At the Supreme Court in Jerusalem **AFH 9081/11**

1. _____ **'Attoun**, ID _____
2. _____ **'Attoun,** Minor**,** no status
3. _____ **'Attoun,** Minor, no status
4. **HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

Represented by Counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.
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The Petitioners

v.

Minister of Interior

Represented by Counsel from the State Attorney's office,
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Tel: 02-6466590, Fax: 03-6467011

The Respondent

Petition for Further Hearing in AAA 1966/09

The Honorable Court is hereby requested to exercise its authority under Basic Law: The Judiciary and Section 30(b) of the Law of the Courts [incorporated version] 5744-1984 and hold a further hearing with regard to the judgment given in AAA 1966/09 on November 22, 2011(hereinafter: **the judgment**), before an extended panel.

In this majority judgment by two justices, Honorable Justice (retired) E. E. Levy and Honorable Justice Grunis with the dissenting opinion of Honorable President Beinisch, the court produced a precedent that has significant and grave implications on the manner in which status in Israel is granted and may lead to a civil status vacuum for minor children who are the children of an Israeli resident and who were born in Israel and live their lives in the country. The judgment alters the common law on purposive interpretation by adopting a literal and narrow interpretation of Regulation 12 of the Entry into Israel Regulations 5734-

1974, which focuses on the best interest of the child. The interpretation given thereto by the court leaves no room for exceptions and substantively alters the common law on the application of this regulation.

The judgment is attached hereto and marked A.

A. The need for a further hearing – A new, significant and grave rule which contradicts previous common law rules

> It is the nature of things
> that are not as they should be,
> for the bird that is inside
> to stand outside.[1]

1. Section 30 of the Law of the Courts stipulates two cumulative conditions for justifying a further hearing: One - the importance, gravity and novelty of the legal rule or the fact that it contradicts a previous legal rule. The other – a relevant justification for bringing the matter to a further hearing (Dr. Y. Susman, **Rules of Civil Procedure** (Seventh Edition) 1995, p. 781).

2. The criteria the court examines when deliberating on whether a further hearing is required were specified in CFH 2485/95 **Apropim v. State of Israel** (July 4, 1995), where the court stated:

> The importance, gravity or novelty of the rule produced by this court must be substantive and significant such that the judgment is substantively flawed, that it violates the basic tenets of the system, or society's concept of justice, that it leads to a result that cannot be tolerated, that it fails to reflect significant changes that have occurred in reality or in the law. The list is clearly an open one. It merely demonstrates the types of arguments that would raise the issue to the level of gravity, importance or novelty that would justify a further hearing that would in turn, perhaps lead to a change in the common law.

3. The Petitioners will hereinafter argue that this motion meets the criteria set in statute and common law and that holding a further hearing with regards thereto is necessary and important.

4. Children and their wellbeing, the family unit and the bond between parents and children are some of the foundations of our human society. Regulation 12 of the Entry into Israel Regulations 5734-1974 (hereinafter: **Regulation 12**) was enacted in order to enable children to have the same status as their parents who are residents of Israel. The language of the regulation explicitly instructs that status be granted without room for discretion. However, the courts later interpreted the regulation as allowing some discretion, based on the purposes of preventing inequality between parent and child and the child's best interest. The judgment which is the subject of the petition for a further hearing makes the regulation one that does not allow discretion to grant status and in so doing, turns the intent of the authors of the regulation and its language on its head.

5. The majority judgment produces a new and grave rule with respect to the question of who is entitled to status in Israel. Until now, the rule focused on a substantive examination of a person's center-of-life which was performed by using the **test of most ties** of the **person** in question. The majority judgment rejects the test of most ties and applies a single, technical test – **the location of**

[1] By the Nature of Things, by Hedva HaRehavi, from the poetry book Adi (Sifriyat HaPo'alim, 1985)

the home (see §19 of the opinion of the President, §1 of the opinion of Honorable Justice Levy). The test of a person's ties is no longer a personal test, but rather a narrow physical one.

6. The majority opinion in the judgment introduces the option of a **civil status vacuum for children** – the children cannot be Israeli residents, yet they are not residents of the Occupied Palestinian Territories (OPT) (see §23 of the opinion of the President, §4 of the opinion of Honorable Justice Levy).

7. Alternatively, if the judgment implies that the children must acquire formal residency status in the West Bank, then indeed, for the first time, children are expected to become residents of a place to which they have no substantive ties or access. This too, is a pioneering, novel and grave ruling.

8. Over the past few decades, accepted common law has been that statutes and administrative authority must be interpreted purposively. Status must be granted if doing so conforms to the purpose of the law, which always seeks to protect human rights. Yet now, for the first time and in contrast to previous rulings,[2] the principle of the child's best interest and the constitutional right to family life have not been given "significant weight"[3] in the majority's interpretation of Regulation 12. Instead, the majority judgment relies on a literal, narrow, technical interpretation which allows no exceptions and according to which, since the law speaks of entry into Israel, the Minister of Interior need not grant visas for residency outside Israel, even to people who lead their lives inside Israel and have no possibility of leading them elsewhere. The following is stated in §5 of the judgment of Justice Levy:

> I believe that granting residency status under Regulation 12 to persons who reside with their parents outside the territory of the country, for reasons of preserving the integrity of the family unit, is not reasonable.

9. The judgment sentences children to life within the confines of their own home, while outside, they are strangers, at best akin to tourists, and as a result devoid of fundamental rights.

10. Employing a purposive interpretation, which incorporates the constitutional considerations that lie at the heart of Regulation 12, primarily the principle of the best interest of the child, as has been the practice thus far, would necessarily lead to a different outcome. President Beinisch addressed this in AAA 5569/05 **Ministry of the Interior v. 'Aweisat** (August 10, 2008):

> The appeals before us therefore illustrate the difficulty in choosing the broader interpretation, which relies solely on the registration in the registry of the area for the purposes of applying the Law. This broader interpretation is likely to deprive the minors, for arbitrary reasons, of any possibility of arguing that the center of their life is exclusively in Israel. On the other hand, the other possible, more restrictive, interpretation of the definition of "resident of the Area", which does not rely exclusively on the registration in the registry of the Area, **will allow minors to claim recognition of their status in the place in which their mothers or parents have status; the place which serves as the center of their lives**. All of the above does not in any

[2] See, e.g. HCJ 979/99 **Carlo v. Minister of Interior** (November 23, 1999); AAA 5569/09 **Minister of Interior v. 'Aweisat** (August 10, 2008); AAA 5718/09 **State of Israel v. Srur** (April 27, 2011)

[3] From §20 of the **'Aweisat** judgment.

> way prevent the Ministry of Interior from examining the minors' claims on their merits. (§14 of the **'Aweisat** rule, emphasis added, A.L.)

11. As described hereinafter, the case of the Petitioners here demonstrates the difficulties that result from the new, narrow interpretive ruling that is contained in the judgment and that has implications that reach far beyond the individual case.

B. A wall and a neighborhood – the complex and unique reality of Wadi Hummus

12. Wadi Hummus is a neighborhood within the village of Sur Bahir. It has always been an intrinsic part of the village, which was annexed to Jerusalem. In his expert opinion, Alon Cohen, an architect working with NGO Bimkom detailed the circumstances under which Wadi Hummus developed outside the municipal boundaries:

> The existence of a municipal border is not visible on the ground. The line is not marked and has no planning, geographic, topographic or urban logic. The only marking of the municipal border appears on various maps as lines drawn between various coordinates (ibid., p. 2)

See Expert Opinion of Mr. Alon Cohen, architect, on behalf of Bimkom, submitted to the honorable court on June 25, 2009, in the appeal proceedings. See also, for example, §§3,17 of the opinion of Honorable President Beinisch.

13. When the Wadi Hummus neighborhood was first built and for years thereafter, its residents were unaware that they were building outside city limits. How could they have known? This is one village, an Israeli village; Jewish-Israeli neighborhoods were built on all of its land with the exception of the south-eastern ridge. The borderline had no physical expression on the ground. The community, social and cultural lives of the neighborhood's residents, mostly Jerusalemites, took place in the village of Sur Bahir. All of the village's services and amenities– public institutions, educational facilities including daycare centers, elementary and secondary schools, community services, medical services including health funds, mother and child clinics and a geriatric institution, mosques, shops, a community center and a sports ground – are located deep inside the village.

14. The lives of Sur Bahir's residents was suddenly disrupted when the separation wall was built, some two decades after the Wadi Hummus neighborhood was established. The route of the wall that was planned for this area would have severed the neighborhood from the rest of the village and left it on the eastern side of the fence. Following HCJ 9156/03 **Da'ud Jabur et 32 al. v. Seamline Administration et al.**, the route was changed so that the neighborhood, including the Petitioners' homes, remained on the wall's western side. The state's consent to alter the route of the wall in this area stemmed primarily from its recognition that these residents would be severely harmed if the wall were to be built on the planned route. This emerges from a document delivered to the petitioners in HCJ 940/04 **Abu Tir et 10 al. v. Military Commander in the Judea and Samaria Area et al.** In §23(a) of said document, the assistant to the military legal advisor for the West Bank notes:

> <u>The harm to residents of Sur Bahir</u>: Under the current planned route for the barrier and in the aforesaid area, some 750 residents of Sur Bahir are expected to become separated from the village. **These are Israeli residents. The harm is particularly grave as this is a single organic community**

> **and the residents expected to reside east of the barrier would be cut off from their families and the public institutions serving them**. (Emphasis added, A.L.)

The document submitted in **Abu Tir** was annexed to the petition as Exhibit P/11.

15. The route was shifted, but the woes of Wadi Hummus residents did not come to an end. In 2004, the National Insurance Institute (NII) began sending notices to residents of the neighborhood informing them that their residency status under the National Insurance Law had been revoked. In response, those residents, including the Petitioner and his family members, filed a claim with the Jerusalem Labor Court - NI 10177/05 **The Sur Bahir Village Committee on National Insurance et 52 al. v. The National Insurance Institute et al.** The plaintiffs in that action requested they be deemed residents of Israel under the National Insurance Law, **in view of the fact that their center of life was, and continued to be, in Israel**. Following the claim, on April 11, 2005, with the state's consent, a judgment was delivered according to which Wadi Hummus residents would be seen as residents of Israel for purposes of the National Health Insurance Law:

> In view of agreements between the parties, and the notice, **and considering that this is a single homogenous village**, and in accordance with the instruction given by the Attorney General to the Defendant, indeed, as long as the legal and political situation remains as it is today, and as long as the separation fence exists as planned, the Defendant shall deem anyone meeting all of the following as coming under the National Insurance Law with respect to both the rights granted and duties imposed according thereto, namely:
>
> He holds a permanent residency visa under the Entry into Israel Law 5712-1952.
>
> **He is a resident of the village of Sur Bahir, including village territory between the separation fence and the municipal territory of Jerusalem, and he resides in the village permanently and not temporarily**.
>
> **In view of the above, the notices sent to the Plaintiffs are null and void**. (Emphases added, A.L.)

The judgment was attached to the petition as Exhibit P/12.

16. Even prior to the erection of the wall, Wadi Hummus residents, who are mostly Israelis, led their lives in Jerusalem. Since then, these residents have no reasonable possibility to lead their lives in the West Bank. In the context of the two legal actions mentioned above, before the High Court of Justice and before the Labor Court, the state also recognized the fact that the current situation requires a special approach to the Jerusalem village that had expanded. The arrangement that was put in place is **unique to Wadi Hummus residents** who have permanent residency status in Israel and allows them, and them only, to maintain their eligibility under the National Insurance Law, unlike other neighborhoods located outside city limits. We note at this point, that now that a number of years have passed since the aforesaid arrangements came into force, one can safely say that due to the unique nature of the situation, the aforesaid decisions have not established political facts and have had no broad implications.

17. Note: the Petitioners are not claiming that the consent given by the state in the matter of changing the route of the wall and recognition of residency by the NII mean, of themselves, recognition of the rights of the Petitioner – who, no one disputes, is a permanent resident – with respect to having his children registered in the population registry. The argument the Petitioners are making is that the rationale that led to those decisions is clearly relevant to the matter at hand. See, on this, §17 of the opinion of Honorable President Beinisch, final paragraph.

> Note – it cannot be said that it is possible to infer from the judgment of the District Labor Court that all Wadi Hummus residents are entitled to permanent residency. However, one cannot ignore the fact that the agreement formulated by the state indicates that it too considers this a unique and complex reality

C. Inside the Outside[4] - the 'Attoun children – the case of the Petitioners' family

18. In the judgment in AAA 1966/09, which is the subject of this motion, the Honorable Court was requested to make a ruling on the practical significance of the unique and complex reality of Wadi Hummus and determine the status of two minors living in the neighborhood, the children of the 'Attoun family – twins born in Israel, who are now 15 and a half years old and have no status anywhere in the world.

19. The home of the children's father is located in Sur Bahir, bordering Jerusalem, outside the city's municipal boundaries, but inside the village of Sur Bahir which is inside the municipal boundaries and entirely located on the west side of the separation wall.

20. The twins' father has been trying to have their status in Israel secured since they were four years old, but to no avail.[5] The children are not registered in the West Bank as their center-of-life is exclusively in Jerusalem and passage from their home to the West Bank is blocked by the wall that was erected by the State of Israel.

21. As stated in the hearing on the appeal (p. 3, lines 1-3 of the transcripts of the hearing dated February 27, 2011), the petitioning children themselves moved to their brother's home in Jerusalem over a year ago. Sadly, even their relocation to Jerusalem has not satisfied the Respondent.[6]

22. The petitioning father, born in 1954, has lived in the village of Sur Bahir, with his family, his entire life. In 1967, the father received permanent residency status in Israel pursuant to the Entry into Israel Law 5712-1952, despite the fact that he had never entered the city, but rather lived in it from birth, as did his parents, and their parents and the entire family for generations. After he

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[4] "Inside the outside", from the title of a book by Oded Burla (Am Oved, 1978).

[5] Because the Petitioner was unable to pay the fees to Augusta Victoria Hospital in Jerusalem at the time of the birth, the hospital unlawfully withheld the "notice of live birth" for his twins. Because the Petitioner requires a notice of live birth as a condition for registration, it was not possible to arrange for the twins' registration at the time of their birth. The father reached an agreement with the hospital only when the children were four years old and only then were the notices of live birth given. Then, in 2000, twelve years ago, he was able to contact the Petitioner and submit an application for his twins. The years have gone by and the Petitioner is still seeking status for his children.

[6] The state claims that as the children live with their brother rather than their father, their status cannot be secured. In response to a question by the Petitioners, the state noted that even if their Israeli brother were to become their guardian, its objection would remain intact as guardianship is not given for the purpose of obtaining status and their father is fit to care for them.

married and had a family, he moved with them to his current home, which they built on a plot of land that belongs to the village of Sur Bahir and which he inherited from his father. It later came to light that the house had been built just a few meters outside the Jerusalem municipal border.

23. The Petitioner has 11 children. The twin Petitioners are the youngest of the family's children. The petitioning children's nine siblings are permanent residents of the State of Israel, like their father. They have Israeli ID cards which allow them to live a life of dignity in the only place where they can lead their lives. Only the children, the Petitioners herein, unlike their remaining nine brothers and sisters, have no status anywhere in the world.

24. The children were born in Jerusalem. They received their vaccinations in the city. Their father has worked over the years in Jerusalem and in other places. He pays taxes to the State of Israel, including payments to the NII. The electricity used in the family's household is supplied by the Israeli electrical company. Their telephone line is supplied by an Israeli telephone company - Bezeq.

25. Like their nine siblings, the children's entire center-of-life effectively takes place in Jerusalem. Like their nine siblings, from preschool to the present day, the children have been educated in their Jerusalem village of Sur Bahir. Like their nine siblings, they meet friends, their grandparents and other family members in Jerusalem. They participate in recreational activities and do their shopping in Sur Bahir, Jerusalem. Yet, unlike their nine siblings, only the petitioning children do not have status where they live. Unlike their nine siblings, they cannot produce ID cards when instructed to do so. Unlike their nine siblings, should they get sick, they will not have medical insurance. **Only they will not.**

26. The fact that the Petitioners' center-of-life is in Jerusalem was accepted in the judgment which is the subject of this motion (§17 of the opinion of Justice Beinisch, §1 of the opinion of Honorable Justice Levy). The children have no ties to the West Bank other than the location of their father's home and their entry into the West Bank is blocked by the wall.

27. Could these children be residents of nowhere?

28. This has been the children's sad predicament in the first 15 and-a-half years of their lives. Children without a number, without an identity, without officially belonging anywhere, without rights.

29. To conclude this section: The home of the petitioning children's father is in between – on one side of it, the side facing Jerusalem, there is a **transparent municipal border**, invisible, virtual, like the emperor's new clothes. On its other side, the side facing the West Bank, **there is a wall**. The majority judgment chooses to focus on the invisible line. The sole operative meaning of this line is the very decision that was enshrined in the judgment; the decision not to grant the children status. The reality of life, in which most of the children's ties are to Jerusalem is dwarfed and pushed aside by the geographic location of the father's home, where the children no longer live. The wall? It is just incidental compared to this virtual line. President Beinisch addressed this situation in her minority opinion:

> … [T]here may be unique and exceptional situations in which living outside the municipal borders of Jerusalem is almost a virtual situation. In these exceptional situations, living outside city limits would be one aspect of the overall elements involved in determining the question of residency in Israel, such that, despite the geographic location of the residence, it is found that

there are more ties to Israel than to the Palestinian Authority. (§21 of the opinion of President Beinisch).

D. Regulation 12 as a unique regulation protecting the best interest of the child.

D.1. <u>Common law prior to the judgment</u>

30. Under common law as it existed prior to the judgment, Regulation 12 was interpreted and applied according to its purpose, which is, primarily, the need to prevent a discrepancy between the status of a parent and that of his child who was born in Israel. Common law protected the values of preserving the integrity of the family until and safeguarding the best interest of the child. The regulation instructs as follows:

> The status in Israel of a child born in Israel, who does not come under Section 4 of the Law of Return 5710-1950, **shall be equal to the status of his parents**; where the parents do not have the same status, **the child shall receive the status of his father** or guardian, unless the other parent objects thereto in writing; where the other parent has objected, the child shall receive the status of one of the parents, as determined by the Minister. (Emphasis added, A.L.)

31. Regulation 12 is a special regulation designed for children. Unlike the statutes that govern the granting of status and grant the Minister of the Interior broad discretion, Regulation 12 explicitly stipulates clear criteria for granting status to a child in Israel: the child's birth in Israel to a parent who is a resident and the inapplicability of the Law of Return 5712-1952:

> The unique nature of the Regulation is that it sets the criteria for exercising the discretion granted to the Minister of Interior. This discretion is generally broad with respect to granting status in Israel under the Entry into Israel Law. These statutory guidelines for exercising discretion apply only to the circumstances of children to whom Regulation 12 applies (§14 of the opinion of Honorable President Beinisch).

32. The language of the regulation grants the Minister of Interior discretion only in a very specific situation: when the parents do not have the same status and they have different opinions on the status to be given to their child. Only in this situation, according to the language of the regulation, may the Minister of Interior decide what status is to be given to the child.

33. In case law, this discretion was initially expanded, such that the minister was permitted not to grant permanent status to a child of an Israeli resident who was born in Israel where there was no center-of-life in Israel. As detailed below, according to common law as it was prior to the judgment which is the subject of this motion, findings on the question of center-of-life were made based on the "test of most ties". Over the years, case law repeatedly emphasized the importance of bringing the civil status of the child on par with that of his guardian parent:

> Israeli law recognizes the importance of making the civil status of the parent equal to that of the child. Thus, s. 4 of the Citizenship Law provides that a child of an Israeli citizen shall also be an Israeli citizen, whether he is born in Israel (s. 4A(1)) or he is born outside it (s. 4A(2)). Similarly, r. 12 of the Entry into Israel Regulations, 5734-1974, provides that 'A child who is born in Israel, to whom s. 4 of the Law of Return, 5710-1950, does not apply,

shall have the same status in Israel as his parents. (HCJ 7052/03 **Adalah v. State of Israel** (May 14, 2006) (hereinafter: **Adalah**)

34. And the following has been ruled in HCJ 979/99 **Pavaloayah v. Minister of Interior** (November 23, 1999) (hereinafter: **Carlo**):

> As a rule, our legal system recognizes and respects the value of the integrity of the family unit and the principle of protecting the child's best interests. **Therefore, one must prevent the creation of a disconnection or a discrepancy between the status of a minor child and the status of the parent who has custody of him or who is entitled to custody**. From the perspective of granting residency visas for Israel, it seems that there is no justification for creating such a discrepancy as the justifications that provide the basis for granting a visa to the parent will generally also apply to the child who was born in Israel and resides in the country with him (§2 in **Carlo**, emphasis added – A.L.)

35. In the judgment given in AAA 5569/05 **Ministry of Interior v. Dalal 'Aweisat**, (August 10, 2008) (hereinafter: **'Aweisat**), the Supreme Court addressed the following question: How must the Ministry of Interior exercise its discretion while processing an application to arrange the status of a child that has been filed pursuant to Regulation 12. The court ruled:

> The point of departure in this issue is that the interpretation of secondary legislation is integrated into the interpretation of the primary Law by virtue of which it was regulated. Indeed, as a rule the purpose of the secondary regulation conforms to the purpose of the primary Law… This is clearly also the case when it comes to the Entry into Israel Law and the regulations which were regulated by virtue thereof. Considering the fact that we have clearly held in the past that Regulation 12 should be interpreted "in a way which conforms to the primary act of legislation by virtue of which it was regulated, and which falls in line with the underlying purpose" (Carlo case at paragraph 2). In this spirit, we accept the State's claim that like in a "regular" exercise of authority under the Entry into Israel Law – in which the appellant is assigned broad discretion - here too in exercising authority under Regulation 12 the Minister of the Interior may take into consideration additional factors beyond the minor's **center of life**. Thus, the Ministry may take into account security or criminal considerations that pertain to the broad public interest… **Nonetheless it must be emphasized that when the Minister of the Interior considers the application that is filed under Regulation 12, he must allot significant weight to the welfare of the child and to the integrity of the family unit**. This is for two main reasons. Firstly**, he must set his mind to the fact that the secondary legislator chose to regulate a special regulation on the matter of the status of children who were born in Israel. As we have already noted, for the most part the provisions of the Entry into Israel Law and those of the regulations which were regulated by virtue thereof do not establish criteria for granting an Israeli permanent residence permit. Therefore by the very fact that a special regulation was instituted that deals with the resolution of the Israeli status of children who were born there we may learn that the secondary legislator sought to establish that when dealing with these minors special and significant weight should be**

> **accorded to the aspect of the integrity of the family unit**. Secondly **we must take into account the special nature of Regulation 12 as a regulation that is designed to promote human rights**, and it does so from two aspects. The first one is the aspect which relates to **the right of the parent with Israeli status to raise his child, that is to say the constitutional right of the parent to a family life. The second aspect relates to the independent and autonomous rights of the minor to live his life alongside his parents**…. **These two aspects**… **underlie the purpose of Regulation 12**. Against this backdrop, the Minister of the Interior is required to exercise his authority **in such a way that these considerations are accorded significant weight, so that he can realize the special purpose of the regulation. Indeed, recognition of the family unit which has expanded with the birth of the child, and recognition of the independent rights of the minor to a continuous relationship with his parents and to his emotional development, requires that at the time of considering an application which has been filed under Regulation 12 significant weight be accorded to the fact that the center of life of the child is in Israel, alongside his mother, his** father **or both of them together**. (Ibid., §20, emphases added, A.L.)

See also the findings of the Honorable Court in AAA 5718/09 **State of Israel v. Srur** (April 27, 2011) (hereinafter: **Srur**).

36. In her minority opinion, Honorable President Beinisch emphasized the great importance of applying a broad interpretation to Regulation 12, an interpretation that seeks to make the child's status identical to that of his parent, in order to protect both the child and the integrity of the family unit. The Honorable President emphasized that this purpose:

> …[I]s not unique to Regulation 12 alone, as Israeli law strives to prevent a discrepancy between the status of a minor child and the status of his parent who has custody or is entitled to custody of him. (§20 of the opinion of the President).

37. Note: The aforesaid judgments expressly use the phrase "center-of-life" with respect to applying Regulation 12, rather than the phrase "place of residence" or any other similar phrase. Indeed, until now, Regulation 12 has been interpreted as one that examines a person's "center-of-life". It has been read and applied as including an obligation to consider the purpose underlying it, namely preserving the integrity of the family unit and the best interest of the child by preventing a split between the status of a parent who is a resident of Israel and the status of his children.

38. In accordance with the purpose of Regulation 12, the Entry into Israel Law and case law on this matter, merely sleeping in the same home as the parents or leading a family life only within the confines of the home do not express the values of the integrity of the family unit and the child's best interest:

> … [I]n view of the discrepancy in the status of the Appellants and their father and remaining siblings, as well as the fact that the Appellants are not registered in the registry of the Area and have no status at all. **Allowing this discrepancy to persist, as well as allowing the Appellants to remain without any status is inconsistent with the protected values that underlie Regulation 12, including the best interest of the child**.

> Therefore, I have reached the conclusion that the Appellant's request must be granted and his children, Appellants 2 and 3 must be granted the status of permanent residents in Israel pursuant to Regulation 12.
> (§25 of the opinion of President Beinisch, emphasis added – A.L.)

39. President Beinisch reiterates in her judgment that in order to fulfill the purpose of the law, there must be a substantive examination of the issue of center-of-life and the ties to Israel:

> This reality requires, in the matter of the Appellant's family, a substantive examination of the question of center-of-life and ties to Israel and cannot be resolved simply by relying on the physical location of the Appellant's home, as the Trial Court has done. (ibid., §18).

D.2. <u>A new and narrow interpretation for Regulation 12 and the Entry into Israel Law</u>

40. The new and grave rule established in the majority judgment rejects the existing interpretation of Regulation 12 and the Entry into Israel Regulations and introduces a technical, narrow and literal interpretation, an interpretation which the Respondent will henceforth apply when making decisions on applications for status for the young children of residents of the country who conduct their center-of-life in Israel. It will also be applied to the matters of many other individuals who seek or have status.

41. The majority opinion bases itself in the language of the Entry into Israel Law and holds that the law applies only to individuals who are present within the country's territory (or seeking entry thereto) rather than outside it (see §2 of the opinion of Justice Levy). This finding represents a departure from accepted rules of interpretation according to which statutory enactments and administrative powers must be given a purposive interpretation rather than a literal-technical one. Under a purposive interpretation of the Entry into Israel Law, phrases such as "residency in Israel" or "status in Israel", must be read as "a residency visa under to the Entry into Israel Law" or "status pursuant to the Entry into Israel Law". We shall argue below that even on the linguistic level, the majority judgment interpreted the phrase "present" in a narrow manner such that a person's presence in Israel is determined by the location of his physical residence rather than his overall ties.

42. The manner in which the Entry into Israel Law must be read in this context can be understood, for example, from the legislation regulating the presence of Israelis in the West Bank. One of the laws in the long list of Israeli laws that have been applied to these citizens is the Entry into Israel Law, including all its provisions, conditions and permissions. That is, under this statute, expressions such as "Entry into Israel" or "residency in Israel" apply also to these citizens' place of residence in the West Bank (see on this issue: Law Extending the Validity of the Emergency Regulations (Judea and Samaria and Gaza Strip – Adjudication of Offenses and Legal Aid) 5727-1967, Section 6b (a)). A literal interpretation, as suggested in the opinion of Justice Levy, would not have allowed the existence of these two statutes together under the same legal system.

43. More importantly: this interpretation would not have enabled the fulfillment of the fundamental principles underlying Regulation 12 – parity between the status of parent and child and the best interest of the child – in "borderline cases" (literally) such as the case at bar, as well as many other cases.

44. The majority judgment interprets Regulation 12 in a literal manner which leaves no room for a substantive examination that is held with the purpose of the regulation in mind. Applying a

linguistic analysis of the title of the Entry into Israel Law and Section 1(a) and (b) of the law, the majority judgment finds:

> … [T]he law applies to people who are present inside the country rather than outside it. Clearly, the State of Israel, as any sovereign state, has borders and only people who traverse them cross its gates and enter its territory… In other words, this is the nature of a border, that "we are always on one side of it… or on the other" (the written statements of my colleague, the President, in a different context, in CrimC 534/04 **A. v. State of Israel**…

45. The new and grave interpretation offered in the majority judgment with respect to status under Israeli law has implications for the laws governing center-of-life. It does not allow granting status in the case at bar in which it is clear – even to the majority justices – that the applicants' center-of-life is in Jerusalem for all intents and purposes, despite the fact that the geographic location of their home is a few meters east of the city's municipal boundary.[7] The state also recognizes that the family's center-of-life is in Jerusalem. This is the reason the route of the wall was shifted; this is the reason local residents are recognized as residents by the Ministry of Interior. This recognition is the reason why, despite their years of living in Wadi Hummus, these residents are recognized by the NII.

46. The majority position that the current situation "involves no risk for the integrity of the family unit" (§4 of the opinion of Justice Levy), was also reached contrary to the test of most ties, out of a narrow and extreme interpretive view that departs from the common law on the integrity of the family unit and the principle of the best interest of the child as expressed in common law. The majority judgment creates a situation where family life is conducted under house arrest, or in an enclave a few meters wide. This occurs despite the fact that the purpose of Regulation 12 is precisely to prevent the outcome of the judgment – leaving the children of a resident without status and in danger of being separated from the entire family, undercutting their social rights and substantially undermining their best interests. It is clear that children's rights as individuals and as members of a family do not come down simply to the right to sleep in one's home, but rather all the needs of a human being: to travel, obtain education, play, work, received medical treatment and have a sense of equality and security amongst one's family members.

47. The new rule not only introduces a Regulation 12 devoid of exceptions, but actually prohibits any deviation from a test that is too narrow to encompass a family life that can uphold the principle of the child's best interest. Yet, under well established case law, the Minister of Interior is meant to have, at the very least, broad discretion in granting residency visas, particularly in the matter of children. This rule has implications for the Petitioner's children and for the manner in which the Minister of Interior exercises his discretion in many other cases.

48. It is clear that this is neither a natural nor a constructive development of previous rulings by the Supreme Court (see CrimFH 4274/94 **Lawrence v. State of Israel** (August 2, 1994), but rather an about-face from the manner in which the regulation has been implemented thus far and from the values of an interpretation that takes into account the child's best interest and the purpose of the law. This is rather a development toward a new, technical finding, which lacks any foundation in case law.

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[7] The arbitrary nature of the border line may be discerned from the expert opinion given by Alon Cohen, an architect with Bimkom, which was submitted to the Honorable Court as part of the appeal along with an application for submission of a document dated June 25, 2009. See *ibid.*, p. 2.

E. The judgment conflicts with the limitations clause and the fundamental tenents of the system

49. Even by way of objective interpretation: any interpretation regarding a human rights violation must be conducted, as much as possible, in accordance with the principles of the limitations clause in Basic Law: Human Dignity and Liberty. It must be conducted in a manner that befits the values of the state, for a proper purpose and to an extent no greater than required. An infringement on a right, and particularly an infringement on the nucleus of the right is subject to an examination of the purpose and proportionality of the infringement (A. Barak Legislative Interpretation):

> The limitations clause now covers the proper interpretation to be given to any balancing formula explicitly enshrined in the relevant law, even when the arrangement that is contained within the law is not under constitutional review (HCJ 1435/03 **B. v. Civil Servant Disciplinary Tribunal**, IsrSC 58(1) 529, 538). It is present in the background of the proper conception of the entire process of weighing conflicting values (CA 506/88 **Schafer v. State of Israel**, IsrSC 48(1) 87). It tests a balance made under the decisive criteria, namely: whether the infringement on the human right is consistent with the values of the state; whether it is being carried out for a proper purpose and whether it reflects proper proportionality (LCA 10520/03 **Ben Gvir v. Dankner** (unpublished, November 12, 2006).

50. The Supreme Court's election to interpret the Entry into Israel Law in a manner that does not take the limitations clause into account unnecessarily injures a disadvantaged individual and is contrary to the purpose of the law. While the minority opinion followed the path laid out by case law until now, the majority opinion chose an interpretation that restricts and reduces the application of Regulation 12 in a manner hitherto unseen. The majority judgment refrained from taking a path that would lead be less injurious to children.

F. From the individual to the walls of his home – what is the test for receiving status in Israel? A new rule

> Anxiety caresses the walls of the home
> What is home?
> What is home?
> The bed, the chair, the table, the window,
> The world outside it[8]

51. Common law on who is a resident of Israel, as it was prior to the judgment, was based on a **personal-substantive** examination which locality a person has more ties to. According to the majority judgment, common law has changed and the test that is implemented is a **geographic-technical** test which does not allow in any case granting status to an individual whose home is located near the municipal border, despite the fact that no one disputes that this individual enters Israel, spends time in the country and leads his life there in the absence of any ability to lead a normal life outside Israel.

52. The opinion of Justice Levy adds a new condition to the list of conditions that must be met for status to be granted under the Entry into Israel Law. This condition has not turned up before – not

[8] A Man Needs a Home, by Israel Bright.

in the language of the regulation nor in the manner in which it was interpreted in case law. The condition that emerges from the judgment of Justice Levy, according to which the **geographic location of the home** of the Petitioners' father is a necessary condition for establishing a center-of-life, in a manner that supersedes and even revokes the **personal test** of most ties, is a new rule which has no mention in the language of the regulation or in the manner in which a person's center-of-life has been determined to date.

53. According to the common law that had been in place throughout the years, in order for a person to be recognized as a resident, he was required to prove that his center-of-life was in Jerusalem. The term "center-of-life", like other terms, has different meanings under different statutes (see for example on the different meaning of the term "resident" in different statutes: CA 657/76 **Competent Authority respecting the Disabilities caused by Nazis Law 5717-1957 v. Hisdai**, IsrSC 32(1) 778; CrimA 3025/00 **Haroush v. State of Israel**, IsrSC 54(5) 111). Each statute and its highlights according to the purpose underlying the legislation.

54. Over the years, case law has established that for the purpose of the Entry into Israel Law, center-of-life will be determined according to the test of "most ties". President Beinisch addressed the common law with respect to the test of "most ties" in the minority opinion:

> This Honorable Court has previously addressed the criteria for examining a person's residential ties to the State of Israel in different contexts. Thus, for example, held Justice **M. Cheshin** (as his title was at the time) in CrimFH 8612/00 **Haim Herman Berger v. Attorney General**, IsrSC 55(5) 439 (2001), at pp. 461-462:
>
> "How might we learn of the residential ties a person has to the country? One could say: intent and action – a subjective test and an objective test – shall together create the status of residency.
>
> The residency condition is created by inference from the concept of possession, in spirit and body, *animo et corpore*, in the intent to settle (*animus manendi*) and in the act of settlement that accompanies the intent. One must examine a person's existing ties to the locale and **only an overall examination of the ties** shall lead us to the answer as to whether he is a 'resident' of the locale or not.
>
> …
>
> **The person claiming to be a resident must give more and more signs of residency until a critical mass that makes him resident is reached: place of residence, place of residence of the family, the residency-claimant's social life, the place where his income is produced, his customs and habits, the place where most of his assets are located, his language, his children's school.**"
> [Emphasis added, D.B.]
>
> See and compare also: HCJ 2123/08 **A.v.B.** (not yet reported, July 6, 2008), paragraph 12 of the judgment of Justice **E. Arbel**.
>
> It has been previously held in our case law, in different contexts, that the condition of dwelling in a certain place must not be interpreted narrowly in

> terms of physical presence only. It must rather be interpreted as examining substantive ties to a place of residency which are not expressed exclusively in a physical manner (see, e.g. CivA 4127/95 **Yael Zelkind v. Beit Zeit Communal Laborer Moshav LTD**, IsrSC 52(2) 306, 315 (1998)). It has also been established that the concept of residential ties must be examined in the context of the statutory provision in which it appears and interpreted in accordance with the background and purpose of said provision (ibid., **ibid.**).

55. It is clear that establishing a center-of-life is not a political decision, nor should it be one. It relates to the overall ties the specific individual has. Reference to a person's personal ties, namely, establishing that a certain individual is entitled to status in Israel in circumstances where there is no doubt that his center-of-life is in Israel, even if his home is slightly outside its border, surely does not constitute annexation.

56. The test of "most ties" examines a person's substantive ties to each of the possible places of residency. The residence itself, though an important determinant of a person's center-of-life, is not a *sina quo non* component. Additional factors that indicate where the family maintains its center-of-life must be examined. Note: the Petitioners have never claimed that the residence is not an important component for the Respondent to consider when establishing where an applicant's center-of-life is, but the Petitioners, like case law, believed that the physical location of the home cannot be the single decisive factor in the complex finding on residency. The majority of a person's ties are not restricted simply to the location of his home, but determined by a number of elements. The remarks of Justice Sobel in AC (Jerusalem) 138/05 **Gavriel Sluk v. Committee for Eligibility under the Disengagement Plan Implementation Law** Tak-Magistrate 2006(3), 15698:

> The most prominent characteristic of the test of center-of-life is its flexibility and its adaptability to the specific set of facts under review in a manner that fulfils the purpose of the legal arrangement under consideration as closely as possible. This is no coincidence. The legislator 'deliberately chose this flexible term in order to allow the judges to give it content in accordance with the circumstances' (A.H. Shaki, *International and Religious Authority and the Choice of Law – on the Legal Competency and Guardianship Law*, **HaPraklit** 20 (1964) 259, 260). This content 'cannot be established in a mechanical, predetermined manner pursuant to some sort of fiction' (A.H. Shaki, *The Rules of Private International Law on the Law of Estate*, **Iyunei Mishpat** 3 (1973) 51, 56). The advantage of the center-of-life is in 'undoubtedly' being 'an objective, original and successful criteria which gives the court discretion to establish **a person's residency and pursuant thereto the law of his residency according to the majority of ties the individual has to one of the countries… according thereto the true center-of-life of the individual can be surmised and thus the law which is truly his personal law can be applied to said individual**. (M. Shawa, **Personal Law in Israel** (Vol 1, 4th expanded edition, 2001) pp. 66, 410. (emphasis added – A.L.)

57. The court does not ignore the Petitioners' overall ties to Israel. On the contrary, these ties are not under dispute (see §5, second paragraph of the opinion of Honorable Justice Levy). Yet, it was established that the Petitioners are not to be regarded as meeting the conditions for receiving status in Israel solely on the basis of the geographic location of their home – a few meters east of the municipal border of Jerusalem, which is an invisible line.

58. The case at hand illustrates the absurd that is reached by the majority opinion: on one hand, the father is recognized as a permanent resident of Israel because under the Entry into Israel Law, even if he resides outside the country, if the majority of his ties are to Israel, he remains a resident (his residency cannot by revoked under Section 11a of the Entry into Israel Regulations and the Sharansky Affidavit given in HCJ 2227/98 **HaMoked: Center for the Defence of the Individual v. Minister of the Interior**). Considering this fact, he is entitled to all the rights afforded to permanent residents of the country – all the rights except for the fundamental right to have the status of two of his children secured, two children who, for their part, live in the Jerusalem part of the village, in their brother's home. The father's Israeli status is recognized and has remained intact because of his ties to Jerusalem, whereas the status of his children, who live there is put to the narrow test of where their father sleeps at night. Let us be precise: the status of nine of the father's children has been recognized. With respect to at least seven, whose mother is also a Jerusalemite, the status was granted in accordance with the Respondent's policy of granting Israeli residency status to individuals both of whose parents are residents.[9] On this issue, see for example, section 3 of the Notice on Behalf of the Respondents given by the state on November 14, 2010, which indicates that the state's position applies only to children one of whose parents is a foreign national.[10]

59. The Honorable Court's exclusive reliance on the geographic location of the home and the denial of the Petitioners' rights based on a virtual municipal boundary constitutes a revocation of the test of "most ties" for establishing residency and its replacement with a central condition relating to the location of the residence. This is a condition which common law has hitherto avoided.

60. The opinion of President Beinisch provides insight on the common law as it has been until now:

> …[I]t seems almost self-evident that the connection of the Appellant's family to the village of Sur Bahir, within Jerusalem territory, is extremely close and in fact, they have had no substantial connection to the Area for many years, with the exception of the physical location of their home within the Sur Bahir extension. (§22 of the opinion of Honorable President Beinisch)

G. The possibility of a civil status vacuum for children of Israeli residents

> This situation, in which the children have no status either in the Area or in Israel, is improper… a reality in which a parent and child in the same family unit have different status may undermine the stability and balance which are so necessary for the proper development of a minor. (§22 [*sic*] of the opinion of Honorable President Beinisch)

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[9] The Petitioner is married to two women. He has seven children with his first wife who is an Israeli resident. He has four children with his second wife, who is a resident of the OPT. Two of these four children are the twin Petitioners. It should be noted that in the absence of a stay permit for the wife who is originally from the West Bank, she cannot travel into town in order to travel to the OPT and cannot cross checkpoints. She has therefore not visited the OPT for many years.

[10] "In Wadi Hummus… there are currently about 1300 residents, to whom this issue may naturally be relevant at present or in the future (for instance, if one of them should marry a woman resident of the Area etc.)". From paragraph 3 of the state's notice of November 14, 2010, in which the state explained, without providing references, why broad implications are possible, though none have occurred over the past 30 years and none occur today.

61. As far as the Petitioners are aware, the judgment introduces, for the first time, the possibility of a civil status vacuum - for minor children, the children of an Israeli resident, destined to remain without status anywhere in the world.

62. According to the majority opinion, the possibility that a child who was born and raised in Israel with his family will remain status-less is not limited to the case at bar. The clear and explicit rationale of the majority opinion is also applicable to cases of children both of whose parents are residents, such as the rest of the children in Wadi Hummus and in other areas, children who have thus far been granted status in this situation under the Respondent's policy.[11]

63. In her opinion, Honorable President Beinisch addressed the wrongful nature of this situation of lack of status:

> Moreover, a discrepancy in status leads to a discrepancy in the rights attached to that status in a manner that creates, within the same family unit, groups with less social rights than the rest of the family. This situation is also undesirable from the perspective of the benefit to the child. This is all the more relevant when it comes to a family in which most of the children do not have the same status as their parents and other children, very young in age, have no status at all – as in our matter. (§20 of the opinion of Honorable President Beinisch)

64. President Beinisch held that the children's status as residents of Israel must be secured and pointed to the aberration in allowing them to remain without status:

> This situation, in which the children have no status either in the Area or in Israel, is improper, both internally and externally. Internally – it undermines the stability of the family unit, while creating an internal distinction among family members. Externally – it undermines the ability of the family unit to carry on a proper routine in Sur Bahir, studying, visiting friends and family etc. In the absence of permanent status, the Appellants are vulnerable to more frequent monitoring on the part of security forces and the police, and their daily lives depend on permit renewal processes vis-à-vis civil administration officials. All this when, unlike the rest of their siblings, Appellants 2 and 3 have no social rights and are not entitled to medical treatment in Israel. This reality of life is difficult for the minors, Appellants 2 and 3, and points to the importance of providing protection for the whole family unit, in accordance with the purpose of Regulation 12 and based on the principle of the best interest of the child. (§22 of the opinion of Honorable President Beinisch)

65. The majority thought otherwise. They held that it is impossible to grant the children status in Israel, based on a literal interpretation of the Entry into Israel Law and Regulation 12 (see, §2 of the judgment of Honorable Justice Levy).

66. At the same time, the justices serving on the panel were unanimous with regards to the family's center-of-life being in Israel. As such, they did not find that the children were residents of the OPT. Indeed, there is no logic to arranging for the children's status in the Palestinian Authority. They lack any ties to the OPT, from which they are separated by the wall.

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[11] See *supra* note 10.

67. Considering the children residents of the OPT is tantamount to claiming that their center-of-life is measured solely by their father's house. How is it possible for a person to be a resident of a place he cannot enter? President Beinisch addressed this:

> In this context, I have already noted, as detailed above, that even if their home is located in the part of Sur Bahir that is located outside the municipal borders of Jerusalem, indeed, there is no dispute that most of the children's ties are to the village of Sur Bahir, which is inside Israel. As noted, this is where Appellants 2 and 3 study, maintain the center of their family and social lives and receive medical services, welfare services etc. We also note that there is a physical divide between the Appellants' home and the Area – the security fence, which makes their travel to the Area difficult and prevents any real connection to this area. In this state of affairs, I believe that based on the test of "most ties", Appellants 2 and 3 have no real ties to the Area (compare **Srur**, §25). Therefore, in my view, they are not to be considered residents of the Area for purposes of the Temporary Order, and as such, its provisions do not impede the application of the provisions contained in Regulation 12 in any way. (§23 of the opinion of Honorable President Beinisch).

See acceptance of this position also in the opinion of Justice Levy who led the majority opinion, *ibid.*, §2, which references the President's remarks in this context.

68. Thus, the majority opinion allows for a status vacuum for children of Israeli residents. The situation of many children, and as described below, in broader circumstances than those of the Petitioners at bar [*sic*].

H. The judgment has broad ramifications of a different nature than those mentioned therein

H.1. <u>The broad ramifications of the judgment</u>

69. In examining, the need for a further hearing "it is not the personal interest of the litigant who claims he has been wronged that is decisive, but the rule which may affect the interests of many others."[12]

70. The majority judgment has broad, severe and immediate ramifications, but these are not the ramifications which caused concern for the court. While the Petitioners' case is characterized by a unique combination of circumstances, the judgment introduces a new interpretation and a new manner of applying the Entry into Israel Law and Regulation 12 of the Entry into Israel Regulations, which have broad applicability.

71. The new rule established in the majority opinion has a broad impact on people seeking status in general and on children who naturally come under Regulation 12 in particular. The judgment creates a new, rigid, rule which sings the praise of literal interpretation. This rule turns both existing common law and common practice on their head; law and practice according to which Israeli status is granted pursuant to the Entry into Israel Law to people who lawfully conduct their center-of-life in the country so that the status reflects reality.

72. The new rule will be applied to a disempowered population of children who have no independent ability to insist on their rights. The new and severe rule produced by the court will also harm

[12] FH 4/57 **Berliner Blau v. Minister of Defense**, IsrSC 12, 25, 27.

parents who are locals, residents of Israel. The rule the judgment sets in place will apply to a larger public, residents and citizens of Israel, who might seek to clarify issues relating to their own or their loved ones' residency, and whose issues would be interpreted within the confines of a narrow linguistic range. The established and accepted test of most ties and the purposive interpretation will no longer be of assistance to them. At the very least, these tests have been significantly altered.

73. According to the rationale of the majority judgment, which has been made common law, individuals whose home is outside Israel do not come under the Entry into Israel Law. The result is that where until now various visas to remain and work in Israel had been given to migrant workers and people seeking status who live in the settlements, without anyone arguing that they may not receive a visa for residency in Israel because they do not reside therein at all; following the judgment, this will no longer be possible. Note: the Law Extending the Validity of the Emergency Regulations (Judea and Samaria and Gaza Strip – Adjudication of Offenses and Legal Aid) 5727-1967, Sec 6b(a) applies to Israeli citizens, not foreign nationals. So, for example, under the new rule, a caregiver who arrives in Israel under the Entry into Israel Law for the purpose of caring for an elderly woman living in the Kiryat Arba settlement would not be able to receive such visa, as she would be living and working outside Israeli territory. This situation is likely to harm Israel's elderly citizens living in Ariel or Maaleh Edomim, who would not be able to receive care in their time of need.

74. Thus far, children who were born to parents who are residents of Israel and who live in the Wadi Hummus neighborhood, have been granted permanent residency, like their parents. The rationale for the rule produced in the judgment may lead to a situation in which children both of whose parents are residents, and who have thus far been given status, would remain without status and with no way of obtaining alternative status. It should be noted that children both of whose parents are residents cannot acquire status in the OPT or in another country and therefore would also be unable to receive permits. The meaning of the majority opinion is the creation of a new stratum of status-less children who lead their lives in Israel but are formally non-existent. This situation is surely not in the state's interest.

H.2. <u>Lack of broad implications emanating from securing the status of the petitioning children</u>

75. One of the central reasons for the rejection of the appeal and the refusal of the children's application despite the "obvious" and even "natural" tendency to "rule in favor" of the Petitioners was concern about broad ramifications (§5 of the opinion of Honorable Justice (ret.) Levy, first paragraph of the opinion of Honorable Justice A. Grunis).

76. The concern regarding the possible broad ramifications of giving the children status which was expressed by the justices who held the majority opinion are based on vague arguments that were never proven. See for example State's Notice dated November 14, 2010, which explicitly states that there were no additional cases of this kind. As such, the judgment contains a substantial error which also justifies a further hearing (see HCJFH 7220/02 **Segal v. National Labor Court** (March 3, 2003).

77. The absence of broad ramifications as a result of comparing the status of the Petitioners, in the specific circumstances, to the status of their father, can be discerned from the response given by the state itself to the court. According to this response, in the **thirty years**, since the neighborhood was established in the 1980s, the court has not been presented with a single case other than the cases of the 'Attoun and Hamada families (the Hamada case, which concerned a

Jordanian spouse became moot after the family return to live in Jerusalem[13]). See, for example, transcript of hearing from June 29, 2009 and February 27, 2011 and State's Notice dated November 14, 2010. Moreover, it appears that the arrangements relating to shifting the separation wall and the recognition of residency by the NII have not led to any broad ramifications over the years. They constituted a purposive and correct consideration of a unique situation which was created in the special historical circumstances that converged when the wall was built. According to the judgment, this consideration that was given to the circumstances and the fabric of life stops when it comes to natural population growth. They may be considered residents for the purpose of social laws, but not for the purpose of fulfilling the constitutional right to family life, a life which is not confined to inside the home, and which clearly cannot be fulfilled in a manner allowing a united, healthy family unit solely on the basis of a military permit.

78. Arranging for the children's status also has no relevance to cases of OPT residents who live or work in the area referred to as the "Seam Zone". The "Seam Zone" is a different case, and often the opposite of the matter at hand, since the "Seam Zone" is home to residents of the OPT **whose center-of-life is in the OPT** and the wall separated them from their lives there. The permit they are given is designed to allow their presence in the Seam Zone for various needs, despite the fact that their center-of-life is **in the OPT**. Conversely, there are Israeli citizens and residents who remained outside Israel after the wall was built. As far as the Petitioners are aware, there are no cases in which the wall was shifted east in order to allow Israeli permanent residents whose center-of-life is obviously in Jerusalem to remain on its western side. Honorable President Beinisch noted this in her judgment:

> I shall note that I have considered the Respondents' arguments regarding the potential broad implications granting the Appellants status might have in their view. However, I have found that they do not change the conclusion I have reached. This, partly because as detailed above, the circumstances at issue, the circumstances of Appellants 2 and 3 are unique. They were born in Israel, to a father who is a permanent resident. The reality of their life in Sur Bahir and in Wadi Hummus is complex and unique and is also characterized by the fact that their remaining brothers and sisters have permanent residency status, while they lack any status. In this state of affairs, it seems that the Respondents have given too much weight to the argument regarding the potential broad ramifications a decision might have instead of making a focused and individual decision in the unique circumstances of the case. (Ibid., §26, see also §28 of the opinion of the President)

[13] The state mentions the petitioning father's two other children as having married residents of the OPT, but living in a different neighborhood of Sur Bahir rather than in Wadi Hummus. This detail is therefore irrelevant. An inquiry held by HaMoked: Center for the Defence of the Individual has revealed that most of the families that live in the Wadi Hummus extension are ones in which both spouses are residents of Israel. Wadi Hummus residents were unaware of any family other than the 'Attoun family in which there is a mixed marriage. The Respondent's response indicates that he too does not know of another such family. Note: the Petitioners are not claiming that it is impossible that a resident of Wadi Hummus would enter into a mixed marriage or that there is no other family, of which the Petitioners and the Respondent currently have no knowledge and which is in a similar situation. However, it is clear that even if such a case were to arise, it is not a phenomenon with wide reaching implications. It is clear that owing to the unique circumstances of the place, other children from Wadi Hummus, should there be such children, must also be granted status. This notwithstanding, the fact that there are no other cases before this Honorable Court, the Court for Administrative Affairs, the Foreign Nationals' Appeal Committee and the Respondent, does indicate that this there is no floodgate that is about to open and threaten the Respondent. The argument about broad ramifications is entirely theoretical when there is no figure on similar cases in 30 years.

79. **As we can see: the case addressed in the judgment includes an entirely unique set of circumstances:** a residence located outside the municipal boundaries, on the west side of the wall, with no connection to the West Bank and no possibility of having such a connection, and parentage by one parent who is registered as a resident and another who is not. As far as the Petitioners know, almost all Wadi Hummus residents are not mixed couples, but rather residents who have married residents and therefore a situation similar to that of the Petitioners does not arise. This position has been confirmed by the state, when it reported that there were no other cases of this type. This response was given after the issue was examined by the Respondent in response to the Honorable Court's request for further information. Even if in future one of the residents of Wadi Hummus marries a foreign national, indeed, the existence of a few isolated cases that share the aforesaid unique circumstances would not produce a terrifying consequence.

80. The concern regarding broad ramifications permeates the majority judgment. To base a judgment on concerns regarding broad ramifications is not just incomprehensible, but also, mostly, unjustified. Considering the reasoning provided in the majority opinion, there is serious doubt that its position would stand if it were not for this unnecessary concern (see, opinion of Honorable Justice Grunis). Therefore, there is an error on this issue which also necessitates a further hearing.

I. The results of the new rule: severe harm to children

81. The refusal to grant status to a child who lives in Israel with his resident parent signifies interference with his development and with the family unit that goes against the child's interest. The case at bar illustrates this, when the Respondent's refusal to register two of the 11 children of the 'Attoun family means imprisoning them in just a few dunams between the separation wall and the virtual municipal border. Alternatively, they may continue to live in Jerusalem as illegal aliens, or at most, with permits which confer no rights. They have been living in Jerusalem for over a year, but their presence in the city is effectively illegal. Their presence in the OPT is also illegal as they have no status there either. There is no dispute that this situation is not in a child's best interest.

82. A child who lives in a place where he has no status suffers harm in all aspects of life: trouble enrolling in school, travel subject to restrictions and delays, a prohibition on driving (when he becomes an adult), a prohibition on working, even now, when their friends have found various youth jobs. They will have no social rights, mostly no right to [national] medical insurance – a right not afforded to individuals who only have military permits. The Petitioners at bar have had to leave their parents' home as without documents, they had difficulty getting from the Wadi Hummus neighborhood to their school in the village. Now that they live in their siblings' home in Sur Bahir, they are able to go to school, constantly fearing detention and arrest by the police who often arrive at the school. The father managed to enroll them in the school where they now attend grade 10 only after he begged and promised the administration that the children were in the midst of legal proceedings to obtain status. The father has already been notified that without status, the children would not be able to enroll for school next year, a very important year, before the matriculation exams. It should be noted that in order to register for the matriculation exams and university entry exams, one must have an ID number. It is impossible to ignore the attendant mental issues. The petitioning children suffer discrimination compared to their remaining nine siblings whom the Respondent did register as permanent residents in the population registry. This baseless discrimination also contributes to tension and instability inside the family, two important components in children's proper development.

83. Note: with respect to the proposition to resolve the issue with a military permit, as a military permit itself is granted only to persons registered in the population registry of the OPT - the

Petitioners, as stated, are not registered in the Palestinian registry and are not interested in registering therein. It therefore appears that it will not be possible to grant them a permit. In any event, such a permit is normally granted to adults for limited periods of time and in order to fulfill specific needs rather than to children who were born in Israel and have lived their entire lives in the country and it cannot rectify the severe harm that stems from the gap between the status of the children and that of the rest of the family as well as the harm that stems from leaving them without status, or at most, with status akin to a tourist visa. Children most of whose ties are to Israel are not tourists:

> I have examined the Respondents' proposal to grant the Appellants stay permits for Israel as a substitute for status in the country, but I have not found that this proposition provides an adequate response to their predicament. In addition, I have not found substance in the Respondents' argument that granting status to Appellants 2 and 3 provides indirect support for the offense of bigamy, as the decision to grant status relies on Regulation 12 and its purposes rather than on the marital relationship between the Appellant and his wife who is a resident of the Area. (§26 of the opinion of President Beinisch).

84. We have observed that the implications of the majority judgment exceed the individual case. According to the majority opinion, many children will remain without status or rights. This would be the case, for example, of all children living in Wadi Hummus, including those whose two parents are residents – children who have thus far received status. A new category of children, children without status anywhere in the world, will become legally accepted.

85. The harm caused to the children and the family unit is severe and it is certain. It encompasses all spheres of life. It prevents children from leading a stable life with their families, as any person would. This harm is caused to them in a place to which they have always had most of their ties. In the case of the Petitioners at bar, it involves discrimination of the brothers as compared to their other nine siblings, discrimination which is severely humiliating.

J. The judgment is directed toward creating a common law norm

86. The minority opinion posited that existing common law with respect to the purpose of the Entry into Israel Law and Regulation 12 instructs that the children should be granted status without this having ramifications that exceed existing common law. The majority opinion explicitly states that a ruling on this issue will have broad ramifications, even if there is no other case in this specific context.

87. The opinion of Justice (retired) Levy emphasizes that a ruling on the case **necessitates interpreting the Entry into Israel Law and Regulation 12 which was issued pursuant thereto** and he undertakes to perform this interpretation (§2 of the opinion of Honorable Justice Levy). In his opinion, Justice Grunis explicitly holds that the judgment has a general aspect.

88. In so ruling, the Honorable Court reveals its awareness and intent that its ruling shall constitute new common law, rather than a decision that relates specifically to the case brought by the Petitioners. The court's intent to create common law is a supporting consideration for holding a further hearing (see and compare AFH 4804/02 **Ravizada v. Goldman** (August 19, 2002)).

K. Summary

89. **Literal rather than purposive interpretation -** The judgment abandons the common law on purposive interpretation and reduces Regulation 12 to the language of the title of the Entry into Israel Law, see and compare §§20-23 of the minority opinion of Honorable President Beinisch.

90. **Erroneous linguistic interpretation which results in severe common law** – making a ruling by way of linguistic interpretation which follows the title of the Entry into Israel Law is particularly severe as the Entry into Israel Law does not apply only to individuals residing in Israel, but rather to different types of people who maintain a center-of-life in Israel temporarily, for a long period of time or permanently. It also applies to residents of East Jerusalem, such as the petitioning father, even if they do not live in Israel but maintain close ties thereto. In our case, the court held that most of the family's ties are to Israel. To date, issues pertaining to granting status under the Entry into Israel Law have been examined according to the test of "most ties".

91. **New interpretation of the question of granting status in Israel** – as follows from the previous paragraph, the judgment also creates new and severe common law with respect to the question of who is deemed a resident. The common law with respect to most ties is abandoned and replaced with a narrow *sine qua non* condition relating to the physical location of the home. See for example, §18, §19 of the minority opinion of Honorable President Beinisch.

92. **New, narrow common law which does not allow for exceptions** – the judgment creates a new common law rule in abandoning the purposive interpretation and opting for a narrow interpretation of Regulation 12 and the question of who is deemed a resident.

93. **The common law rule has broad implications** – the new rule will apply to many residents who seek status under the Entry into Israel Law. It will apply to parents, but mostly to children who seek to obtain status pursuant to Regulation 12, a regulation no longer perceived as intended to protect the child's best interest but rather interpreted in a rigid and literal manner which excludes any exceptions to the Entry into Israel Law. In contrast, the Respondent has presented absolutely no figures on other families which share the Petitioners' unique situation other than those residing in Wadi Hummus, nor has he provided figures suggesting that there are many such families in Wadi Hummus itself (given most of the neighborhood's residents have Israeli residency status). According to the Respondent, there are no other petitions on this issue, and certainly no legal actions that raise concern of broad implications. In any event, the majority opinion opted to rely on concern regarding **hypothetical** broad implications which are being used to deny **real** children status.

94. The judgment creates a **status vacuum**, leaving minor children with no status anywhere in the world. According to the new rule introduced by the Honorable Court, the children are residents of nowhere. Alternatively, against their will, against their parents' will and contrary to their best interest, the children are required to become residents of a place from which they are cut off by a wall, to which they have no ties and registration in which will classify them as security threats simply because they are registered there. See AAA 1621/08 **State of Israel v. Khatib** (Janaury 1, 2011).

95. **The difficulty is illustrated by the case of the Petitioners at bar** – Petitioners 2 and 3 were born in Israel, raised in the country and live there to this day. If the children conducted their life under house arrest, one might have claimed that they formally live in the West Bank. However, the children, the Petitioners, like most people who have done nothing wrong, do not live under house arrest. They leave their home to go to Jerusalem, where they maintain their center-of-life. Should they attempt to leave their home to go to the West Bank, a place they do not know and to which they have not ties, they will hit a wall, with no way around it.

L. Conclusion

96. A famous quote attributed to Janusz Korczak is: “Children are future people. That is, they will be, and now, they seemingly are not. But here we are, we exist: we live, we feel, we suffer.”

97. The judgment relates to children, their lives, their feelings, their existence, their suffering. It is not just the Petitioners’ children, but many others who might suffer as a result of the new common law rule. At the very least, and in the circumstances in which the rule was introduced, the Petitioners’ children, and other children whose voices have not been heard, must be given a chance to make their voices heard again and receive an opportunity for a further hearing in their matter.

98. The judgment which is the subject of this petition is unanimous with respect to the fact that the children’s center-of-life is in Jerusalem (§17 of the opinion of President Beinisch, §1 of the opinion of Honorable Justice Levy). Even according to the majority opinion, the children are not residents of the Occupied Territories – they do not lead their lives there (§§4 and 5 of the lead opinion of Honorable Justice Levy). Therefore, the conclusion in the majority opinion that the children cannot receive status in Israel despite the fact that it is where they maintain their center-of-life and in fact cannot lead their lives anywhere else, constitutes the adoption of a new, literal, narrow and restrictive interpretation which alters the substantive tests thus far applied with respect to Regulation 12. Such tests were carried out in **Carlo** and in **‘Aweisat** and they focused on a substantive and complex test of ties in whose epicenter lay the constitutional and human right to family life and the child’s best interest. The new rule stipulated in the majority judgment reduces the decision on granting status in Israel to a technical, rigid test that lacks substance. The majority opinion allows for the first time for children to remain in a status vacuum, devoid of legal status.

99. In light of all the above, the Honorable Court is requested to instruct as sought and hold a further hearing before an extended panel.

Today: December 7, 2011

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