates, even though there was no impediment to doing so” (ibid., pp. 526-527).

When the enforcement of the fundamental duty of adequate representation depends primarily on sporadic petitions to this court, even the relief ultimately granted in specific cases cannot always be sufficiently effective. Thus, in the *Tirkel Committee* case, the absolute order issued by the court stipulated that the government would be deemed to have fulfilled its duty if, within a specified timeframe, it proposed the appointment to five suitable women and none accepted. Given the circumstances, this is indeed what happened, and in the end, the committee completed its work without a female member.

4. Without delving into the full history of case law, the importance of the relief granted in the current petition becomes even clearer. Unlike previous cases, this petition does not concern a specific appointment. Rather, it seeks to establish a general procedure that ensures the principle of adequate representation is embedded in the appointment process from the outset, rather than being addressed only retrospectively after a different candidate has already been appointed—who may be qualified in their own right.
5. Additionally, it is particularly important that the duty of adequate representation be embedded in senior management positions and, with the necessary adjustments, in positions exempt from competitive selection. Holders of these positions have a significant influence on the entire civil service—they lead it and work closely with the ministers heading government ministries. Excluding them from the principle of adequate representation would undermine any real chance of embedding it as an integral part of the public service framework in Israel. As my colleague, Justice Sohlberg, noted, not only is there no justification for excluding senior positions from the principle of adequate representation, but it is precisely in these positions that it is most crucial—both in terms of policymaking by individuals representing diverse perspectives and in creating role models.
6. More broadly, I would like to emphasize that the true test of advancing the principle of equality often lies in the willingness to allocate resources for its realization. In the present case, the necessary investment involves decision-making regarding appointments in a manner that proactively identifies suitable female candidates and ensures a holistic governmental perspective on its overall appointment framework. As of now, the numbers presented regarding the appointment of women to senior positions in the civil service are dismal and far from meeting the legislative standard.
7. Looking forward, I believe that to avoid the repetitive and Sisyphean process of filing petitions on adequate representation for specific cases, the government’s procedure must be practical and implementable. It is not enough to have a procedure; it must have the potential to create tangible outcomes. The development of this petition highlights the risk of reverting to general policies that yield no real results. As my colleague, Justice Sohlberg, noted in his ruling, at the outset, the respondents proposed that whenever a minister presents a candidate for an exempt position, they must declare that they also considered a female candidate and spoke with her by phone. With all due respect, such an approach merely pays lip service rather than demonstrating a commitment to advancing the principle of adequate representation. The later update included a more respectful proposal, stipulating that the appointing minister interview an equal number of male and female candidates for the position and consult the database of the *Authority for the*

Advancement of the Status of Women to identify relevant female candidates. This marked some progress, but not sufficient progress.

8. To achieve change, the government must adopt a comprehensive approach to appointments to senior positions exempt from competitive selection (as my colleague noted in paragraph 36 of his ruling). The government must take responsibility by setting clear goals and ensuring their fulfilment. While it may not always be possible to ensure simultaneous appointments of all ministry directors-general, as proposed by
9. the petitioner, other steps can be taken. It is not for us to determine the details, and there is no single correct approach. However, restrictions should be placed on approving new director-general candidates. For instance, the government could require its members to implement an alternating appointment system ("zipper method")—appointing men and women alternately. Given the current situation, it would not be unreasonable to require ministers to interview more female candidates than male ones to improve the chances of finding a suitable female candidate. Additionally, every nomination for a director-general position submitted for government approval should be accompanied by an update on the extent of adequate representation among deputy directors-general in that ministry. There is no single correct course of action, and I do not make a final determination on the matter. The key is that the time for mere declarations has passed.
10. I wish to conclude my judgment with the hope that the principle of adequate representation will cease to be the subject of celebratory rulings and will instead become a principle implemented in practice. So be it.

Daphne Barak-Erez, Justice

Accordingly, the court ruled as stated in Justice N. Sohlberg's judgment.

Given today, 24 February 2025 (26 Shevat 5785).

Khaled Kabub, Justice

Daphne Barak-Erez, Justice

Noam Sohlberg, Justice