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At the Supreme Court Sitting as the Appeals Court for Administrative Matters

AdmA 1621/08

Before:	**Honorable President D. Beinisch** **Honorable Vice President E. Rivlin** **Honorable Justice M. Naor**
The Appellant:	**State of Israel, Ministry of the Interior**
	v.
The Respondent:	**1. Ziad Hatib** **2. Sahar Hatib**
Appeal from the judgment of the Jerusalem District Court sitting as the Court for Administrative Affairs dated 18 January 2008 in Adm.Pet. 817/08 delivered by Honorable Judge Yehudit Zur	
Session date:	3 Kislev 5771 (10 November 2010)
Representing the Appellant:	Att. Hila Gorni; Att. Yochi Genesin
Representing the Respondent:	Att. Smadar Ben Natan

Judgment

President D. Beinisch:

Does a person's registration in the population registry of the Area suffice to find that he is a "resident of the Area" under the definition stipulated in the Nationality and Entry into Israel Law (Temporary Order Law) 5763-2003, **as amended in 2005 in the context of Amendment No. 1** (hereinafter: **the Law** or **the Temporary Order Law**)? This is the question which must be decided in the appeal at bar.

Summary of the factual background and the ruling of the lower court

1. Respondent 1 (hereinafter: **the respondent**) was born in 1979 in the village of Sarta located in the Area. He was registered in the Palestinian population registry and received a Palestinian identification number 906149968. Respondent 2, his wife, is an Israeli citizen born in 1980. Sometime after his birth, the petitioner left the Area with his family and relocated to Jordan, where was granted Jordanian citizenship, which he still holds today. His Palestinian residency remained as it had been and according to information presented to us, he obtained a Palestinian identity card when he reached the age of 16.

2. On January 15, 2007, the respondents married. Following their marriage, they contacted the Ministry of the Interior and filed an application for status for the respondent as part of a family unification process, at the population administration bureau in Tel-Aviv Yaffo. Their application for status was rejected out of hand without being examined on its merits following discovery that the respondent is registered in the population registry of the Area, and therefore, under the definition section of the Temporary Order Law, he is a "resident of the Area" who is under the age of 35 to whom Section 2 of the Law is applicable, and therefore, it is not possible to grant him status in Israel at the present time.

   This, in keeping with the normative reality in Israel as anchored in the Temporary Order Law of 2003, enacted following Government Resolution No. 1813 of 2002 with respect to the "treatment of illegal aliens and the family unification policy respecting Palestinian Authority residents and foreigners of Palestinian descent," which sets forth that the Ministry of the Interior would no longer process new applications for status in Israel by Palestinian Authority residents. The Temporary Order Law was amended in 2005, as aforesaid, and in this context, the definition stipulating who is considered a "resident of the Area" to whom the provisions of the Law apply was also amended:

   The definition section of the Temporary Order Law, which is the focal point of the appeal at bar, stipulates as follows:

   > Definitions — Resident of the Area – **someone who has been registered in the population registry of the Area**, as well as who resides in the Area notwithstanding the fact that he has not been registered in the Area, excluding a resident of an Israeli settlement in the Area." (emphasis added, D.B.)

   As aforesaid, the respondent is registered in the population registry of the Area. Therefore, the application filed on his behalf was denied.

3. The respondent submitted an appeal against the rejection with the Ministry of the Interior. The appeal was denied and the respondents subsequently filed an administrative petition with the Court for Administrative Affairs in Jerusalem (Adm.Pet. 817/07). Having examined parties' arguments and held a live hearing, the Court for Administrative Affairs delivered its judgment on January 16, 2008 (Judge **Y. Tzur**), which partly accepted the petition and instructed the Ministry of the Interior to examine the question of the respondent's residency on its merits and decide on the family unification applications in light thereof (hereinafter: **the judgment**).

   In its judgment, the lower court found that the definition section, in its amended version, was designed to apply to persons registered in the population registry of the Area who are indeed residents of the Area. It was therefore argued that in the respondent's circumstances and in view of the fact that in addition to his registration in the population registry of the Area he is also registered in the Jordanian population registry, it may be said that there is objective, unequivocal evidence which casts real doubt on the presumption that the person involved is effectively a resident of the Area. In light of this, the lower court found that it is incumbent on the Ministry of the Interior to

examine the true residency of the respondent on its merits and in accordance with the test of "most ties", prior to determining that the respondent is a resident of the Area for purposes of the Temporary Order Law. In other words, the lower court found that the definition of the term "resident of the Area" should not be applied to the petitioner, who bears another nationality, automatically and based solely on the registration in the Palestinian population registry. In the words of the lower court:

> … [O]n the merits, the respondent's decision to reject the application of the petitioners (the respondents here, D.B.) in view of the petitioner's registration in the population registry of the Area is unjustified and must be overturned. The definition of "resident of the Area" in the Temporary Order Law was designed to apply only to persons registered in the population registry of the Area who are indeed residents of the Area. The fact that the petitioner has another citizenship and is registered in another population registry is objective evidence which casts real doubt over the presumption that he is indeed a resident of the Area. Therefore, the respondent should have examined the true residency of the petitioner in accordance to the test of most ties…

4. As a study of the judgment indicates, the lower court based its conclusion on two central footings: one based on its interpretation of the explanatory notes for the Temporary Order Law and the other based on the accepted rule of interpretation according to which a law which curtails human rights must be interpreted as narrowly as possible whilst giving preference to an interpretation which is least injurious to the rights. On the latter aspect, the lower court ruled that in view of the severe harm to the constitutional right to family life which is caused as a result of the Temporary Order Law, as has been found in the judgment of this court in HCJ 7052/03 **Adalah – Legal Center for Arab Minority Rights v. Minister of the Interior** (not yet published, May 14, 2009; hereinafter: **the Adalah case**), it is appropriate to interpret the definition of the term resident of the Area narrowly, as stated above. The lower court further added that the result it reached creates a more appropriate balance between the security purpose of the Temporary Order Law and the duty to uphold fundamental constitutional rights, as an individual security check of the applicant is still possible and therefore, the security purpose on which the Law is based is not compromised.

In addition to its general ruling, the lower court also examined the individual circumstances of the respondent in accordance with the test of most ties and thereafter found that the respondent's place of residency is allegedly Jordan rather than the Area and thus there is no justification to reject his application out of hand. As such, as stated above, the lower court instructed the Ministry of the interior to examine the respondent's residency on its merits and decide the family unification application in view thereof.

The lower court also found cause to reject the preliminary arguments made by the state – arguments regarding *laches* in the submission of the petition as well as allegations regarding bad faith.

It is against this judgment that the state has filed the appeal at bar.

5. Before we present the arguments by the parties to the appeal, we further add that on August 10, 2008, a few months after filing of the appeal at bar and before a hearing thereof was held, this court delivered a judgment in AdmA 5569/05 **Ministry of the interior v. Dalal 'Aweisat et 7 al.** (not yet published, August 10, 2008) (hereinafter: **the 'Aweisat case**). The review in the **'Aweisat case**, addressed, *inter alia*, the question of the interpretation of the definition of "resident of the Area" in the Temporary Order Law in its version **prior to** the amendment of 2005. In that case, the court addressed the interpretation of this definition in order to apply it to a number of non-Jewish minors

who were registered in the population registry of the Area and who were born in Israel to mothers who are permanent residents of Israel. The language of the definition of the term "resident of the Area" in the days prior to the Amendment which is the subject matter of the appeal at bar is as follows:

> Definitions 1….
>
> Resident of the Area – **Including** someone who resides in the Area despite not being registered in the population registry of the Area and excluding a resident of an Israeli settlement in the Area." (emphasis added, D.B.)

Based on this version, and considering the textual obscurity surrounding the term "including" which raised a clear question of interpretation with regards to the scope of applicability of the definition of the term "resident of the Area", this court examined – heeding accepted principles in legislative interpretation – whether the definition of the old version aims at anyone effectively living in the Area even if he is not registered therein, or at anyone registered in the registry of the Area even if he does not live therein. In the circumstances of the matter there, the court upheld the findings of the Jerusalem Court for Administrative Affairs regarding the appropriate interpretation of the definition of "resident of the Area" in its old version, and found that the purpose of the legislation and the fundamental principles of the system, including the duty to interpret the text in a manner consistent with protecting human rights, led to the conclusion that this definition must receive a narrow interpretation such that it does not automatically apply to a person solely due to his registration in the population registry of the Area and requires an additional examination on the merits of the matter with respect to the question of whether there are ties to the Area. This court further determined in its judgment that this interpretation is consistent with the security purpose which underlies the Temporary Order Law as it still allows the state to examine the existence of a concrete security preclusion.

All this notwithstanding, in its judgment in the **'Aweisat case**, the court emphasized that it was not examining the applicability of the new definition in the Temporary Order Law (the definition which is the subject matter of the appeal at bar), such that its findings relate in their entirety only to the definition of resident of the Area as defined prior to the amendment of 2005.

In order to complete the normative picture which forms the background of the appeal, we also note that in accordance with the findings of the majority in the judgment of this court in the **Adalah case**, the Temporary Order Law is constitutional and presently remains in effect. Since the judgment in the **Adalah case** was delivered, the Temporary Order Law has been periodically extended, following which a number of new petitions were submitted to this court in 2007 (HCJ 466/07 **MK Zahava Gal-On et al. v. Minister of the Interior**). The petitions challenge the constitutionality of the law and are pending before an extended panel.

Arguments of the state – the appellant

5. [sic] According to the state, there are a number of errors in the judgment of the lower court which necessitate its dismissal.

The state's principal argument is that the lower court's interpretation of the definition of resident of the Area is erroneous, has no basis in the language or purpose of the law and diverges from the explicit stipulation of the legislator that anyone registered in the population registry is a "resident of the Area" for purposes of the Temporary Order Law, and the state is not required to proceed with an examination of his actual residency.

In this context, the state noted that a review of the amending order and its explicit language indicates that a resident of the Area is a person who meets one of two tests – being registered in the population registry of the Area **or** living in the Area even without being registered therein. Any other interpretation, according to the state, contradicts the security purpose of the Temporary Order Law, as indicated by the explanatory notes attached thereto and recognized in the judgment of the court in the **'Adalah case**.

The state has clarified, in this context, that in the unique circumstances of the Area, the term "resident of the Area" is unlike the accepted expression "residency" which refers to where a person resides, which is normally determined by the test of most ties. The argument made is that with respect to the Palestinian Authority, the term "resident of the Area" also includes being a subject of the Palestinian Authority with the derivative duty of loyalty thereto, and, in a sense, with respect to the Area, parallels the concept of citizenship. Registration in the Palestinian population registry is a reflection of this legal situation and hence, according to the state, a person who is registered in the population registry of the Area is by default a type of subject of the Palestinian Authority and as such, the Temporary Order Law – with its security purpose – is to apply to said person. In view of the aforesaid, the state claims that for purposes of the Temporary Order Law, an examination of a person's physical ties to the Area is of no consequence. The state further notes that the legislator sought to augment the legal default derived from registration in the Area with a factual tie of residency in practice, hence the definition as phrased. According to the state, the 2005 amendment to the definition was implemented in order to remove doubt and explicitly clarify what was perceived by it to be self-evident.

The state further stresses that it maintains that in view of the explicit language of the Section, there is no need to review the second part of the judgment which examines the respondent's personal matter and the majority of his ties in practice. However, and, according to the state beyond requirement, it reviews the information relating to the respondent and clarifies why it maintains that it too supports the conclusion that the respondent is a resident of the Area who has retained his ties despite his additional citizenship. Hence, even according to the test of most ties, he is a resident of the Area to whom the Law applies.

The state also noted that it contends that the court erred in not dismissing the petition *in limine* on the grounds of bad faith. It shall be noted that a study of the state's brief, allegedly shows that the argument regarding *laches* it had raised before the lower court was neglected.

Respondents' ***arguments***

6. The respondents rely on the judgment of the lower court and seek the dismissal of the appeal. They maintain that the lower court's interpretation of the definition of the term "resident of the Area" is correct as it is consistent with the purpose and language of the Law.

First, **on the level of purpose**, the respondents examine whether the interpretation is consistent with the security purpose underlying the Temporary Order Law. They maintain that only a real tie to the Area – and not the registry itself with the absence of a real tie in addition thereto – can point to a potential security threat due to which it is appropriate to apply the Temporary Order Law. In the absence of the aforesaid potential, thus according to the respondents, the first test of proportionality, which requires a rational connection between the means and the end, is not met. The respondents also emphasize the severe harm caused to various human rights as a result of the

application of the Temporary Order Law – the right to family life, the right to parenthood and children's right to grow up with their parents – and point to the importance of adopting an interpretation which minimizes infringement of these rights as much as possible. In this context, the respondents also refer to the findings of this court in the **'Aweisat case**. According to the respondents, the findings of the court in the **'Aweisat case** are consistent with the interpretation rendered by the lower court in the case at bar and lead to the conclusion that the position of the appellant expands the application of the Temporary Order Law unnecessarily whilst causing disproportionate harm to human rights. The respondents are aware that the judgment in the **'Aweisat case** did not explicitly address the interpretation of the new definition, but they note that the balances between the purpose of the legislation and the protection of human rights stipulated in the judgment, are binding in the circumstances of the matter at hand also. Additionally, the respondents note that the rationale underlying the judgment in the **'Aweisat case** is that the fact of registration in the population registry does not establish a security risk and that this rationale is relevant to the circumstances of the case at bar and necessitates the adoption of the interpretation rendered by the lower court. The respondents also note that as in the **'Aweisat case**, in this case too, there is no concern that adoption of the lower court's interpretation would prejudice the security purpose, as the Ministry of the Interior is still able to hold an individual security screening of the applications.

In their reasoning, the respondents further rely on the second part of the definition of resident of the Area in the Temporary Order Law and note that one can deduce from it that the registry is not the all-important element and that an examination of the effective residency is required. They maintain that if the legislator instructed to transcend the registry and examine effective residency ties, one must do so even in a situation where registration exists – as in the matter of the respondent. The respondents also stress that the fact of registration in the Palestinian population registry is merely formalistic and is not indicative of a tie of residency or loyalty, especially in the circumstances of the respondent, who has a second citizenship and whose ties to his other country of citizenship are strong.

On the textual level, the respondents sought to persuade that the definition of "resident of the Area" underwent no changes when amended in 2005, and therefore, it is appropriate to apply the interpretation rendered in the **'Aweisat case** to it as well. The respondents argued that this was the case primarily considering the explanatory notes of the amendment which, they contend, indicate that the new definition was designed to clarify the purpose of the original definition rather than constitute a new, amending definition. It was further noted that the Law contains no determination that the Palestinian registry constitutes a conclusive presumption of residency in the Area and that where the legislator sees fit to do so, it does so explicitly.

It was further argued by the respondents that implementation of the test of most ties in the respondent's circumstances leads to the conclusion that the majority of his ties are effectively to Jordan and not the Palestinian Authority, such that the Temporary Order Law is inapplicable in his case and there is no basis for the state's argument that the petition was unduly delayed and made in bad faith.

To complete the picture, it is noted that the respondents filed a Motion to Augment Argumentation in which they requested that the court restrict its ruling in the circumstances of the case to the dispute regarding the interpretation of the definition of "resident of the Area" in the amendment and refrain from ruling on the dispute with regards to the facts relevant to the respondent's effective residency in accordance to the test of most ties. The respondent so requested considering the fact that the Ministry of the Interior had never made a decision on the merits of the residency issue and therefore, he contends that it is inappropriate that such a decision should first be made by this court.

The state's response to the motion was not attached due to the strike by state attorneys.

Review and ruling

7. Having examined all the arguments made by the parties, we have reached the conclusion that the appeal must be accepted and that the lower court erred in the interpretation of the amended definition of the term "resident of the Area", as amended in Amendment No. 1 to the Temporary Order Law. We specify:

As stated, the central question before us in this appeal surrounds the interpretation of the definition of the term "resident of the Area" in the Temporary Order Law by lower court. As known, the premise for interpreting a law is the language thereof, as interpretation which is not anchored in the language of the law cannot be accepted (see A. Barak **Interpretation in Law**, Vol. B, Interpretation of Legislation (hereinafter: **Barak Interpretation of Legislation**, p. 97). When the language of the law allows for several interpretations, the interpretation which fulfills the purpose of the statute shall be selected out of the various interpretations (see the judgment in AdmA 2775/01 **Witner v. Local Planning and Building Committee**, IsrSC 60(2) 230, 245 (2005)). However, where the language of the text does not allow a range of textual possibilities, there is no interpretive question which requires examination according to the interpretive process known in our legal system, and the interpreter is not required to examine the entirety of the purpose – the second rule of interpretation. Moreover – in a situation where the language of the text is clear and unequivocal, the interpreter shall not endow the text with a meaning it cannot carry in a manner which preserves the principle of the rule of law, the constitutional and systemic structure and public confidence in adjudication (**Barak Interpretation of Legislation**, p.82). My colleague, Justice **A. Procaccia** elaborated on this in Adm.Pet. 2190/06 **State of Israel v. Bueno Gemma** (not yet published, 13 May, 2008, hereinafter the **Gemma case**) as follows:

> It is a rule that a statute requires interpretation according to its language and according to the purpose of the norm included therein. I**nterpretation is restricted primarily by the language limitations of the legislated norm, in the scope of which and in the limits of which the purpose is examined. In the linguistic scope allowed by the legislative text,** the interpretation is informed by the purpose of the norm and where a number of purposes are possible, the court shall exercise interpretive discretion and select the appropriate purpose out of the different possible purposes…
>
> Of the possible linguistic meanings of the text, the meaning which fulfills the spirit and purpose of the law must be chosen…
>
> 39. **The interpreter's circumscription by the language of the law and his duty to remain within its scope also when examining the purpose are not just fundamental rules of interpretation, they strike at the heart of the essence and scope of judicial authority and judicial power.** [emphasis added, D.B.]

9. [sic] In the circumstances of the matter at bar, it seems that the conclusion that the lower court has departed from the interpretive rules accepted in our legal system is unavoidable. For the sake of convenience, we shall first briefly repeat the context for the birth of the amendment which is the subject matter of the appeal. As stated above, the Temporary Order Law, in its original version from 2003, included a different definition of the term "resident of the Area" which stipulated as follows:

Definitions 1….

Resident of the Area – **Including** someone who resides in the Area despite not being registered in the population registry of the Area and excluding a resident of an Israeli settlement in the Area." (emphasis added, D.B.)

This definition did not explicitly stipulate that a resident of the Area is a person registered in the population registry and left some margins of vagueness on the question of whether registration alone suffices for the application of the Temporary Order Law or whether it is also necessary to examine effective residency. As stated, a number of judgments handed down by the Jerusalem Court for Administrative Affairs in cases of minors who requested to be granted status in Israel found that an interpretation of this definition leads to the conclusion that it is insufficient to rely on registration only and that for the purpose of applying the Temporary Order Law, it is necessary to examine whether a given person has real ties to the Area. This, among other things, is also the background for the state's appeals which were reviewed in the **'Aweisat** case. Following these judgments, and in order to avert the interpretation adopted by the Court for Administrative Affairs in the context thereof – an interpretation later adopted also by this court in the **'Aweisat** case – it was decided to change the definition of "resident of the Area" in the Law and it was amended, as aforesaid, in Amendment No. 1 in 2005, which stipulates:

Definitions Resident of the Area – someone who has been registered in population registry of the Area, as well as who resides in the Area notwithstanding the fact that he has not been registered in the Area, excluding a resident of an Israeli settlement in the Area.

Indeed, a study of the definition section in its current version clearly indicates that the expression "including", which stood at the heart of the interpretative question that arose in the **'Aweisat** case, was stricken and replaced by two clear **alternatives** for the definition of "resident of the Area" for the purpose of applying the Temporary Order Law: A. a person registered in the population registry of the Area; B. a person who is not registered but resides in the Area. These alternatives refer to two different population groups which are not related to one another in the language of the section – one which is registered in the population registry in the Area and one which is not. In this state of affairs, it is quite difficult to state that which the lower court ruled and the respondents claim, that alongside the requirement for registration, the section implicitly contains a requirement for actual residency in the Area. According to the language of the section itself, the requirement for actual residency is relevant only for those who are not registered in the population registry, a group to which the respondent does not belong (see in this context, also HCJ 3220/06 **Abu Sneineh Mahmoud Nimr v. Ministry of the Interior** (not yet published, July 31, 2006)).

As stated, the lower court found the main anchor for its finding in the explanatory notes for the Amendment which is the subject matter of this petition (Nationality and Entry into Israel Law (Temporary Order Law) (Amendment) 5765-2005, 58 173, 624). Due to its importance, we shall quote the section relevant to our matter in full. The explanatory notes stipulate as follows:

Section 1

The term "resident of the Area" is defined in Section 1 of the Temporary Order Law as follows: **Including** someone who resides in the Area despite

not being registered in the population registry of the Area and excluding a resident of an Israeli settlement in the Area.

The purpose of the enactment of the Temporary Order Law was, as stated, denying status in Israel to residents of the Area who are registered in the population registry of the Area, in addition to persons effectively residing in the Area who are not registered as residents in the aforesaid registry.

It is proposed, in order to remove doubt, to amend the definition of "resident of the Area" to explicitly clarify that this definition also includes the obvious – namely, those registered in the population registry of the Area. [emphasis added, D.B.]

A study of the explanatory notes and the legislative history detailed above, clearly indicates that the legislator sought to have the Temporary Order Law apply to the two groups explicitly anchored in the language of the section – those registered in the population registry of the Area and those not registered but actually residing therein. The lower court found that in view of the explanatory notes according to which "The purpose of the enactment of the Temporary Order Law was, as stated, denying status in Israel to **residents of the Area** who are registered in the population registry of the Area" [emphasis added, D.B.], the legislator meant that those registered in the Area would also be residents in practice. We contend that it is difficult to find a true basis for such interpretation in the explanatory notes, as they clearly state that the purpose is to prevent the granting of status in Israel to residents of the Area who are registered in the population registry, in addition to residents of the Area who are not registered as residents therein. Considering that the explanatory notes did not overlook the group of effective residents and emphasized that the Temporary Order Law shall apply to them even if they are not registered, we do not see any other meaning for the first alternative in the definition of Section 1, which refers to residents as per their registration in the Area, other than that which conforms to the state's position.

Moreover, even if we are prepared to accept, for the sake of argument only, the supposition of the lower court that it is possible to read several meanings into the explanatory notes with respect to the purpose of the legislation, this interpretation still has no anchor in the language of the statute itself. In this state of affairs, the explanatory notes cannot constitute the basis for establishing the range of linguistic possibilities of the statute. Indeed, the explanatory notes of a statute may serve as a tool for inquiring after the purpose of the norm, but where it is impossible to deduce a range of linguistic possibilities from the language of the norm, it is impossible to deduce this vagueness from the language of the explanatory notes and from them alone. This is the case in the matter at hand, as the language of the definition of "resident of the Area" is clear and explicit and does not create a range of linguistic possibilities. As it is evidently impossible to select which linguistic option fulfills the purpose of the statute, there was no need to address this aspect in the circumstances of the matter at hand.

Additionally and as stated above, the interpretation adopted by the lower court is also inconsistent with the background which led the state to take action to enact the amendment and change the definition. The same clearly indicates that the amendment was meant to repeal the previous interpretation of the section and explicitly clarify that the Temporary Order Law was also meant to apply to persons registered in the population registry of the Area.

10. Note, there is no doubt in my view that when handing down its decision, the lower court envisioned the severe injury caused to the constitutional rights of the respondents – and those in similar

circumstances – in view of the legal situation which applies as a result of the Law, and that the court sought to minimize this injury using the tools available to it. I have also expressed my explicit position with respect to the severe harm caused to constitutional rights due to the Temporary Order Law (see for example the **Adalah** case) on a number of occasions. I too, have accordingly found that it may be that in view of this injury, there is room to act within the accepted interpretive guidelines and strive to minimize the infringement of these rights, as much as possible. However, this can only be done in circumstances where the language of the norm allows several interpretations in a manner which allows – and requires – searching for the interpretation which conforms to the basic tenets of the system. This occurred, for example, in the **'Aweisat** case. However, where the language used by the legislator is clear and inasmuch as the background leading up to the amendment indicates that it was meant to prevent a possible interpretation of the type accepted in the **'Aweisat** case, the basic tenets of the system cannot be an interpretative source of inspiration for replacing it, as Justice **Procaccia** noted in this context in the **Gemma** case:

> The general tenets of the system, including constitutional principles stemming from basic laws and common law may be incorporated in an interpretation of the purpose of a legislative norm, provided it is found in the scope of the existing linguistic framework and does not exceed it…

In the circumstances of the matter at hand, as aforesaid, one cannot find a textual anchor for the interpretation adopted by the lower court in the amending definition. In this situation, no substantive question with regards to interpretation was raised and there was no room to expand the definition of the section beyond its limits. Therefore, and given the current legal situation whereby the Temporary Order Law is still in effect, there is no choice but to conclude that the findings of the judgment with respect to the interpretation of the definition section in the law cannot stand.

11. The unavoidable conclusion from the aforesaid is that the position of the Ministry of the Interior must remain intact, i.e. that for the purpose of applying the Temporary Order Law with its amended definition, suffice it that the respondent is registered in the population registry of the Area and there is no need to examine his actual ties to the Area also. In view of the conclusion we have reached, we are not required to address the evidence presented by the parties with respect to the respondent's ties to the Area and to Jordan, nor to the respondent's Motion for Deletion of Arguments filed in this context. In the absence of a dispute with regards to the respondent's registration in the population registry of the Area, there is no further need to examine his individual circumstances for the purpose of applying the Temporary Order Law. As a direct result thereof, we do not intend to express any opinion with respect to the lower court's findings on this issue.

We further note that we have not found that in the circumstances of the matter there has been any flaw in the lower court's decision not to reject the petition *in limine* due to *laches* (an argument which seems to have been forsaken in the appeal and in the brief submitted by the state) and/or alleged bad faith. Indeed, in the circumstances, it was appropriate to review the petition on its merits, as the lower court has done.

Conclusion

12. We conclude by stating that having examined the definition of "resident of the Area" as amended in 2005, we reached the conclusion that for the purpose of the Temporary Order Law, a "resident of the Area" is one of two – a person who is registered in the population registry of the Area, **and an examination of his actual ties to the Area is of no consequence for this matter**, or a person who is present in the Area but not registered therein. For the latter, a substantive examination – according to the test of most ties – with respect to the actual residency of the person seeking status will naturally be required.

13. Therefore, the appeal must be accepted and the judgment of the lower court must be overturned, with respect to the interpretation of the definition of "resident of the Area" within the Temporary Order Law therein.

President

Vice President E. Rivlin

I concur.

Vice President

Justice M. Naor

I concur.

Justice

Ordered as stated in the opinion of President D. Beinisch.

Given today, 25 Shvat 5771 (30 January 2011).

President Vice President Justice

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