At the Jerusalem District Court
Sitting as a Court for Administrative Affairs

In the matter of:

1. **_____ Salem, ID No. _____**
2. **Dr. _____ Salem, ID No. _____**
3. **____ Salem, ID No. ____ (born on June 2, 1991**
4. **____ Salem, ID No. ____ (born on January 3, 1993)**
5. **____ Salem, ID No. ____ (born on August 14, 1994)**
6. **____ Salem, ID No. ____ (born on February 9, 1999)**
7. **____ Salem, ID No. ____ (born on August 27, 2002)**
8. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (RA) 580163517**

all represented by counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.,
27 Shmuel Hanagid Street, Jerusalem 94269
Tel: 02-6222808; Fax: 03-5214947

The Petitioners

v.

State of Israel: Minister of Interior

all represented by counsel from the Jerusalem District Attorney's Office (Civil)
7 Mahal Street, Ma'a lot Daphna, P.O.Box 49333 Jerusalem 91493
Tel: 02-5419555; Fax: 02-5419582

The Respondent

Administrative Petition

The honorable court is requested to order the respondent to approve petitioners' family unification application in Israel, in the framework of the graduated procedure for family unification, so that petitioner 2 would be granted a stay permit in Israel.

The petition

1. Petitioner 1 (hereinafter: **petitioner 1**), an Israeli resident, and petitioner 2 (hereinafter: **petitioner 2**), originally a resident of the Occupied Palestinian Territories (OPT), married and established their home in East Jerusalem, where they raise their five children.

2. In 2009, the spouses submitted a family unification application and since then, **for five years**, they are lost, like in a labyrinth, in respondent's corridors – thrown back and forth between the respondent and the appellate committee.

3. The concern which is used by the respondent as the reason for his denial of the application, is his argument that petitioner 2 is in a conflict of interests situation, in view of his employment with the Palestinian Water Authority. The petitioners explained time and time again that petitioner 2's work had no political nature, and that it only concerned the technical aspects of the installation of water systems. It was also argued that the balance between respondent's unfounded concern of conflict of interests and the violation of the constitutional rights of the family members, clearly indicated that respondent's position was unreasonable, especially in view of the fact that due to the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the **Temporary Order Law**), the approval of the application would lead, at the utmost, to the grant of conditional and renewable military stay permits to the father of the family, without any prospect of receiving status. The respondent on his part sticks to his opinion, despite the fact that both the Israel Security Service (ISA) and Israel Police do not object to petitioner 2's stay in Israel. On the other hand, notwithstanding respondent's objection, no action has been taken by him to expedite the handling of petitioner 2's matter, in whose case, as will described below, an interim order has been pending for years which enables him to stay in Israel.

4. Two appeals were submitted in petitioners' case due to failure to respond in which a decision on the merits was also requested. The first appeal concerned a failure to make a decision in the application and a decision in the application on its merits was requested. Following said appeal the case was remanded to the respondent, who notified that he was considering a denial of the application for indirect security reasons and enabled the petitioners to argue against said intention. The petitioners acted accordingly but again no decision was made for a protracted period of time. Consequently, a second appeal had to be submitted which concerned the failure to respond to the argument that had been submitted as well as the mere intention to deny the application. The appeal also included an argument concerning petitioner 2's work. After an unbearable procrastination on behalf of the respondent which was encouraged by the chair of the appellate committee, the latter also dragged his feet and eventually decided not to make a decision in the appeal.

5. It seems that the chair of the committee was of the opinion that the five years which passed were not enough and that the petitioners should return for yet another excursion with the respondent who "should make a decision in the application" – despite the fact that the respondent has already made a decision in the application and despite the fact that according to respondent's procedure 5.2.0015, Procedure on Security Agencies Comments in family unification applications (hereinafter: **Procedure on Security Agencies Comments**), once respondent's decision was made under these circumstances, the power to approve or change it vested with the appellate committee.

6. Notwithstanding the above and despite the long time which passed from the submission of the application and the appeal and despite the fact that all arguments have already been raised and repeated *ad nauseam* – the chair of the committee refused to make a decision therein and remanded the case for respondent's consideration, contrary to the procedure and without setting a deadline by which a decision should be given. He made only a meaningless statement that under the unfortunate circumstances known to us the respondent should make a decision in the "application" within reasonable time. After years of procrastination in making a decision, the chair of the committee summarized his decision as follows:

> I am not trying to accuse anyone, as the entire responsibility is solely that of the committee but I regret the fact that the appellants caused the committee to fail by their demand that the appeal be given volume and force which it did not originally have (paragraph 5 of the decision of the chair of the committee dated May 1, 2014).

7. Hence, according to the chair of the appellate committee who acts as respondent's arm, petitioners' matter has no "volume and force", it has no value whatsoever and it may be dusregarded for years under the explanation that the appellants cause the respondent to fail by presenting a peculiar demand that a decision in their matter be made.

8. The petition concerns the constitutional right of the petitioners to family life and the principle of the child best interest – which are crushed by the respondent, who treats petitioners' life in a condescending and abusive manner, and whose decision is extremely unreasonable. As a result of the conduct of respondent's different arms, the fundamental rights of the petitioners and their children are injured on a daily basis.

B. The Parties to the Petition

9. Petitioner 1, Mrs. _____ Salem, is a resident of East Jerusalem and since 1989 has been married to petitioner 2, Dr. _____ Salem, originally a resident of Tulkarm.

10. The spouses have five children, petitioners 3-7: _____ - born in 1991, _____ - born in 1993, _____ - born in 1994, _____ - born in 1999, _____ - born in 2002. The family established its home in Jerusalem. All children are registered in the Israeli Population Registry as permanent residents and the family members are recognized by the National Insurance Institute and are members of a health fund.

11. Petitioner 8 is a registered not-for-profit association the offices of which are located in East Jerusalem which has taken upon itself to assist victims of cruelty or deprivation by state authorities, including by protecting their rights before the authorities, either in its own name as a public petitioner or as counsel for persons whose rights have been violated.

12. **The respondent** is the body authorized by law to grant status in Israel and to approve family unification applications and also to respond and decide in the appeal which was submitted in petitioners' matter to a body known as the appellate committee. In fact it is not a committee at all, but rather a body the decision of which is made by the chairperson alone, "without additional committee members", as a single judge.

C. The Facts Concerning the Matter at Hand

The submission of the family unification application being the subject matter of the petition in the beginning of 2009

13. In February 2009[1] petitioner 1 submitted a preliminary family unification application in Israel with her spouse. On March 29, 2009, respondent's letter was received according to which the application was reviewed and it was found that petitioner 1 was allowed to submit an application for status in Israel for her husband. On June 3, 2009, petitioner 1 submitted the full family unification application

[1] After they were precluded from submitting applications in the past due to government resolution 1813 and the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003 and after their family unification application from 2005 was denied for indirect security reasons (in this matter AP 820/06 and AP 333/07 were conducted in the past).

together with all required documents, which is the application being the subject matter of this petition.

- Invitation to respondent's bureau for the submission of the application is attached as Exhibit **P/1**.

- A receipt and confirmation regarding the submission of the application is attached as Exhibit **P/2**.

14. On July 7, 2009, September 7, 2009, October 7, 2009 and November 4, 2009, the petitioners sent to the respondent reminders concerning their application.

- The reminders are attached as Exhibit **P/3**.

15. On November 23, 2009, respondent's letter was received in the offices of HaMoked: Center for the Defence of the Individual (HaMoked) scrawled by hand on the reminder letter which was sent to him on November 4, 2009, which requested to receive a power of attorney which has already been sent to the respondent and should have been placed in his file. On November 30, 2009, the petitioners sent to the respondent additional reminders together with a power of attorney.

- Respondent's request scrawled by hand on petitioners' letter is attached as Exhibit **P/4**.

- Petitioners' letter dated November 30, 2009 is attached as Exhibit **P/5**.

The First appeal - Appeal 4/10

16. On January 3, 2010, seven months after the application was submitted, while the respondent was still procrastinating, the petitioners filed an appeal against the fact that no response has been received for such a long time. The appeal was marked 4/10. On January 4, 2010, the chair of the committee notified that the respondent should respond to the appeal – the interim order (stay of expulsion proceedings) within 14 days, and the main order within 30 days, according to the appellate committee procedure number 1.5.0001 (hereinafter: the **appellate committee procedure**).

- The appeal along with the committee's decision scrawled on it is attached as Exhibit **P/6**.

17. On January 21, 2010, notice was sent to the appellate committee on petitioners' behalf concerning respondent's failure to provide a response in connection with the interim order. On January 24, 2010, an interim order was given in the appeal, according to which petitioner 2 should not be expelled – as will be described hereinafter, **said interim order remained in force until a decision in the appeal was made which was sent to the petitioners on May 4, 2014**, for the last four years and a half.

- The decision dated January 21, 2010 is attached as Exhibit **P/7**.

18. On January 25, 2010, the committee ordered the petitioners to respond to the request for extension of two months which was submitted by the respondent. The petitioners objected to said request but the honorable committee, nevertheless, approved an extension of 30 days.

- The request for extension is attached as Exhibit **P/8**.

- Petitioners' notice along with the committee's decision scrawled on it is attached as Exhibit **P/9**.

19. On June 14, 2010, six months after the appeal was submitted, an additional request for extension was submitted by the respondent. The petitioners objected and the honorable committee ordered the respondent to reply not later than July 1, 2010.

- The request for extension along with petitioners' objection and the committee's decision is attached and marked **P/10**.

20. On July 5, 2010, the respondent notified that a *curriculum vitae* form which is customarily filed in family unification applications was required. In its said notice the respondent also requested to delete the appeal. The chair of the committee ordered the petitioners to respond to said notice.

    - The notice of respondent's counsel along with the decision scrawled on it is attached as Exhibit **P/11**.

21. On July 6, 2010, the petitioners notified that in order to prevent any additional delays in the processing of the application and despite the fact that the *curriculum vitae* form had been submitted along with the application itself, it would be re-submitted. However, the petitioners clarified that respondent's request for an additional form after he had disregarded the application on its merits, could not constitute a reason for the deletion of the appeal, which had been submitted six months earlier. On July 7, 2010, the chair of the committee decided that the petitioners should submit the *curriculum vitae* form to respondent's bureau and that the appeal would remain pending for 45 days from the date on which the form would be submitted. She decided that the respondent should make a decision in the application until such date. In the absence of a decision in petitioners' application – the appeal would be accepted.

    - Petitioners' notice along with the committee's decision scrawled on it is attached as Exhibit **P/12**.

22. On July 22, 2010, the petitioners submitted the *curriculum vitae* form. On July 25, 2010, the chair of the appellate committee notified that the respondent should make a decision in petitioners' application not later than September 8, 2010.

    - Petitioners' notice along with the committee's decision scrawled on it is attached as Exhibit **P/13**.

23. The respondent failed to respond. On November 2, 2010, the petitioners sent a request for a decision in the appeal according to the decision of the chair of the committee.

    - Petitioners' request is attached as Exhibit **P/14**.

24. Only on February 7, 2011, following two additional requests which were submitted on behalf of the petitioners for a decision in the appeal and **a year and one month after its submission**, the respondent notified that he was considering to deny the family unification application based on "information indicating that the sponsored party had connections with Hamas activists, a fact which puts state security at risk, and no additional details may be provided for security reasons". Petitioner 2 was requested to submit written arguments concerning the accusations which were raised against him. Respondent's counsel requested to delete the appeal. The chair of the committee decided that the petitioners should respond to said notice within 14 days.

    - Respondent's notice along with the committee's decision scrawled on it is attached as Exhibit **P/15**.

25. On February 8, 2011, the petitioners clarified that they were unable to respond to respondent's vague paraphrase, and requested the chair of the committee to order the respondent to expand it and thereafter to enable the petitioners to submit their arguments in writing, leaving the appeal pending. On February 10, 2011, the chair of the committee decided that the respondent should notify whether the paraphrase could be expanded within 14 days.

- Petitioners' response along with the committee's decision scrawled on it is attached as Exhibit **P/16**.

26. Respondent's response, once again, was not timely submitted. On February 25, 2011 the petitioners requested the honorable chair of the committee to order the respondent to submit its response forthwith.

- Petitioners' response is attached as Exhibit **P/17**.

27. On March 8, 2011, respondent's counsel notified that a request for the expansion of the security paraphrase had been transferred to the security agencies. The chair of the committee notified petitioners' counsel of same.

- Respondent's notice along with the committee's notice scrawled on it is attached as Exhibit **P/18**.

28. On March 22, 2011, a somewhat expanded paraphrase was received from the respondent. The respondent notified that the petitioners should submit a written response to said paraphrase within 30 days. The honorable chair of the committee notified that the petitioners should respond to the request for the deletion of the appeal.

- Respondent's notice along with the decision of the committee scrawled on it is attached as Exhibit **P/19**.

29. On March 23, 2011 the petitioners notified that despite the meagerness of the paraphrase they would transfer their written arguments to the respondent within 30 days and requested that the interim order which prevented petitioner 2's expulsion would remain pending for a period which would end upon the expiration of 45 days from respondent's decision. The chair of the committee transferred said request for respondent's response within 14 days.

- Petitioners' notice along with the decision of the committee scrawled on it is attached as Exhibit **P/20**.

30. On April 7, 2011, in the absence of respondent's response, the appeal was deleted and **the interim order was left in force as requested – until the elapse of 45 days after respondent's decision**.

- The decision of the committee is attached as Exhibit **P/21**.

31. On April 20, 2011, the petitioners submitted to respondent's bureau their written arguments together with an affidavit as required.

The written arguments dated April 20, 2011 are attached as Exhibit **P/22**.

32. On June 14, 201, following petitioners' reminder letter, Ms. Liat Melamed from respondent's bureau sent notice that the documents were not received in their bureau.

- The letter dated May 25, 2011 is attached as Exhibit **P/23**.

- Respondent's letter dated June 14, 2011, is attached as Exhibit **P/24**.

33. On that very same day, June 14, 2011, the arguments were re-sent, with a registered mail receipt regarding the mailing of the document.

- The ancillary letter dated June 14, 2011, is attached as Exhibit **P/25**.

34. On July 6, 2011, an additional reminder letter was sent to the respondent. On July 11, 2011, Ms. Liat Melamed confirmed that the application was in process. On August 9, 2011, September 8, 2011, October 6, 2011 and November 24, 2011 reminder letters were sent to the respondent.

- The reminder letter dated June 6, 2011, and respondent's response dated July 11, 2011, is attached as Exhibit **P/26**.

- The reminder letters are attached as Exhibit **P/27**.

The second appeal, being the subject matter of the petition – appeal 73/12

35. After **two years and a half passed from the date on which the application had been submitted and eight months from the submission of petitioner 2's arguments** and no decision was made by the respondent, the second appeal in petitioners' matter was submitted on January 18, 2012. The appeal was submitted with respect to the absence of a decision in their matter as well as with respect to the application on its merits. In the appeal the petitioners referred, *inter alia*, to the argument concerning petitioner 2's employment with the Palestinian Water Authority, and explained that said argument had no merit in view of low ranking job of petitioner 2 as opposed to the severity of the impingement on the fundamental rights of petitioners' family members.

- Appeal No. 73/12 is attached as Exhibit **P/28.**

36. On January 19, 2012, the decision of the chair of the committee was given according to which the respondent should submit his response to the appeal within 30 days and his position concerning the interim order (stay of expulsion proceedings) within 14 days, according to the committee's procedure.

- The decision of the chair of the committee, scrawled by hand on the first page of the appeal is attached as Exhibit **P/29**.

37. In the absence of respondent's response to the request for interim order, the order was granted on February 5, 2012. Said interim order which prevents petitioner 2's expulsion has been in force, as aforesaid, from January 2010 (when it was given in the framework of the first appeal and when it was held that it would remain in force until the elapse of 45 days from respondent's decision *vis-a-vis* petitioners' arguments).

- The decision of the appellate committee dated February 5, 2012 concerning the interim order is attached as Exhibit **P/30**.

38. On February 27, 2012, in the absence of respondent's response and as no request for extension has been submitted either, the petitioners requested that the committee would order the respondent to make a decision in their application forthwith. The committee gave the respondent seven days to respond to said trivial request and added a proposal of its own, according to which: "should an extension be required, the respondent should act accordingly."

- Petitioners' request along with the decision of the committee scrawled on it is attached as Exhibit **P/31**.

39. On March 14, 2012, after the elapse of the date on which respondent's response was due following the extension given to him by the chair of the committee at his own initiative, the petitioners requested that the respondent be ordered to respond to the application forthwith. The chair of the committee decided that the respondent should respond immediately, however, thereafter, she added the following: "It should be noted that the appeal was submitted exactly two months ago." By making this comment the respondent was given to understand that his failure to respond, contrary to the

procedure and the decisions which were made, constitutes proper conduct, despite the fact that according to the procedure respondent's response was due within 30 days, namely half of said period, and despite the fact that the appeal at hand is the second appeal which derives from respondent's failure to respond, who refrains from making a decision in the application and in the argument against the intention to deny it, at this stage **for years**.

- Petitioners request dated March 14, 2012 along with the decision of the chair of the committee scrawled on it is attached as Exhibit **P/32**.

40. On March 15, 2012, the respondent agreed for the first time to submit a request for extension. The respondent requested an extension for the submission of his response to the appeal – which was submitted after a delay of eight months in giving a response, a delay which was added to previous long delays – after a period twice as long as the period within which he should have been responded according to the procedure, by an additional doubled period. Hence, in their response dated March 19, 2012, the petitioners notified that they objected to the request for extension.

- Respondent's request for extension dated March 15, 2012 along with petitioners' response thereto is attached as Exhibit **P/33**.

41. At the request of the chair of the committee dated March 20, 2012, the petitioners clarified on March 21, 2012, that a family unification application submitted by them in 2005 was denied for indirect security reasons. The petitioners clarified that the current appeal concerned the application which was submitted in 2009, a long time after the previous information. Thereafter, on March 25, 2012, a decision was given by the chair of the committee according to which the respondent should explain within seven days why no response was given.

- The request of the chair of the committee for clarification, the clarification and the decision which were scrawled on respondent's request for extension are attached as Exhibit **P/34**.

42. On August 21, 2012, the respondent submitted a request for the deletion of the appeal in view of petitioner 2's invitation for a hearing, which was attached to his request. The chair of the committee allowed the petitioners to respond to said notice.

- Respondent's request for the deletion of the appeal and the hearing invitation are attached as Exhibit **P/35**.

43. On September 5, 2012, the petitioners gave notice of their objection for the deletion of the appeal. The petitioners reminded the very long delay which occurred on respondent's behalf, and the requested remedy in the petition, namely, the approval of the application. Therefore, the petitioners requested that the appeal would remain pending and that the committee would order the respondent to make a decision in the application not later than within 30 days after the date of the hearing. On September 6, 2012, the decision of the chair of the committee was given, according to which the appeal would remain pending until respondent's decision, which would be given within 60 days from the date of the hearing.

- Petitioners' response dated September 5, 2012 and the decision of the chair of the committee are attached as Exhibit **P/36**.

44. The hearing was held on October 18, 2012. After petitioners requests that a decision be made in the application and that the protocol of the hearing be given to them, respondent's letter dated July 3, 2013 was sent (nine months after the date of the hearing), according to which the application was transferred to the competent authorities for the examination of a possible conflict of interest. It was

notified that only upon the return of the file the protocol of the hearing would be transferred to the petitioners.

- One of petitioners' requests dated February 20, 2013 and respondent's letter dated July 3, 2013 are attached as Exhibit **P/37**.

45. Only on July 29, 2013, seven and a half months after the date prescribed by the appellate committee for respondent's decision in the application, the respondent submitted another request for the deletion of the appeal, due to the fact that a decision in the application was made by him. A letter sent by Ms. Drix from respondent's headquarters dated July 21, 2013, which was attached to respondent's request, informed that **the application was denied due to conflict of interest arising from petitioner 2's employment with the Palestinian Water Authority of the Palestinian Authority**. The respondent also noted that the security agencies did no longer object the application.

- Respondent's request dated July 29, 2013, for the deletion of the appeal and Ms. Drix' letter dated July 21, 2013, are attached as **Exhibit P/38**.

46. On August 11, 2013, the petitioners requested an extension for submitting their response to respondent's position, *inter alia*, due to the need to clarify with petitioner 2 the arguments made by the respondent in his decision as well as a result of a heavy work load and the summer vacation. After an incomprehensible delay by the respondent and numerous extensions which were given to him throughout the years, the chair of the committee was reluctant to approve petitioners' request, who submitted a request for extension for the first time. The chair of the committee explained that she did not see any matter which required a thorough investigation, and that an appeal should be filed against respondent's decision, which she did not intend to hear in the context of the current appeal. The chair of the committee allowed the undersigned to explain within 10 days why the appeal should not be deleted.

- Petitioners' request for extension dated August 11, 2013 and the decision of the chair of the committee are attached as Exhibit **P/39**.

47. On August 20, 2013, the petitioners submitted their response to the decision of the chair of the appellate committee, in which they protested against the favoritism expressed by the chair of the committee who granted the respondent generous extensions which encouraged incomprehensible delays on his behalf, as opposed to the denial of a single request for extension which was submitted in the summer vacation when the children of the undersigned were on vacation. The petitioners explained that the clarification on their part was required, *inter alia*, for the purpose of receiving the protocol of the hearing on which respondent's decision was based, which they have repeatedly requested from the respondent to no avail. The petitioners explained, inter alia, that there was no pertinent reason to push them into another foot-dragging ordeal in respondent's corridors while their arguments concerning the denial have already been raised long ago, were included in the appeal and were only limited in respondent's recent notice which clarified that there was no longer a security objection (which existed due to indirect reasons) for petitioner 2's stay in Israel. On August 21, 2013, the petitioners were given the requested extension.

- Petitioners response dated August 20, 2013 along with the decision of the committee on it are attached as Exhibit **P/40**.

48. On October 4, 2013, the petitioners submitted their response in which they reiterated their request which was raised by them throughout the entire year, to receive the protocol of the hearing which was held for petitioner 2. After they reminded respondent's delays the petitioners noted that their family unification application was submitted almost five years ago and that after respondent's notice

concerning conflict of interest the time has come to make a decision in the appeal with no further delay. The petitioners argued that respondent's desire to lock the petitioners in endless rounds of proceedings did not reconcile with his argument concerning a security or preclusion for the approval of the application on the grounds of conflict of interests. The petitioners referred to the difficulty of respondent's vague arguments concerning conflict of interests. This issue will be elaborated below. The petitioners requested the committee to make a decision in the appeal. The committee allowed the respondent to respond to its decision *[sic]* within 21 days should it he wish to do so.

- Petitioners response along with the decision of the committee on it are attached as Exhibit **P/41**.

49. The respondent did not wish to respond to petitioners response and therefore and according to the committee's procedure, the chair of the committee should have made a decision in the appeal by December 6, 2013 – within two months from the submission of the last response in the file. However, like the respondent in his arm as the Population Administration office and like the respondent in his arm as the legal advisor's office, the chair of the appellate committee also chose to drag his feet, a conduct which identified with the Ministry, while **about seven months** after the date on which the last response had been submitted in the file, a term twice as long as the term set in the procedure, no decision has yet been made by the chair of the committee in the appeal.

50. Hence, on April 7, 2014, the petitioners requested that a decision be made by the committee in the appeal. The chair of the committee, Zvi Gal apologized but nevertheless did not write if and when he intends to make a decision in the appeal.

- Petitioners request and the decision of the committee are attached as Exhibit **P/42**.

The decision in appeal 73/12

51. A month later and seven months after the date on which the last response in the appeal was submitted, in a decision dated May 1, 2014 which was served on the petitioners on May 4, 2014, the chair of the committee deleted the appeal without having discussed it on its merits. The chair of the committee decided to remand the case to the respondent, who only now, after many years, was willing to make a decision in the family unification application.

- The decision of the chair of the committee dated May 1, 2014 which was served on the petitioners on May 4, 2014 is attached as Exhibit **P/42**.

52. The chair of the committee notified that the mere lingering of the proceeding before him "is to a large extent the committee's fault". However, to his regret "there were parties who "assisted" the failure. These parties, according to the chair of the committee were the petitioners and the respondent. The chair of the committee states that the committee should have deleted the appeal "in September 2012! about a year and eight months ago and it "slipped" under the radar", before this committee after the petitioners have apparently found the arrangement of the temporary relief to be a permanent arrangement." (paragraph 1 of the decision). However, the appeal remained pending according to an explicit decision of the chair of the committee dated September 5, 2012 (which was attached as Exhibit P/36 above), which was given following petitioners' request and in view of the very long delays in the handling of the appeal and the failure to receive the relief requested therein, namely, the approval of the application. In said decision it was held that the appeal would remain pending until respondent's decision, which would be given within 60 days from the date of the hearing. It is not a case which "slipped" "under the radar" as presented by the chair of the committee, but rather an educated, formal decision which was given after the positions of the parties were heard.

53. And the chair of the committee adds as follows:

> **It is true, the appellants objected (and I assume that they still object) to the deletion of the appeal. So what? The proper procedure is – firstly respondent's decision and thereafter an appeal before the committee. The respondent notified in August 2012 that requested (*sic* – A.L.) to conduct a hearing for the appellant before a decision in their matter is made, in September 2012. The respondent added further – "<u>under these circumstances the need to make a decision became redundant</u>". What does this mean? In plain Hebrew, respondent's decision in the application has not yet been rendered, how will the decision of the appellate committee be made in a matter which has not yet "come into the world", in a matter with respect of which no decision has been made? The answer is clear to all and particularly to the appellants…**" (Excerpt from paragraph 4 of the decision. Emphasis appears in the original – A.L.).

The words of the chair of the appellate committee are offensive both in their style and content. As to the style the words speak for themselves. As to the contents – it is a clear mistake of the honorable chair of the committee. It is obvious that despite the long time which passed the chair of the committee did not deign to read the file before he gave his decision. Had he done so he would have discovered that **respondent's decision has already been given on July 29, 2013**. Hence, contrary to the words of the chair of the appellate committee in his decision, he was not requested to give a decision *vis-à-vis* a decision which has not yet been given, but rather *vis-à-vis* a decision which had been given and which according to the procedure, should be heard by the appellate committee, and which all arguments in connection therewith have already been raised.

54. In his decision the chair of the committee explains that the appeal was captioned as an appeal due to failure to respond and complains that the expectations of him were exaggerated:

> **In the absence of response – what is expected of the committee a hearing in the absence of response. The only thing which may be expected of the committee is that it would ascertain that an interview/hearing be held for the appellants** (paragraph 4 of the decision).

The chair of the committee decides to disregard the remedies which were requested in the appeal, including a decision in the application on its merits, so that the family unification application be approved – a remedy which was not referred to – neither approved nor denied. The chair of the committee decided to disregard the fact that the decision of the committee stated, in this very same appeal, that in the absence of response on behalf of the respondent the appeal would be decided on its merits (decision dated July 7, 2010 Exhibit P/12 above). The chair of the committee disregarded the provisions of the Procedure on Security Agencies Comments, according to which after a decision is made in an argument against an intention to deny a family unification application, the request will be heard by the appellate committee and will not be remanded to the respondent. The decision of the chair of the committee runs contrary to the above provision. The chair of the committee disregarded his own course of action in the past to resolve applications on their merits under such circumstances, and particularly when extreme delays were involved. The chair of the committee acted in this manner, for instance, in appeal No. 127/11 in the **Sawalhi** case.

A decision dated October 10, 2011, in appeal 127/11 in the **Sawalhi** case indicates that there was a willingness to make a decision in the appeal on its merits even when no decision was made by the respondent.

55. Despite the incomprehensible delay on behalf of the respondent in making a decision in petitioners' application, contrary to the law, with the encouragement and participation of the chair of the appellate committee, the chair of the committee holds that the responsibility is solely that of the committee and that the petitioners caused it to fail, neither more nor less – in other words, according to the chair of the appellate committee the responsibility for the absence of a pertinent decision in petitioners' application which was submitted five years ago lies with the petitioners themselves:

> **There is no doubt that the committee failed in the execution of procedural efficiency. I am not trying to accuse anyone, as the entire responsibility is solely that of the committee but I regret the fact that the appellants caused the committee to fail by their demand that the appeal be given volume and force which it did not originally have** (paragraph 5 of the decision).

E. <u>The petition should be decided on its merits</u>

56. The respondent established a body, the appellate committee, which constitutes an additional necessary level for exhaustion of remedies purposes, in addition to the laborious procedures *vis-à-vis* the respondent which include, among other things, protracted waiting periods for his late responses to the applications and the appeal procedure. However, in view of the current proceedings *vis-à-vis* the respondent and in view of the fact that the way to the court is blocked until a decision is made by the chair of the committee, procedure No. 1.5.0001 established a limited schedule of 90 days (30 days for respondent's response and 60 days for the decision of the chair of the committee) for the handling of the application by the committee.

57. The petitioners applied lawfully to the appellate committee according to the established outline, **twice**, but the respondent in his different arms, including his arm, the chair of the appellate committee, failed to make a decision in their matter. Firstly, the chair of the committee allowed the respondent not to respond to the appeals which were submitted after a protracted failure to respond, and in which a decision in the application, on its merits was requested. Thereafter he himself dragged his feet in making a decision, and finally he decided not to make a decision in the appeal and to remand the issue to the respondent contrary to the law, pursuant to which the procedure with the respondent was exhausted (see Procedure on Securities Agencies Comments). In his said conduct the chair of the appellate committee waived the power vested in him to review respondent's decision. The petitioners, including young children, in their distress, are forced to turn to this honorable court.

F. <u>The Legal Argument</u>

F.2 <u>The right to family life – a constitutional right</u>

58. Respondents' conduct which was described above impinges on petitioners' right to live jointly and to maintain a family unit at their choice. The right of every person to marry and establish a family unit is a fundamental right in our legal system, which should not be violated and which derives from the right of every person to dignity. In the first judgment which was given concerning the constitutionality of the Citizenship and Entry into Israel Law (HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of Interior**, which was given on May 14, 2006), the right to family life was given the status of a constitutional right, which was enshrined in the Basic Law: Human Dignity and Liberty. President Barak, who held a minority opinion with respect to the end result of the judgment, summarized, with the consent of eight of the eleven justices of the panel, the ruling which was established in said judgment concerning the status of the right to family life in Israel.

> **From human dignity, which is based on the autonomy of the individual to shape his life, we derive the derivative right of establishing the family unit and continuing to live together as one unit. Does this also imply that the realization of the constitutional right to live together also includes the constitutional right to realize it in Israel? My answer to this question is that the constitutional right to establish a family unit means the right to establish the family unit in Israel. Indeed, the Israeli spouse has a constitutional right, which is derived from human dignity, to live with his foreign spouse in Israel and to raise his children in Israel. The constitutional right of a spouse to realize his family unit is, first and foremost, his right to do so in his own country. The right of an Israeli to family life means his right to realize it in Israel**.
>
> (paragraph 34 of President Barak's judgment)

And see also HCJ 466/07 **Galon et al. v. Minister of Interior** (given on January 11, 2012).

59. Giving the right to family life the status of a constitutional right means, that any violation of said right should be made according to the Basic Law: Human Dignity and Liberty - only for weighty considerations, based on solid evidentiary infrastructure attesting to such considerations. Said determination imposes on the respondent an increased obligation to strictly maintain a **proper administrative system**, which will ensure that his power to deny family unification applications brought before him, a power which impinges on a protected constitutional right, will be exercised only in cases in which it is fully justified. The same applies to foot dragging and the imposition of exaggerated bureaucratic obstacles, a conduct which is clearly demonstrated in the case at hand and which is contrary to the rule of law.

    See also: the Honorable Justice Barak, as then titled, in HCJ 693/91 **Efrat v. The person in charge of the Population Registry in the Ministry of Interior et al**., IsrSC 47(1) 749, 783; CA 238/53 **Cohen and Bulik v. Attorney General**, IsrSC 8(4), 35 HCJ 488/77 **A. et al. v. Attorney General**, IsrSC 32(3) 421, 434.

60. International law also provides that each person has the freedom to marry and establish a family. See Article 10(1) of the International Convention on Economic, Social and Cultural Rights, *Treaties* 1037, which was ratified by Israel on October 3, 1991; The Universal Declaration on Human Rights which was adopted by the UN Assembly on December 10, 1948, Article 8(1); Article 17(1) and Article 16(3) of the International Convention on Civil and Political Rights, *Treaties* 1040, which entered into force with respect of Israel on January 3, 1992.

E.3 The violation of the rights of petitioners' children

61. Respondent's position concerning petitioner 2's family unification application particularly injures the spouses' children. The lingering of the proceeding over five years and the refusal to enable the arrangement of the status of the father, without any justification, thwarts all normative aspects of family life and causes great tension, instability, uncertainty and apprehension in family life, elements which are so important for the proper development of children.

62. In Israeli jurisprudence the principle of the child's best interest is a basic and well rooted principle. In CA 2266/93 **A. v. A**., IsrSC 49(1) 221, Justice Shamgar held that the state must intervene for the purpose of protecting the child from a violation of his rights. The right of minor children to live together with both their parents was recognized as an elementary and constitutional right by the Supreme Court. See: the words of Justice Goldberg in HCJ 1689/94 **Harari et al., v. Minister of Interior**, IsrSC 51(1) 15, page 20, opposite the letter B.

63. The Convention concerning the Rights of the Child includes a host of provisions which impose an obligation to protect the child's family unit. The convention's preamble states as follows:

> **[The States Parties to this convention are] convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community […]**
>
> **[…] the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding […].**

Article 3(1) of the Convention states:

> **In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration**...

Article 9(1) states:

> **States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child**

The provisions of the Convention on the Rights of the Child are increasingly recognized as a complementary source concerning the rights of the child and as a guide for the interpretation of the "child's best interest" as a superior principle in our jurisprudence: see CA 3077/90 **A. v. A.,** IsrSC 49(2) 578, 593 (the Honorable Justice Cheshin); CA 2266/93 **A. minor et al. v. A.,** IsrSC 49(1) 221, page 232-233, 249, 251-252 (Honorable President *emeritus* Shamgar); CFH 7015/94 **Attorney General v. A.,** IsrSC 50(1) 48, 66 (Honorable Justice Dorner); HCJ 5227/97 **David v. Supreme Rabbinical Court** (TakSC 98(3) 443) paragraph 10 of the judgment of the Honorable Justice Cheshin.

64. Petitioners' children are severely harmed by respondent's failure to arrange the status of their father for such a long time. The mental stress at home as a result of the absence of a stay permit in Israel, the impingement on the family and the uncertainty concerning the continued life of all family members together in their home in Jerusalem - all cause irreversible damage to petitioners' children. By refusing to arrange the residency of the father of the family in Israel, the respondent violates international and Israeli law and the provisions of the Convention on the Rights of the Child, and disregards the consideration of the best interest of the children, permanent residents of the state of Israel, which should guide him as a primary consideration.

F.4 <u>Respondent's decision to deny petitioners' application on the grounds of conflict of interests – is not proportionate</u>

65. Respondent's decision to deny the application on the grounds of "conflict of interests" – and not on the grounds of a security or criminal danger – must meet the proportionality tests, according to the sub-tests which were developed by case law. The rational connection test, the least injurious measure test and the proportionality test in its narrow sense.

66. In the case at hand, with respect to the first test, according to which a rational connection is required between the measure taken for the prevention of family unification and the purpose of safeguarding state security and public safety - it is clear that respondent's decision does not satisfy said test in view of the fact that security agencies explicitly notified that they had no objection for the approval of the application. On the other hand, the respondent did not explain how the absolute prohibition imposed on petitioner 2's stay in Israel would promote the purpose of preventing a conflict of interests. Firstly, the respondent failed to explain why petitioner 2's technical work constituted a conflict of interests, and what was the source for his concern in the case at hand –which was not based on security or criminal grounds. Secondly, given the fact that the respondent has enabled petitioner 2 to stay in Israel over the last five years by virtue of a procedure which prohibited the expulsion of a person whose family unification application is pending[2] and by virtue of an interim order which was in force over the last four years and a half [3] - it is not clear why the approval of the family unification application, as a result of which the interim order would be replaced by DCO permits – would promote the purpose of preventing a conflict of interests situation. Hence, there is no rational connection between safeguarding state security and public safety and the failure to give a stay permit, since petitioner 2 poses no danger. If there is any other interest which the respondent wishes to protect – it is not at all clear which interest it is, what is its nature and what is its magnitude.

Respondent's decision does not satisfy the second proportionality test either, which requires that the security purpose may not be achieved by another less injurious measure. Respondent's absolute denial constitutes a choice of the most injurious measure.

Finally, according to the third test, the proportionality test in its narrow sense, a proper balance should exist between the impingement on the right to family life and the right to equality according to their magnitude, and the security benefit which arises from the prevention of the requested unification. (See HCJ 2028/05 **Amarah v. Minister of Interior** (July 10, 2006), paragraph 11 of the judgment of President Barak). The scope of the security benefit which should be considered for the application of the proportionality test in its narrow sense is not the entire scope of the possible security benefit; the benefit which should be considered is only the marginal addition to the security which is obtained as a result of the severance of the family unification procedure, as compared to the possible use of alternative security measures, such as the grant of temporary short term renewable stay permits, which enable a periodic examination by the authority of the actual risk level posed by the spouse, resident of the Area, who stays in Israel; a close supervision over the spouse who stays in Israel, securing from him an undertaking as will be determined the fulfillment of which will be examined, ans such similar measures. (See HCJ 7444/03 **Dakah v. Minister of Interior** (February 22, 2010), paragraph 33 of the judgment).

Denial of a family unification application due to conflict of interests

67. In AP (Jerusalem) 310/07 **Mugrabi v. Minister of Interior** (December 13, 2007) (hereinafter: **Mugrabi**), the court discussed the issue of the proportionality of the denial of a family unification application on the grounds of "a conflict of interests", and held that the required balance did not exist in that case:

[2] Procedure No. 5.1.0001 has been recently changed, but was in force on the relevant period to petitioner 2's matter. Prior to the change of the procedure and until this day an interim order in petitioner 2's favor was in force.

[3] See interim order dated January 24, 2010 (Exhibit P/7 above), a decision to leave the interim order in force until 45 days after respondent's decision in the application (Exhibit P/21 above) and an interim order dated February 5, 2012, which was given in the context of appeal 73/12 until another decision be given, when a decision in the appeal was made in May 2014.

Hence, what is the threat embedded in that "conflict of interests" on which the decision is based? This question was presented in the hearing to respondents' counsel, but the answer which was given only strengthened the impression that behind said interest no specific concern existed which justified the drastic reaction of an absolute denial of a constitutional right.

[…]

The above specified difficulties arising from the reliance on the obscure reason of "conflict of interests" which does not involve any security or criminal threat, undoubtedly apply, if not to the mere relevancy of the reason itself, then at least to the balancing between said reason and the right to family life, as well as to the implementation of the tests of proportionality in the framework of the balancing. Even if it is a legitimate consideration (and I have not yet said that this was the case), its status and strength are significantly lower than the status and strength of a consideration which is based on a security or criminal threat. In any event, the Minister of Interior is doubly obligated, according to the second and third subtests of the principle of proportionality, to avoid, to the maximum extent possible, a sweeping violation of the constitutional right to family life in Israel, and prefer the solution which injures said right to the minimum extent possible, while maintaining a proper relation vis-à-vis the contribution of said injury to the prevention of said "conflict of interests".

The decision of the Minister of Interior dated January 15, 2007, stipulates that the need of the state of Israel to prevent "conflict of interests" overrides "the right of Mr. Mugrabi to maintain family life with his wife and daughter in Israel." The scope of the Minister of Interior's discretion in population administration matters, which is especially broad, particularly when risk evaluation is concerned, could have justified abstention from intervention in said stipulation, had the petitioner posed a security or criminal threat. This is not the case when the concern involves neither one of these risks, but rather, an obscure concern for the interests of the state on the promotional or political level. Such a concern does not completely override the constitutional right to family life in Israel. Even when a security risk is involved, the probability of the realization of the risk must be weighed against the unquestionable injury caused to family life…"

(*Ibid*., Emphases were added, A.L.)

68. As aforesaid, even when the sponsored party in a family unification procedure poses a specific security or criminal threat, the respondent is obligated to balance the violated right against the protected interest – in the case of a security or criminal threat the protected interest is securing public safety and life in Israel. Said obligation is all the more so applicable, when the respondent fails to point at any specific threat to public safety which may arise from the sponsored party:

If this is the case when a life threatening risk is concerned, it applies even more forcefully when the interest which is balanced against the violation of the constitutional right concerns the promotional and political needs of the state. A complete denial of the constitutional right due to such needs is at all possible, only when the impingement

> **thereon is concrete, present and clear. A constitutional right cannot be sweepingly and relentlessly violated for the realization of an obscure and un-defined public interest, both in terms of its nature and the chances and time of the anticipated impingement thereon, as things stand in the case at hand according to the explanations given by the respondents to said "conflict of interests". I t is a well known rule that "whenever the denial of existing rights or the denial of fundamental rights is at stake" the administrative authority may not make a decision denying them unless it is based on "clear, unequivocal and convincing" evidence (HCJ 159/84 Shahin v. Military Commander of the Gaza Strip Area, IsrSC 39(1) 309, 327). "A particularly severe violation of a fundamental right must be based on particulary reliable and convincing data." (HCJ 987/94 Euronet Kavei Zahav (1992) Ltd. v. Minister of Communication, IsrSC 48(5) 412, 425). "The reasonableness of the decision derives from the values involved in the decision. Therefore, if the administrative discretion may violate human rights, convincing and reliable evidence, which leaves no doubt, is required." (HCJ 680/88 Schnitzer v. Chief Mlitary Censor, IsrSC 42(4) 617, 637).**
>
> (**Mugrabi**, Emphases appear in the original, A.L.)

69. In this context a decision in a family unification application, when the respondent is of the opinion that there is a concern that the sponsored party has a conflict of interests, must take into consideration the requested status in the family unification procedure. As is known, under the current legal situation, in which the **Citizenship and Entry into Israel (Temporary Order), 5763-2003**, is in force (see judgment in HCJ 466/07 **Gal-On v. Attorney General**, which denied the petitions against the Temporary Order), **the most petitioner 2 may receive in the framework of a family unification procedure, is a DCO permit**.

70. Indeed, the grant of renewable DCO stay permits in Israel is a proportionate solution, which will obtain the proper balance in the case at hand:

> **Under such circumstances, the constitutional right does not completely recede, but rather, a way must be found to keep it in place in a manner which maintains proper proportion between the scope of the violation of the right and the public benefit which arises from the supervision exerted over the petitioner which is intended to ensure that her presence in Israel is not used to prejudice the interests of the state. This is done by limiting petitioner's stay in Israel for pre-determined periods of time, during which the ramifications of such presence on state interests will be supervised on an on-going basis, while maintaining the right of the Minister of Interior to refuse to extend the stay permit if it turns out that it was used to injure a material interest of the state**. (**Mugrabi**, emphasis added, A.L.)

And also:

> **A wide range of intermediate levels exists between a total denial of a permit application and a complete approval thereof for family unification purposes, including graduated permits, for the purpose of reconciling between the conflicting interests**. (HCJ 5702/07 **Sabag v. Minister of Interior**, reported in Nevo).

71. The respondent does not argue that a security or criminal danger is embedded in the approval of the family unification application. On the contrary. Respondent's response clearly and explicitly states that the Israel Security Agency (ISA) no longer objects to the approval of the application: "The updated position of the professional security agencies in the above referenced matter – "no comments" with respect to the application" (see second paragraph to respondent's response dated July 29, 2013, Exhibit **P/38** above). He does not argue that there is specific information which ties petitioner 2 to the possibility of causing harm to public safety in Israel. Petitioner 2 is not defined as dangerous. It is, then, a vague rather than a specific "concern". The respondent does not even specify the results which may possibly arise from the realization of the "concern" of a conflict of interests, and does not specify the probability of the realization of his concern. Furthermore. The respondent did not argue that he had in his possession information – open or privileged – concerning the danger to public safety in Israel, which may occur as a result of the approval of petitioners' family unification application, due to the "concern of a conflict of interests", while the obligation imposed on the respondent as held in **Dakah**, is to:

> … prove that the probability of a threat to public safety is at the highest level, reaching, at least near certainty, and that it is impossible to defend against it without violating human rights.
>
> (HCJ 7444/03 **Dakah v. Minister of Interior** (reported in Nevo, hereinafter: **Dakah**)).

72. The above words are reinforced when, on the one hand, petitioner 2 poses no specific security or criminal threat, and on the other, the protected interest is vague and its public weight is unclear. Relevant to this case are the words of the court in **Dakah**:

> **The weightier the violated right and the more severe the impingement inflicted thereon, the stronger the conflicting public interest must be to justify the violation, otherwise, the violation may be considered disproportionate. A correlation should exist between the strength of the fundamental right and the weight of the conflicting public interest to justify the violation of the right. The severity of the injury should also be integrated in this equation.**

73. Moreover. The fact that the "conflict of interests" argument between the grant of a temporary, limited and conditioned stay permit to petitioner 2 and his position as a water systems planner in the Palestinian Authority was not raised by the respondent in the context of the previous proceedings although the respondent was aware of the fact, according to his own words, that petitioner 2 was holding said position since 2005, gives the impression that the respondent decided to deny the application no matter what – and as the security argument failed, he came up with a vague excuse for the denial.

74. And to the matter on its merits. Petitioner 2 is indeed employed by the Palestinian Water Authority, as he had voluntarily informed the respondent in the context of the different proceedings which took place in his matter. As explained to the respondent years ago in the context of the appeal and again in the context of the hearing, the office held by petitioner 2's is not political in nature. He is in charge of the technical aspects of the water systems in the West Bank and has no connection whatsoever to political meetings or decisions. It should also be noted that as explained to the respondent in response to his question in the hearing, petitioner 2's meetings with the minister are few, include many participants and concern updates and reports regarding his work with the Palestinian Water Authority rather than the establishment of policies or any other aspect which veers from installation and technical maintenance of water systems. Furthermore. To the best knowledge of petitioner 2, the minister himself receives entry permits into Israel. These circumstances most certainly cannot be

used against petitioner 2 and pull the rug out from under petitioners' constitutional right to family life, in the absence of any reasonable proof of a probable security danger.

75. In AP 470/03 **Abu Hilu v. Minitry of Interior**, a family unification application was denied due to the applicant's position as a registrar of the Ramallah court. In the framework of the petition a hearing was held for the petitioners, which convinced the respondent that there was no causal connection between the nature of the applicant's position and the probability of security danger. It was decided to approve the application regardless of the fact that the applicant was employed by the Palestinian Authority. This case is only one example of family unification applications undertaken by sponsored parties regardless of the fact that they were employed in the past or are currently being employed by the Palestinian Authority, in view of the nature of the position which befits their qualifications.

76. An administrative authority is not empowered to revoke a fundamental right, other than on the basis of clear, unequivocal and convincing evidence (HCJ 159/84 **Shahin v. Commander of IDF Forces**). An extremely severe impingement on fundamental rights must be based on reliable and especially convincing data which leave no room for a doubt concerning the danger posed. In HCJ 2028/05 **Amarah v. Minister of Interior**, it was held that in such cases the court must examine the infrastructure which caused the authority to deny the family unification application, its strength and the discretion which was exercised, as follows:

> **It should be noted, however, that the Minister of Interior must make a decision based on proper administrative evidence. The greater the severity of the impingement on a person's right, the higher the level of persuasion which is demanded, based on the evidence presented to the authority, for the justification of its decision. Certain applications are not denied on the basis of open facts which may be challenged, but rather based on privileged information. In these cases the person himself is deprived of the possibility to challenge the administrative evidentiary material which exists against him, a fact which requires the exercise of great prudence while reviewing the material. Although the court does not sit as a court of appeals over the decisions of the Minister of Interior it examines the factual infrastructure which caused it to deny the family unification application, its strength and the discretion which was exercised**.

77. In the case at hand, the respondent failed to present even a shred of evidence for the existence of administrative material against petitioner 2. Vague statements such as "conflict of interests" are not sufficient to pull the rug out from under petitioners' life that for over a decade, Jerusalem has been their only home, where they conduct their life and raise their children. Over the course of the years petitioner 2 has neither been detained nor interrogated. Moreover. There was room to expect that the respondent, whose arguments concerning the ostensible security threat posed by petitioner 2 suddenly evaporated when submitted for the review of the appellate committee, would act more prudently before raising, once again, baseless arguments.

78. All of the above indicate that respondent's decision does not satisfy the proportionality tests: the interest which the respondent wishes to protect is vague, as well as the probability that the protected interest or public safety may be injured; the respondent severely violates a fundamental right without taking the measure which injures the protected right to the least extent possible. This argument applies to the general case of denial of a family unification application on the grounds of "conflict of interests." It most certainly applies to the specific case of petitioner 2. The above indicate that while denying the family unification application, the respondent did not make the required balancing between the severity of the impingement on the right and the protection of public interest.

F.5 Extreme Procrastination – the obligation of the authority to act expeditiously and it brazen breach

79. As described in the factual part, the petitioners submitted two appeals in view of respondent's failure to respond to the family unification application submitted by them for the realization of their constitutional right to family life and in view of his failure to respond to the argument submitted by them, when the respondent argued that an indirect security preclusion existed against petitioner 2 – absurdly and outrageously – the proceedings which were submitted against the delays were characterized by longer delays than the initial delays with respect of which the appeals were submitted. The appellate committee, the assistance of which they sought, showed indifference all along the way and even encouraged respondent's foot dragging, when it commented on one occasion that only two months passed from the date on which the second appeal was submitted for failure to respond, when it granted the respondent extensions time and time again, and when it gave a belated seven months notice of the termination of the proceedings for the purpose of remanding them to the respondent, contrary to the Procedure on Security Agencies Comments – according to which the matter should be handled by the appellate committee, and all of the above five years after the date on which the family unification application was submitted. Not only that the chair of the committee enabled the appeal to linger beyond any proper time frame, but also, when it was time to make a decision therein, the chair of the committee refrained from making a decision and deigned to give notice thereof seven months after the last response had been submitted.

80. The respondent, like any administrative authority, is obligated to handle applications submitted to them fairly, reasonably and expeditiously. It was so ruled by the Honorable Justice D. Levin in HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451:

> **A competent authority must act reasonably. Reasonableness also means upholding a reasonable schedule.**

81. Respondent's duty to handle applications submitted to it expeditiously is also entrenched in section 11 of the Interpretation Law, 5741-1981:

> **Any empowerment and the imposition of any duty to do something shall mean, where no time for doing it is prescribed, that it shall or may be done expeditiously and be done again from time to time as required by the circumstances**.

82. The obligation to act within reasonable time, and not to neglect and delay applications which are pending before the authority, is one of the foundations of good governance. See on this issue CA 4809/91 **Local Planning and Building Committee, Jerusalem v. Kahati**, IsrSC 48(2) 190, 219. Respondent's conduct in the case at hand does not only fail to be expeditious or efficient, but it also extremely deviates from the conduct expected of a reasonable administrative authority, which is responsible for significant aspects of the life of those who need its services, let alone the appellate committee, which is responsible, *inter alia*, for the instillation and enforcement of the authority's procedures. Respondent's conduct runs contrary to the rational of family unification procedure, and severely injures the spouses and the children of the family.

F.6 The respondent acts contrary to the procedure of the appellate committee and contrary to the Procedure on Security Agencies Comments

83. The appellate committee was established, as stated by the respondent, in order to handle more efficiently the applications submitted to the offices of the Population Administration and to reduce the heavy load imposed on the district courts sitting as courts for administrative affairs, until such

time as a tribunal for foreigners is established.[4] In fact it is clear that respondent's deviation from the administrative rules concerning the obligation to give prompt response, as specified above, increased the inefficiency and caused a delay of justice to many applicants.

- See the letters of petitioner 8 dated April 26, 2011, and the letter of the Association for Civil Rights dated August 19, 2012, to the Head of the Population Administration, which are attached as Exhibit **P/45**.

84. The courts have already heavily criticized the appellate committee, which over the course of its existence (since the beginning of 2009), became notorious for its delayed proceedings. Recently, this issue was referred to by the president of this honourable court, the Honorable Judge, President David Cheshin in AP (Jerusalem) 54853-01-13 **Ilham Sarhan v. Minister of Interior** (reported in Nevo, May 21, 2013). And also see for instance, AP (Jerusalem) 38244-03-10 **Aramin v. Minister of Interior** (October 3, 2010, reported in Nevo, paragraph 7 of the judgment), AP (Jerusalem) 294-10 **Salem v. Minister of Interior** (not reported), concerning the arrangement of the status of the daughters of the said petitioners, in which case costs in the sum of 12,000 ILS were imposed on the respondent; AP 18569-04-13 Gevi Lin v. Ministry of Interior (not reported) in which case costs in the sum of 15,000 ILS were imposed on the respondent.

85. Respondent's disregard of its own procedures is also expressed, beyond the long delays in giving his decisions, in the manner by which he exercises his discretion and in his decision in the applications on their merits.

86. Our case is regulated by the Procedure on Security Agencies Comments, which provides as follows:

> **In view of the fact that a response may be submitted before a final decision is made, leave to appeal against the decision for the second time before the office will not be granted. The response letter should state that a petition may be filed against the decision with the competent court or that an appeal may be submitted to the appellate committee according to procedure 1.5.0001 where relevant** (paragraph 2.7 to the procedure).

In the case at hand, despite the fact that all arguments were made in the framework of the appellate committee, despite the passage of time, despite the fact that the appeal remained pending when the respondent was finally willing to decide in the application and the only thing which remained to be done was to make a decision in the appeal, despite the fact that the procedure stipulates that is such cases the subject matter of the appeal should not be remanded to the respondent, despite the fact that in similar cases in which less protracted delays occurred the chair of the committee made a decision in the appeal, by virtue of the authority vested in him – the chair of the committee decided that the matter "has not yet come to the world" (paragraph 4 of the decision and see also paragraph 5). Hence, as aforesaid, this petition is filed.

Conclusion

87. The impingement on petitioners' right to family life, the impingement on the best interests of their children, extremely exceeds the realm of reasonableness. In view of all of the above, the court is requested to order the respondent to approve petitioners' family unification application so that the

[4] On this issue see notice dated January 14, 2009, in the website of Ministry of Justice "An Appellate Commissioner for Foreigners was appointed in the Ministry of Interior" at the following address: http://www.justice.gov.il/MOJHeb/News/News_84132009_01_14.htm and also section 1 of the procedure of the appellate committee which may be located in the following link: http://www.piba.gov.il/Regulations/1.5.0001.pdf

interim order which has been in force for almost four years and a half, will be replaced by a renewable stay permit.

88. The petitioners will request the honorable court to obligate the respondent to pay legal fees and costs of trial in favor of the petitioners, in view of the harsh injury inflicted on the fundamental rights of the family members and in view of respondent's conduct in his has as the appellate committee, which demonstrated indifference and disrespect towards petitioners' matter which constitutes an impingement on human dignity.

89. The honorable court is requested to hold a hearing in the petition as soon as possible, in view of the very long delay on respondent's part in making a decision in petitioners' matter.

Jerusalem, May 21, 2014

_____

Adi Lustigman, Advocate
Counsel to the petitioners