

The Incidence of the Right to Minimal Living Conditions for People in Poverty – A Normatively Desirable Interpretation of Private Enforcement Laws after the Decision in H.C. 10662/04 *Hassan v. The National Insurance Institution of Israel*

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In the article, the writers explore the right to minimal living conditions in Israeli private enforcement laws (based mainly on the Execution Law, enacted in 1967).

In the first part of the article the writers examine how the constitutional rights to freedom from imprisonment and freedom of movement have influenced the private enforcement laws since the Supreme Court acknowledged them as constitutional rights. On the basis of chief-enforcement officers' decisions and trial court decisions from the past 20 years, the writers show that the different models that have been adopted in cases concerning the different rights have led to different results. They show that the "case by case" model that was adopted by the courts concerning the right to freedom of movement did not lead to a change in the importance assigned to the right when balanced against other public interests and the rights of creditors. In the context of the right to freedom from imprisonment, they show that due to the collaboration among the three branches of government, and because the precedent laid down by the Supreme Court gave clear guidance to chief-enforcement officers and trial courts concerning how to implement their discretion in specific cases, the right became not only the "law in books" but also the "law in action."

On this empirical foundation, the writers suggest that the constitutional right to minimal living conditions should be implemented in private enforcement laws using the same model as the right to freedom from imprisonment.

In the second part of the article, the writers examine the right to minimal living conditions as developed in Israeli law and precedent. They show that the right has two main aspects: the immediate aspect, which concerns an individual's capability to have dignified living conditions at a given point in time, and the processual aspect, concerning the individual's capability to change her economic conditions, escape the poverty cycle and provide for her needs by herself.

In the third part of the article the writers show how the constitutional right to minimal living conditions should be applied in private enforcement laws. In this context they examine, as a representative example, the protection that should be given to residential apartments in mortgage cases, when the right to minimal living conditions is taken into account. The writers emphasize three elements that are

required in order to give true meaning to the right to minimal living conditions in private enforcement laws in general. First, they show how the courts' discretion should be designed, taking into account the two aspects of the right. Second, they emphasize the need for cooperation among the three branches of government in order to give effective meaning to the right in real life. Third, they analyze the procedural laws governing the enforcement laws and offer a normatively desirable procedure that will bring the precedential cases before the Supreme Court, in order to avoid the "case by case" paradigm.