At the Supreme Court **HCJ 7961/15**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Dwayat, ID No. _____**
2. **_____ Abu Kif, ID No. _____**
3. **_____ Atrash, , ID No. _____**
4. **_____Abu Ghnam, ID No. _____**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA No. 580163517**

all represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben Ari (Lic. No. 37566) and/or Abir Jubran-Dakawar (Lic. No. 44346) and/or Ido Blum (Lic. No. 44538) and/or Michal Pomeranz (Lic. No. 54788) and/or Anat Gonen (Lic. No. 28359) and/or Nadia Dakah (Lic. No. 66713) and/or Hava Matras-Irron (Lic. No. 35174) and/or Bilal Sbihat (Lic. No. 49838) and/or Nasser Odeh (Lic. No. 68398) and/or Daniel Shenhar (Lic. No. 41065)

Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Government of Israel**
2. **Minister of Interior**

represented by the State Attorney's Office
29 Salah-a-din Street, Jerusalem
Tel.: 02-6466590; Fax: 02-6466713

The Respondents

Petition for *Order Nisi*

A petition for an *order nisi* is hereby filed with the honorable court which is directed at the respondents ordering them to appear and show cause:

1. Why they should not stay the implementation of the decision of the Ministerial committee on national security affairs (the **political-security cabinet**) of the Government of Israel of October 14, 2015, concerning "Revocation of the permanent residency of perpetrators", until judgment is given in the general petition on this issue which is pending before an expanded panel of this honorable court and in which an *order nisi* was issued (HCJ 7803/06 **Abu Arafeh v. Minister of Interior**; hereinafter: the **general petition**);

2. Why respondent 2 should not refrain from taking action for the revocation of the permanent residency status of East Jerusalem residents according to section 11(a)(2) of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry Into Israel Law**) until judgment is given in the general petition;

3. Why respondent 2 should not refrain from taking action for the revocation of the permanent residency status of petitioners 1-4, residents of East Jerusalem, according to section 11(a)(2) of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry Into Israel Law**) until judgment is given in the general petition.

Request for an Interim Injunction

4. The honorable court is hereby requested to issue an interim injunction directed at the respondents ordering them to refrain from taking action for the revocation of the permanent residency status of East Jerusalem residents, and in this context to refrain from taking action for the revocation of the permanent residency status of petitioners 1-4 according to section 11(a)(2) of the Entry into Israel Law until judgment is given in the general petition.

5. As will be broadly described in the petition below, a general petition, HCJ 7803/06 **Abu Arafeh v. Minister of Interior**, is pending before this honorable court, which concerns the constitutionality of the revocation of the permanent residency status of East Jerusalem residents according to section 11(a)(2) of the Entry into Israel Law, and the authority of respondent 2 to act for the revocation of the permanent residency status by virtue of this section. In the general petition an *order nisi* was issued by this honorable court and a hearing in the petition, before an expanded panel, was held on May 5, 2015. The parties are currently waiting for a judgment in the petition.

6. In the framework of the **Kasem** petition, AP 303/06 **Kasem v. Minister of Interior** (hereinafter: **Kasem**), which concerns four similar cases, the court for administrative affairs in Jerusalem ordered to stay the proceedings in the file until judgment is given in the general petition.

7. It is therefore clear that the revocation of the residency status of petitioners 1-4 would not only violate their fundamental rights but would also leave two of them stateless in the entire world. As will be specified below, a person's right for status in his homeland is a primary right in and of itself, and a key for obtaining other fundamental rights. The revocation thereof not only impinges upon a person's identity and on his relations with his homeland, but also paves the way for the violation of his right to family life and additional rights and even to his deportation. In fact, it is one of the most severe and extreme sanctions which may be taken against a resident.

8. Beyond need, and despite the fact that the petition concerns a different issue, one cannot disregard the fact that the decision to initiate proceedings for the revocation of the permanent residency status of petitioners 1-4, including the fact that they were summoned to present their arguments against the decision already at this stage – when the criminal proceedings in their case are only in their initial stages, before petitioners' testimony was given and it is yet unclear what is the scope of the involvement of each one of them in the accusations ostensibly attributed to him, if at all – severely violates their right to due process, in view of the fact that as a direct result of the hearings held for the petitioners in the proceeding being the subject matter of the petition at hand at such an early stage,

their right as defendants not to disclose their line of defense and not to expose their arguments while the prosecution still brings its evidence – is violated.

9. On the other hand, no harm will be caused to the respondents if the status remains as is and the residency revocation proceedings are stayed until judgment in the general petition is given.

10. Therefore, the honorable court is requested to issue an interim injunction as requested.

The Filing of this Petition to the High Court of Justice

11. This petition concerns respondents' decision to initiate proceedings for the revocation of the permanent residency status of East Jerusalem residents based on an alleged "breach of allegiance to the State of Israel" despite the fact that judgment concerning the mere authority and lawfulness of such action is about to be given by the honorable court in the context of the general petition, in which a hearing was held before an expanded panel and in which an *order nisi* was issued.

12. It should be noted that the court for administrative affairs has already held that similar proceedings should be stayed until judgment was given in the general petition (AP 303/06 **Kasem v. Minister of Interior**).

13. In response to an argument which may be raised concerning the filing of this petition with the High Court of Justice (rather than with the court of appeals or the court for administrative affairs), the petitioners would like to clarify:

    The petition at hand does not concern the specific circumstances of petitioners 1-4, but rather the mere decision to initiate proceedings for the revocation of their permanent residency status before a decision was made with respect to respondent 2's authority to do so. The remedies requested in this petition form an inseparable and integral part of the **general petition**, which as aforesaid, concerns general and crucial issues.

14. Furthermore. Amendment No. 22 of the Entry into Israel Law, 5712-1952, provides that the court of appeals has jurisdiction over decisions in matters concerning entry into Israel, stay and residency in Israel or exit there-from according to the Entry into Israel Law, 5712-1952, **excluding government resolutions** and the promulgation of regulations (see section 23 of the Law and the addendum by virtue thereof).

15. It should be emphasized that the Ministerial committee on national security affairs acts by virtue of section 6 of the Government Law, 5761-2001 and its decisions are regarded as government resolutions.

16. It should be further noted that the general petition was also firstly filed with the court for administrative affairs (AP 832/06 **Abu Arafeh v. Minister of Interior**) and the honorable Judge Musia Arad ordered on September 21, 2006, pursuant to section 6 of the Courts for Administrative Affairs Law, to transfer the petition to the High Court of Justice, due to the importance of the matter being the subject matter of the petition.

    A copy of the decision of the honorable Judge Musia Arad dated September 21, 2006, AP 832/06 **Abu Arafeh v. Minister of Interior**, is attached and marked **P/1**.

17. Therefore, this honorable court is vested with the jurisdiction to adjudicate this petition.

The Factual Part

The Parties

18. **Petitioner 1**, Abed Dwayat, born on July 23, 1996, is currently 19 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against petitioner 1 and the criminal proceeding is still in its initial stages. Petitioner 1 is currently held in Megido prison. Petition 1 has no status in any other place in the entire world.

19. **Petitioner 2**, Mohammed Abu Kif, born on May 17, 1997, is currently 18 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against petitioner 2 and the criminal proceeding is still in its initial stages. Petitioner 2 is currently held in Megido prison. Petition 2 has no status in any other place in the entire world.

20. **Petitioner 3**, Al-walid Atrash, born on August 26, 1997, is currently 18 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against petitioner 3 and the criminal proceeding is still in its initial stages. Petitioner 3 is currently held in Megido prison. Petition 3 has Jordanian citizenship.

    A copy of the indictments filed against petitioners 1-3 is attached and marked **P/2**.

21. **Petitioner 4**, Belal Abu Ghnam, born on January 8, 2004, is currently 22 years old and a resident of Jabal al Mukabbir located in East Jerusalem. An indictment was recently filed against petitioner 4 and the criminal proceeding is still in its initial stages. Petitioner 4 is currently held in Eshel prison. Petition 4 has Jordanian citizenship.

    A copy of the indictment which was filed against petitioner 4 is attached and marked **P/3**.

22. **Petitioner 5** (hereinafter: **HaMoked**), is a registered not-for-profit association which has taken upon itself, *inter alia*, to assist East Jerusalem residents and their family members in various matters *vis-à-vis* state authorities and to protect their rights before legal instances, either in its own name as a public petitioner or as counsel to those whose rights were violated.

23. **Respondent 1** (hereinafter: **respondent 1**), is the government of Israel on behalf of which the Ministerial committee on national security affairs decided to revoke the permanent residency status of perpetrators, as part of the measures taken in response to recent security incidents.

24. **Respondent 2** (hereinafter: **respondent 2**), is the Minister who notified the petitioners of his intention to act according to section 11(a) of the Entry into Israel Law and revoke their permanent residency status in Israel.

<u>The Facts and Exhaustion of Remedies</u>

25. On October 14, 2015, respondent 1's Ministerial committee on national security affairs convened to discuss the security situation and approved a series of measures. Among other things the committee decided to "**revoke the permanent residency of perpetrators**". In the government meeting dated October 18, 2015, the prime minister specified the measures taken recently according to the decision of the Ministerial committee on national security affairs, including "revocation of perpetrators' residency".

    A copy of the decisions of the Ministerial committee on national security affairs made on October 14, 2015, taken from the website of the prime minister's office, is attached and marked **P/4**.

    A copy of the announcement of the government secretary given following the government meeting which was held on October 18, 2015, taken from the website of the prime minister's office, is attached and marked **P/5**.

26. Following the publication of the decisions of the Ministerial committee on national security affairs, HaMoked wrote to the prime minister and demanded that action be taken for the cancelation of the decision to revoke the permanent residency status of East Jerusalem residents who committed attacks. HaMoked noted, *inter alia*, that the authority to revoke the permanent residency status of East Jerusalem residents and its constitutionality were questionable and that said issue was currently pending before the Supreme Court in the framework of the general petition.

A copy of HaMoked's letter to the prime minister dated October 15, 2015, is attached and marked **P/6**.

27. On October 22, 2015, HaMoked wrote to respondent 2 and informed him that it was representing the petitioners in the status revocation proceedings in Israel, as it was reported on the media a day earlier that respondent 2 signed letters which summoned the petitioners for a hearing. HaMoked requested to be advised of any action taken in connection with said proceedings.

A copy of HaMoked's letter to respondent 2 dated October 22, 2015, is attached and marked **P/7**.

28. On November 2, 2015, the response of the Attorney General to HaMoked's letter dated October 15, 2015, was received according to which "Following review of your letter it was transferred to Adv. Dina Zilber – deputy to the Attorney General (counseling), to be handled by her."

A copy of the Attorney General's letter to HaMoked dated November 2, 2015, is attached and marked **P/8**.

29. On November 9, 2015, petitioner 1 informed his counsel in the criminal proceeding, Adv. Akram Khalili, that he had received in prison a letter dated October 21, 2015, from respondent 2, which notified of the latter's intention to revoke his permanent status and of the opportunity to submit arguments within 30 days. Following said information, Adv. Michal Pomeranz wrote on November 10, 2015, on behalf of HaMoked to respondent 2 and protested against the failure to transfer the above notice to HaMoked despite the representation notice which was given to him. She also noted that November 9, 2015, should be regarded as the date on which the letter was served for the purpose of computing the days for the submission or arguments against the intention to revoke petitioner 1's status.

A copy of respondent 2's notice to petitioner 1 of the intention to revoke petitioner 1's permanent status is attached and marked **P/9**.

A copy of the letter of petitioners' counsel to respondent 2 regarding petitioner 1 dated November 10, 2015, is attached and marked **P/10**.

30. On November 12, 2015, Adv. Pomeranz visited petitioners 1-3 in Megido prison, when she was informed that petitioners 2 and 3 have also received notices from respondent 2 of his intention to revoke their permanent status, while giving the opportunity to submit arguments within 30 days. The notices were dated October 21, 2015.

A copy of respondent 2's notice to petitioner 2 of the intention to revoke petitioner 2's permanent status is attached and marked **P/11**.

A copy of respondent 2's notice to petitioner 3 of the intention to revoke petitioner 3's permanent status is attached and marked **P/12**.

31. On November 16, 2015, petitioners' counsel wrote to responded 2 and demanded that the proceedings for the revocation of petitioners 1-3's status be stayed. In her letter Adv. Pomeranz noted that she

became aware for the first time of the intention to revoke the permanent residency status of petitioners 2-3 on November 12, 2015, when she visited them in prison, despite HaMoked's representation notice dated October 22, 2015. Therefore November 12, 2015 should be regarded as the effective date for the purpose of computing the days for the submission of the arguments against the decision to revoke their status.

32. In her letter petitioners' counsel demanded that the proceedings for the revocation of petitioners 1-3's residency be stayed until judgment was given in the general petition concerning this issue, which was pending before an expanded panel of the Supreme Court and in which an *order nisi* was issued.

A copy of the demand letter for having the proceedings in petitioners 1-3's matter stayed dated November 16, 2015, is attached and marked **P/13**.

33. On November 16, 2015, the response of the legal advisor for the prime minister's office to HaMoked's letter dated October 15, 2015, regarding the decision of the Ministerial committee on national security affairs was received, which stated that the authority to revoke the status of a permanent resident was vested with the Minister of Interior subject to the approval of the Attorney General and once the decision was made the party prejudiced by the decision may submit a petition.

A copy of the legal advisor for the prime minister's office dated November 16, 2015, is attached and marked **P/14**.

34. On November 17, 2015, a response was given through the legal advisor for the population and immigration authority to the letters of petitioners' counsel dated November 10, 2015, and November 16, 2015. The letter noted that on October 21, 2015, the Minister of Interior signed a notice of intention to act according to section 11(a) of the Entry into Israel Law with respect to petitioners 1-4 and that his notices were transferred to the four petitioners through the Israel Prison Service. It was also noted that he was not aware of HaMoked's notice dated October 22, 2015, that it was representing the petitioners.

35. As to petitioners' demand that the proceedings be stayed in view of the general petition pending before the Supreme Court, respondent 2 argued that there was no justification for the demand and that the response of the four petitioners to his notice should be submitted not later than December 8, 2015.

A copy of respondent 2's response dated November 17, 2015, is attached and marked **P/15**.

36. On November 17, 2015, petitioners' counsel answered respondent 2's letter and noted that she, personally, verified receipt of the notice concerning petitioners' representation dated October 22, 2015, by respondent 2's bureau. She also added that there was no basis for the date stipulated by respondent 2's representative, December 8, 2015, as the date for the submission of the written arguments, and reiterated that the dates mentioned in her former letters should be regarded as the effective dates for this matter.

A copy of the letter of petitioners' counsel dated November 17, 2015, is attached and marked **P/16**.

37. On November 18, 2015, petitioners' counsel sent another letter to respondent 2 and requested to add that hearings held to the petitioners in such an early stage of the criminal proceeding, prejudiced their right to due process.

A copy of the letter of petitioners' counsel dated November 18, 2015, is attached and marked **P/17**.

38. In view of the fact that the respondents denied petitioners' demand that the proceedings for the revocation of their permanent status be stayed until judgment was given in the general petition, the petitioners turn to this honorable court and request relief.

The general petition and other proceedings for the revocation of permanent residency

39. The general petition was filed with the honorable court on September 26, 2006, against the unprecedented decision of the Minister of Interior dated June 30, 2006, to revoke the permanent residency of four petitioners, residents of East Jerusalem, who were appointed to hold office in institutions of the Palestinian Authority. The revocation was based on an alleged breach of allegiance to the state of Israel.

40. On December 25, 2006, the first hearing was held in the petition, in which the honorable court heard, *inter alia*, the request of the Association for Civil Rights in Israel and the Adalah organization to join the proceeding as *Amicus Curiae,* and in which a decision was given that "**In view of the general aspects with which this petition is concerned, beyond the personal matter of the petitioners, and in view of the fact that the Association for Civil Rights in Israel and the Adalah organization may contribute in their arguments to the clarification of said general aspect, we decide to accept the request and join them as *Amicus Curiae***." Following said decision, on May 9, 2007 an opinion was submitted on behalf of the *Amicus Curiae.*

41. Following several hearings in the petition, the honorable court issued, on October 23, 2011, an *order nisi* which states as follows:

> *Order nisi* is hereby granted directing respondent 1 to appear and show cause why he should not revoke his decision dated June 30, 2006, to revoke the permanent residency status of petitioners 1, 8, 15 and 21, inter alia, in view of the absence of explicit and detailed authorization in primary legislation and in the absence of primary arrangement in primary legislation for the revocation of the permanent residency status of individuals who were born in East Jerusalem by reason of breach of allegiance or other reasons raised by respondent 1.

A copy of the decision of the honorable court in HCJ 7803/06 **Abu Arafeh v. Minister of Interior** dated October 23, 2011, is attached and marked **P/18**.

42. On May 13, 2014, the honorable court decided to expand the panel which heard the petition by stating as follows: **"Following an additional review and reconsideration of the parties' arguments, we have concluded that it would be appropriate for this petition to be scheduled for further hearing before an expanded panel, and so we decide**."

A copy of the decision of the honorable court in HCJ 7803/06 **Abu Arafeh v. Minister of Interior** dated May 13, 2014, is attached and marked **P/19**.

43. On May 5, 2015, a hearing in the petition was held before an expanded panel following which the up-to-date position of the Minister of Interior was requested concerning the revocation of petitioners' residency and following various developments which occurred with respect to the petitioners. On September 10, 2015, the respondent notified the court that he did not see any reason to change the decision to revoke the permanent residency of the petitioners. In view of respondent's notice, the parties are currently waiting for judgment in the petition.

Stay of judicial proceedings in other cases until judgment is given in the general petition

44. As aforesaid, an additional petition in the **Kasem** matter, concerning the revocation the permanent residency status of four East Jerusalem residents, is pending before the Jerusalem District Court sitting as a court for administrative affairs.

45. On January 25, 2008, the court of administrative affairs held in **Kasem** that the proceeding should be stayed until judgment is given by the honorable court in the general petition:

> A general petition is pending before the High Court of Justice concerning the authority of the Minister of Interior to revoke permanent residency status in Israel on the grounds of breach of allegiance to the state (HCJ 7803/06)[…]In his decision dated December 25, 2006, the honorable acknowledged that the petition before it had a general nature and has therefore allowed to join the Association for Civil Rights in Israel and the Adalah organization to the petition as *Amicus Curiae* 'in view of the general aspects with which this petition is concerned, beyond the personal matter of the petitioners'.
>
> The case at hand concerns the same general issue which arises in HCJ 7803/06, namely: the authority and the manner by which the Minister of Interior exercises his discretion to revoke permanent residency status in Israel due to breach of allegiance to the state by the permanent resident, which is manifested by his participation in terror activity or organization.
>
> **Therefore this case should be stayed until judgment in this general issue is given by the Supreme Court** (Emphases added by the undersigned).

A copy of the decision of the court for administrative affairs in Jerusalem in **Kasem** dated January 25, 2008, is attached and marked **P/20**.

The Legal Framework

46. The petitioners will argue below that respondents' decision to act according to the Entry into Israel Law and initiate proceedings for the revocation of the permanent residency status of petitioners 1-4 in particular, and for the revocation of the permanent residency status of additional permanent residents, in general, constitutes a severe violation of substantial fundamental rights. The decision is unreasonable as it was received in the absences of the presumption of administrative validity and it indirectly prevents specific judicial scrutiny over the cases of petitioners 1-4. It is a decision which was made knowingly and intentionally for the purpose of changing the facts on scene prior to the judgment in the general petition. We shall specify.

Revocation of residency – severe violation of fundamental rights

47. The revocation of petitioners' permanent residency status will constitute a harsh and severe violation of a substantial fundamental right. A person's right to status in his homeland is a primary right in and of itself and a key for obtaining other fundamental rights.

48. Revocation of residency impinges not only upon a person's identity and on his special connection to his homeland, but also paves the way to impingement on family life and the rights of the family members, to violation of social rights, deportation, etc. It is in fact one of the most severe and extreme sanctions which may be taken against a resident or a citizen.

49. The residents of East Jerusalem were born, raised and lived in the city before it was annexed by Israel in 1967 and became part of the territory of the state of Israel. They were citizens of the Kingdom of Jordan in these territories, beforehand citizens of the Mandatory "Palestine" and beforehand citizens of the Ottoman Empire.

50. Following the annexation of East Jerusalem and its residents, a population census was taken by Israel. Any person numbered in the census received permanent residency status and thereafter permanent residency status was also given to individuals who proved that they had been living in the annexed area before 1967 and continuously ever since, although not numbered in the census (AAA10811/04 **Surahi v. Minister of Interior**, IsrSC 59(6) (2005)).

51. In this sense, the permanent residency status, in fact, **constituted declaration of an existing situation and the legalization thereof within the new territorial framework** (any other option would have resulted in massive deportation of dozens of thousands of residents from the territory of East Jerusalem which was occupied and annexed).

52. Under these circumstances, for the vast majority of Esat Jerusalem residents, including petitioners 1-2, the status of residency is the only status which East Jerusalem residents have, and the revocation of said status means that they instantaneously become stateless, having no status in the entire world.

53. It should be emphasized that while the Citizenship Law clearly and specifically refers to respondents' authority to revoke citizenship based on breach of allegiance, section 11(a)(2) of the Entry into Israel Law, 5712-1952, does not grant respondent 2, beyond the general authority granted to him, a specific right to revoke the permanent residency status of East Jerusalem residents. The law clearly makes no reference to revocation of permanent residency status based on breach of the duty of allegiance, a duty which is refuted by petitioners in as much as it pertains to permanent residents in general, and to residents of East Jerusalem, being protected residents, in particular.

54. Unlike revocation of citizenship, section 11(a)(2) of the Entry into Israel Law, 5712-1952, does not refer to the weighty question of the fate of a resident who, as a result of the revocation of his residency, will remain stateless without any status in the entire world. A decision in these weighty issues should be made in the general petition, which will eventually determine whether the Minister of Interior is vested with the authority to revoke the residency of petitioners 1-4 and/or the residency of Esat Jerusalem residents, in general.

55. Hence, on the one hand, the revocation of residency of East Jerusalem residents, including two of the petitioners in the petition at hand, causes them very severe damage since they are consequently left stateless, with no status in the entire world. They will be persecuted in their own homeland, devoid of protection against deportation from their home and natural environment, and in fact the connection between the petitioners and their home will be severed. In addition, the revocation of residency will severely impinge on their right to family life and on their right to dignity. On the other hand, no damage will be caused to the respondents if the residency revocation proceedings – the lawfulness of which is currently questionable – will be stayed until judgment in the general petition is given.

Issue of *order nisi* and absence of presumption of administrative validity in the case at hand

56. The respondents are well aware of the fact that their decisions were made while a general petition concerning their authority to revoke the permanent residency status of East Jerusalem residents is pending before the honorable court. In addition, the respondents are well aware of the fact that the honorable court, before which the petition is pending, issued an *order nisi* directing them to show cause why, in the absence of explicit authorization, their decision should not be cancelled. Hence,

the respondents can no longer rely on the presumption of administrative validity in this matter. On the contrary: these decisions are *prima facie* inappropriate, unless the state proves otherwise.

> Once the petitioner satisfied the initial burden imposed on him and showed that the act of the authority was ostensibly unlawful or had a flaw which could point at its unlawfulness, the burden will shift to the administrative authority to show that its actions and decisions were not flawed in a manner which could affect the validity of the decision or otherwise affect the results of the hearing. (HCJ 8150/98 **Jerusalem Centre for the Performing Arts v. Minister of Labor and Welfare** (reported in Nevo).

57. Hence, once the party arguing for the invalidity of the administrative action manages to point at a flaw therein, the administrative authority may no longer enjoy the presumption of validity and the burden to prove that its actions or decisions were not flawed shifts over to it. To the extent the petitioner manages to break the barrier of the presumption of administrative validity and to cast an actual doubt in the lawfulness and validity of the action, the court will issue an *order nisi* in the matter. (See Itzhak Zamir, **Evidence in the High Court of Justice**, Law and Government A 295, 297 (1985)).

58. And to the case at hand. Respondents' decision to initiate proceedings for the revocation of the permanent residency status of East Jerusalem residents by virtue of the Entry into Israel Law, a decision materially related to the cardinal issue to be decided on by the High Court of Justice in the framework of the general petition, is an inappropriate decision to say the least.

59. It is inconceivable that while an *order nisi* was issued by the High Court of Justice, an order which clearly means that the burden to prove the validity of decisions to revoke permanent residency based on the above reasons shifts over to respondents' shoulders, and while judgment of this honorable court is about to be given in this general issue, the respondents will in fact disregard the order and establish facts on scene in the case of the petitioners at hand. The decision is void *ab initio*.

Breach of the duty of fairness and reasonableness

60. Petitioners' position is that respondent's decision to revoke the permanent residency status of East Jerusalem residents and leave them stateless, while this honorable court is about to decide on the lawfulness of the source from which the Minister derives his authority, is an unlawful and unreasonable decision. It is a major consideration that the respondent should have taken into account and give him the proper weight.

61. It is a well known rule that a decision of the administrative authority is unreasonable when the authority, in the framework of the balancing between the different considerations, did not take into account or failed to give proper weight to any consideration. (See: Itzhak Zamir, **The Administrative Authority**, second edition, volume A, page 156; Daphna Barak-Erez, **Administrative Law**, volume B, page 729 an onwards).

62. An administrative authority breaches the duty to act reasonably also when it takes into account the relevant considerations but fails to give the relative proper and just weight to any of the pertinent considerations:

> The administrative authority breaches the duty to act reasonably when it indeed takes into account all relevant considerations and does not take into account extraneous considerations, but gives relative unreasonable weight to this consideration or another. This issue was stressed by Justice Shamgar in HCJ 156/75 Dakah V. Minister of Transportation [3] page 105: "Circumstances may

> occur in which the ministerial authority did not consider extraneous considerations, and only relevant considerations were taken into account, however, weight was given to the various relevant considerations in such a distorted proportion in and amongst themselves, which rendered the final conclusion baseless *ab initio* and therefore totally unreasonable (Honorable Justice Dorner in HCJFH 3299/93 **Vechselbaum v. Minister of Defense**).
>
> See also:
> HCJ 935/89 **Ganor v. Attorney General**, IsrSC 44(2) 485, 513;
> HCJ 341/81 **Moshav Beit Oved v. Comissioner of Transportation**, IsrSC 36(3) 349, 354;
> HCJ 3094/93 **The Movement for Quality in Government v. State of Israel**, iSRsc 47(5) 404, 420-421 and many others.

63. An unreasonable conduct of the administrative authority may lead to the disqualification of its administrative discretion and even to the revocation of its decision:

> The principle of reasonableness leads to the disqualification of the administrative discretion which does not give proper weight to the different interests which the administrative authority must consider in making its decision".
>
> (HCJ 389/90 **Yellow Pages v. Israel Broadcasting Authority**, paragraph 4 of the words of the Honorable Justice Barak)

64. In addition to the obligation to act reasonably, the administrative authority must also act fairly:

> The duty of the state to conduct itself with extreme fairness in all of its actions is plain as the sun at midday to the extent that it does not require references; "Something which is not sufficiently clear and deciphered, requires ample references" (Book of Proverbs and Sayings, Y.C. Tabayov). This is what singles the state out, in particular, and public service in general, sharply and clearly. As far as I am concerned an ethical-moral aspect is embedded in all of the above. **State internal agencies are not expected** – and I am not talking about times of war or of any kind of external maneuvers – **to take tactical consideration**. (taken from the judgment of the Deputy President, Honorable Justice Rubinstein dated March 4, 2010 in LCA 470/08 **Carmel Desalination Ltd. v. State of Israel – Ministry of Finance;** Emphasis was added by the undersigned).

65. In the case at hand, the respondents did not take into consideration, or alternatively, if they did take into consideration they failed to give proper weight to a major and decisive consideration – that the lawfulness of the authority of the Minister of Interior to revoke the residency of East Jerusalem residents was still pending before this honorable court after an *order nisi* was issued in the general petition. Thus, had the respondents taken this consideration into account and had they given it proper weight, they should have reached the conclusion that no act should be taken for the revocation of the permanent residency status of East Jerusalem resident **for as long as** judgment in the general petition has not been given by the honorable court. Hence, respondents' decision is unreasonable and should be revoked at this stage.

<u>Lack of specific judicial review until judgment is given in the general petition</u>

66. The legal advisor for the Prime Minister's Office states in her response letter dated November 15, 2015 that "Following the decision of the Minister of Interior (regarding the revocation of residency) a person who may regard himself as having been prejudiced by his decision will have the right to file a petition, as has already been done in the past."

67. We would like to set the record straight. For as long as the general petition is pending, the courts for administrative affairs naturally refrain from making decisions in specific cases and from conducting a specific judicial review in each and every case – since until such time as the general issue has not been determined, there is no room or reason to discuss the details and circumstances and each and every case (as decided by the court for administrative affairs in **Kasem**).

68. However, while the judicial system "freezes" the handling and legal examination of residency revocation cases, the respondents, on their part, continue to institute proceedings for the revocation of residency (by forcing the petitioners to disclose their arguments and line of defense in the criminal proceedings in the framework of a hearing), knowing that those whose residency was revoked, would have to wait for a specific judicial review of their case until judgment is given in the general petition – all of the above after their residency has already been revoked – with all ensuing consequences.

69. Accordingly, the respondent can revoke the permanent residency of East Jerusalem residents, without having to subject his decision and its severe and far reaching ramifications to specific judicial criticism in each and every case, under circumstances in which an *order nisi* was issued in the general petition which revoked the presumption of validity he had in his favor.

70. In the bottom line, the respondents put the petitioners in a situation in which they must wait for the decision in the general and weighty issue after their residency has already been revoked.

71. Petitioners' position is therefore that in the "legal limbo" which was created following the issue of an *order nisi* in the general petition, "legal limbo" which prevents them and others like them from having their specific case judicially reviewed, the respondents should have refrained from any proceeding associated with the revocation of permanent residency status until such as time as judgment is given in the general petition.

Conclusion

72. A general petition in which an *order nisi* was issued is pending before the honorable court and judgment therein is about to be given by an expanded panel of Justices. The general petition challenges the authority of the Minister of Interior to revoke the permanent residency of East Jerusalem residents based on alleged breach of allegiance, in the absence of an explicit authorization under section 11(a)(2) of the Entry into Israel Law.

73. Respondents' decision to act pursuant to section 11(a)(2) of the Entry into Israel Law and institute proceedings for the revocation of the permanent residency status of petitioners 1-4 while the general petition on this issue is pending and judgment therein is about to be given, is an unreasonable decision which was made in the absence of the presumption of administrative validity and which severely violates petitioners' right for due criminal process.

74. In addition, the decision was made by the respondents who were very well aware of the fact that petitioners' specific case would not undergo specific judicial review, similar to the **Kasem** case, for as long as the general arguments concerning the authority are not determined in the framework of the general petition.

75. It is a decision which was made knowingly and intentionally for the purpose of changing the facts on scene before judgment is given in the general petition. Respondents' intention to revoke

petitioners' permanent residency, if materialized, very severely violates substantial rights of the petitioners, leaving two of them stateless in the world and severely violates the right of all petitioners to family life, their right to live in their homeland and their right to be protected from deportation.

76. In view of the severe impingement on petitioners 1-4 which was described above and in view of the fact that the authority of respondent 2 to institute proceedings for the revocation of the permanent residency status of East Jerusalem residents is questionable in the absence of an explicit authorization in the Entry into Israel Law, the proceedings taken by the respondents for the revocation of the residency status of petitioners 1-4 should be stayed until judgment in the general petition is given. No damage will be caused to the respondents if the situation remains as is and the proceedings for the revocation of the residency are stayed until the petition is resolved.

77. In view of all of the above, the honorable court is requested to accept the petition and issue an interim injunction and an *order nisi* as requested above.

Jerusalem, November 23, 2015

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[File No. 89542]