AAP: **Appeal**

Date: February 14, 2021 **The Supreme Court, Jerusalem**

The Appellants	**ID**
____ Hammouri	**_____**
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v.

The Respondent	1. **Ministry of Interior – Population and Immigration Authority** 2. **Minister of Justice – Ministry of Justice** 3. **Attorney General**	
Name:	Identification Number:	Address:
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Type of Proceeding	Appeal
Name of lower instance	Court for Administrative Affairs
Type and number of lower case:	AP 42672-11-21
Date of lower judgment	January 2, 2022
Date on which lower judgment was served:	January 2, 2022

The competent court:	According to section 11 of the Court for Administrative Affairs Law, 5760-2000, the Supreme Court – panel of three Justices, according to section 26 of the Courts Law, 5744-1984
Fee:	3,061 (item 27 of the Addendum to the Courts (Fees) Regulations, 5767-2007
Guarantee:	NIS 15,000 according to item 24 of the third addendum to the Civil Procedure Regulations, 5779-2018
Additional proceeding:	No additional proceedings are pending before a court in connection with similar factual circumstances that the appellants are parties of.

The Appeal

1. Notice of appeal is hereby submitted against the judgment of the Court for Administrative Affairs in Jerusalem dated January 3, 2022.

   In a nut shell, the court of first instance decided to join the case at hand to the five cases dealing with a similar matter of revocation of residency on grounds of 'breach of allegiance' which were frozen at the recommendation of the Supreme Court until judgment is given in the petitions dealing with revocation of citizenship on grounds of 'breach of allegiance'. The court of first instance holds in its brief judgment that:

   > "1) In the circumstances at hand a hearing is not necessary and it should be deleted for respondent's reasons.
   >
   > 2) However, exceptionally *ex gratia*, if the Supreme Court judgment is given by December 31, 2022, and an application to cancel the deletion is submitted within 30 days from the date of the Supreme Court's judgment, I shall be willing to consider the application, clarifying however, that the above shall not be interpreted to mean that I shall necessarily agree to cancel the deletion.
   >
   > 3) It should also be clarified that if following the Supreme Court's judgment, the respondent shall be required to reconsider its decision it is doubtful whether this proceeding shall still be required. Nevertheless, I decided to provide the petitioner the flexibility specified in paragraph 2 above (emphases were added by the undersigned L.T.).

   Appellant's counsels requested that the proceeding in Appellant's matter continues to be heard since in all other cases which may be referred to as "frozen", petitioners' status had been degraded due to the fact that they have no status in any country in the world. In that regard, said cases differ from the case at hand in which Appellant's status was revoked leaving him without any status in Israel. Instead of understanding the severe crisis faced by the Appellant and agreeing to hear the case despite the complex legal situation, the court of first instance deleted the proceeding, leaving the Appellant

without any ability to fight for the reinstatement of his status, or at least for staying in his country until his case is resolved.

Not parenthetically we wish to add that the court of first instance already erred at the outset of the proceeding when it refused to issue an interim order staying the exercise of the decision to revoke Appellant's residency until all remedies are exhausted, rushing to deprive the Appellant of any status, either permanent or temporary. In its decision the court of first instance strayed from the balanced decision of the Supreme Court in which it was held that:

> "As the hearing commenced we have suggested that the petitioners delete the petitions mutually reserving their rights and arguments, given that questions similar in part are pending in the framework of AAP 8277/17 and AAP 7932/18 (hereinafter: the Petitioners), which have already been discussed and heard by an expanded panel and are just awaiting written supplements prior to deliberation and judgment. The reason for that being that in any event, following the judgment which shall be given in the appeals – the parties shall be required to refer to it and to its implications on the issues which are the subject matter of the petitions at hand.
>
> The counsels of the parties accepted the above suggestion of the court and therefore the petitions are deleted, reserving the rights and arguments of all parties with respect to the constitutional issues. It is clarified that the individual questions are within the jurisdiction of the Court for Administrative Affairs which shall discuss them after the constitutional issues are resolved."

The court of first instance has erroneously ruled in favor of the Respondent – the Ministry of Interior – by making crucial decisions without once hearing from Appellant's counsel, not even regarding application for interim measures. Moreover, the court has even stated in paragraph 2 of its decision dated January 2, 2022 that: "… exceptionally *ex gratia*…". It has thus demonstrated that it views an objection to a decision revoking permanent residency as being unimportant, and that such person can be deprived of any protection and has lost their case before it has even been discussed.

The subject matter of the appeal in brief

2. On November 17, 2021, the Appellants filed an administrative petition against the decision of the Minister of Interior, AP 42672-11-21 with the court of first instance in which they challenged Respondent's decision to revoke the permanent residency status of petitioner 1. In their petition, the Appellants argued that the Respondent should retract her decision (hereinafter: the **Decision**) dated October 17, 2021 revoking the permanent residency status of Appellant 1 on grounds of breach of allegiance and on the basis of section 11A of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry into Israel Law**), the above, since the decision was made by virtue of unconstitutional legislation which does not meet the conditions of section 8 (hereinafter: the **Limitation**

Clause) of the Basic Law: Human Dignity and Liberty; is contrary to international law and humanitarian law; and is completely contrary to the principle of rule of law and the governmental obligation of fairness; and since the decision imposes on petitioner 1, *inter alia*, legislation – creating an offense coupled by sanction – in retrospect, without a proper purpose; and also to the crux of the matter and the individual alleged causes.

A copy of the petition is attached and marked Exhibit A

3. It should be emphasized that in view of the severe implications and the critical harm embedded in Respondent's decision in the matter of Appellant 1, a permanent resident belonging to the indigenous population of East Jerusalem where he has been living from his birth until today, the Appellants have submitted, together with the petition, an application for an interim order ordering the Respondent to refrain from taking any action to remove him from Israel so long as the legal proceedings in his matter are pending.

A copy of Appellants' application for an Interim Order in the matter of Appellant 1 is attached and marked Exhibit B

4. On November 30, 2021, the Respondents submitted to the honorable court of first instance their response to the application in which the Respondents objected to Appellants' application on grounds that the Appellant had been staying "for about a month in the Judea and Samaria area" and that the application had been submitted "in bad faith and unclean hands with the Applicant concealing from the honorable court substantial and important details."

A copy of Respondents' Response is attached and marked Exhibit C

5. On December 2, 2021, the Appellants submitted their reply to Respondents' response in which they notified that they were willing to present their arguments in detail in the hearing if necessary, before a final decision is made in the application for interim relief.

A copy of Appellants' Reply is attached and marked Exhibit D

6. On the very same day, December 2, 2021, the honorable court held that "particularly considering the content of the decision of the court which clearly focuses on the security aspect, an interim order shall not be granted at this time."

A copy of the decision of the honorable court is attached and marked Exhibit E

7. On December 7, 2021, the Appellants in the case at hand filed an application for leave to appeal with this honorable court, arguing that the decision of the Jerusalem district court sitting as a court for administrative affairs (the Honorable Judge Alexander Ron) dated December 2, 2021, in AP (Jerusalem) 42672-11-21 Hammouri v. Minister of Interior, should be revoked and an interim order should be issued ordering the Respondents to refrain from taking any measure aimed at distancing Appellant 1 from Israel and promoting and exercising the decision in his matter. All of the above, until the judicial review of his matter by the courts is concluded.

A copy of the Application for Leave to Appeal is attached and marked Exhibit F

8. On December 26, 2021, and after the Appellants had consented to the honorable court reviewing privileged information in Appellant 1's matter, the court dismissed the application.

A copy of the Court's Decision in the matter is attached and marked Exhibit G

9. In view of the decision of the Supreme Court in the application for leave to appeal, the Respondents submitted to the court of first instance on December 26, 2021, an application to delete the petition.
A copy of the Respondents' Application to Delete the Petition is attached and marked Exhibit H

10. On December 27, 2021, the court of first instance ordered the Appellants in the case at hand to respond to the application, and on January 2, 2022, the Appellants submitted their response to the application for the deletion of the proceeding.

A copy of Appellants' response to the Application for the deletion of the proceeding before the court of first instance is attached and marked Exhibit I

11. On January 2, 2022, the court of first instance gave its decision in the application for the deletion of the proceeding. On the following day, the Appellants applied to the court requesting it to clarify whether the decision concerned the deletion of the proceeding and on January 3, 2022, the court of first instance clarified that indeed according to the decision the proceeding should be deleted.

A copy of the judgment of the court is attached and marked Exhibit J

12. However, it is Appellants' position that according to case law and in view of the unbearable harm inflicted by the Respondent on Appellant 1 by her decision which violates his fundamental rights without any judicial scrutiny of the lawfulness of the decision and the constitutionality of the law underlying it, the honorable court of first instance erred in deleting the petition and enabling the Respondent to severely harm Appellant 1 prematurely.

If, God forbid, said unreasonable decision is realized, the following nightmare shall take place:

The Appellant, a 37-year old man, shall be obligated to leave his homeland and his property and go to France where he has a formal status of citizenship by birth, as he was born to a French mother who had married a Jerusalemite and has been living her entire life in Jerusalem where she stills lives.

He will arrive to France without a profession since he had been trained to be a lawyer and was practicing law in the Arabic/Hebrew languages in the military courts and the territories of the Palestinian Authority.

His grasp of the French language is on a low level of basic speaking. He is not familiar with high-level French. Perhaps an immigrant by choice has the ambition to become

integrated into the place to which they have immigrated of their own free will, to learn the language and the customs, but a person who was forcefully deported against his/her will, shall not be properly integrated.

It should be noted that his French wife is living in France, with her parents, since she was not permitted to enter and live with her husband in his home. The couple would not be able to live with their in-laws and will be doomed to live in difficult conditions.

The Factual Basis

The Parties

13. Appellant 1 (hereinafter: the **Appellant**), a permanent resident belonging to the indigenous population of East Jerusalem and a French citizen, was borne in 1985, and in 2014 married a French citizen. The spouses have two children, a son, ------ ------, who was borne on March 27, 2016, and a daughter, who was borne on April 30, 2021, both of whom are currently living temporarily in France with their mother – petitioner's wife – whose entry is prevented by the Ministry of Interior.

14. Appellant 2 (hereinafter also **HaMoked**) is a not-for-profit association whose purpose is to assist victims of abuse and deprivation by state authorities, including, inter alia, indigenous residents of East Jerusalem and their family members, residents of the territories, by protecting their rights before the courts, either in its own name as a public appellant or as counsel to persons whose rights had been violated.

15. **The Respondents are respectively:**

    - **Ministry of Interior – Population and Immigration Authority by the Minister of Interior:**

      The Minister of Interior who made the decision to revoke the permanent residency status of Appellant 1 on grounds of breach of allegiance and on the basis of section 11A of the Entry into Israel Law, 5712 – 1952 (hereinafter: the **Entry into Israel Law**).

    - **Minister of Justice – Ministry of Justice and the Attorney General:**

      The two bodies which gave their consent to the Minister of Interior's decision to revoke the permanent residency status of Appellant 1 on grounds of breach of allegiance and on the basis of section 11A of the Entry into Israel Law, 5712 – 1952 (hereinafter: the **Entry into Israel Law**).

Factual Background

16. The Appellants shall describe below the factual infrastructure of this Notice of Appeal.

17. It should already be stated at the outset that as known, there is a substantial controversy concerning the lawfulness of the law underlying the proceeding whereby the status of Appellant 1 is revoked on grounds of 'breach of allegiance'. The controversy still stands

after the petitions which had been filed in this matter with the High Court of Justice – HCJ 396/19, HCJ 405/19, HCJ 6047/19 and HCJ 6049/19 – were deleted reserving all of the arguments of the parties until after judgment is given in AAP 8277/17 and AAP 7932/18 dealing with the revocation of Israeli citizenship on grounds of 'breach of allegiance'.

18. Therefore, and since the above petitions are still pending and have not yet been resolved, the Appellants hereby notify that they join the same principled arguments which were argued in said petitions in connection with the constitutionality of the law, and they reserve the right to broaden their arguments with respect to the constitutionality of the law and the decision which is the subject matter of the petition as well as with respect to the revocation of the permanent residency of East Jerusalem residents on grounds of breach of allegiance. It is the position of the Appellants in the case at hand that the revocation of status of permanent residents belonging to the indigenous population of East Jerusalem by virtue of section 11A of the Entry into Israel Law, 5712 – 1952 (hereinafter: the **Law**) – does not meet the conditions of the limitation clause and therefore is unconstitutional; the purpose of the Law is not proper; the Law does not befit the values of the state; the Law inflicts excessive harm; and the Law does not include an explicit and detailed authorization consisting of standards and criteria as required.

A few arguments in a nut shell:

19. **The status of an East Jerusalem resident**

It should already be emphasized at the outset that the permanent residency held by the petitioner from his birth, was given to him by right and not by grace. Petitioner's status was not given to him by virtue of a pledge of allegiance to the state of Israel or following his immigration thereto. The status was given to him by virtue of the fact that he was born in this land and belongs to the indigenous population of East Jerusalem whose territory and residents were occupied and annexed by the state of Israel, and therefore the proceeding which was initiated against the petitioner on grounds of 'breach of allegiance' is intrinsically unlawful, and should be revoked.

As aforesaid, there is a substantial controversy concerning the constitutionality of the law underlying the proceeding whereby petitioner's status is revoked on grounds of 'breach of allegiance'. The controversy still stands after the petitions which had been filed in this matter with the High Court of Justice – HCJ 396/19, HCJ 405/19, HCJ 6047/19 and HCJ 6049/19 – were deleted reserving all of the arguments of the parties until after judgment is given in AAP 8277/17 and AAP 7932/18.

Therefore, and beyond the fact that the proceeding against the petitioner is nothing but another attempt to retroactively apply to a permanent resident a law which was enacted several years after he had committed the offenses, and that at its core there is a punitive element through a procedure tainted by blatantly extraneous considerations, **the entirety of the principled arguments which were raised in the legal proceedings mentioned above should be regarded as an integral part of the arguments in the case at hand**.

The principled arguments against the constitutionality of the Law and the unlawful manner by which it vests with the Minister of Interior the authority to revoke the status of permanent residents belonging to the indigenous population of East Jerusalem are as follows:

- Section 11A of the Law does not meet the conditions of the limitation clause since it is not intended to achieve a proper purpose, it does not befit the values of the state, it inflicts an excessive harm, and until recently did not include clear standards and criteria for the exercise of the authority;

- Permanent residents belonging to the indigenous population of East Jerusalem do not owe a duty of allegiance to the state of Israel, and Israel is prevented from obligating them to be loyal to the state, and therefore said residents cannot breach the duty of allegiance and cannot be penalized for breach of allegiance;

- Applying twice a legislative act **retroactively** is unlawful, due to the fact that both section 11A of the Law and the Counter Terrorism Law came into being after the acts attributed to him as the main cause of the proceeding, and the administrative detentions cannot serve as any basis whatsoever.

- In view of the fact that a punitive element is embedded in the law by virtue of which the authority is exercised we are concerned with double punishment – **Non bis in idem**.

It should be noted that it is at least improper that, instead of refraining from initiating additional proceedings by virtue of the Entry into Israel Law until the issue in dispute concerning the constitutionality of the Law and the manner of its implementation is resolved, the Minister of Interior, unfortunately, quickly initiated another problematic proceeding prematurely.

Accordingly and in view of the agreements reached between the parties in the series of the petitions in HCJ 396/19, HCJ 405/19, HCJ 6047/19 and HCJ 6049/19 – <u>that the Minister of Interior is a party to</u>, petitioners' position is clear: even if it is decided not to accept petitioner's arguments, **<u>the proceeding against him should be currently stayed until a decision is made in a new constitutional petition which shall be filed after judgment is given in the appeals referred to above</u>**.

20. **<u>The Notice</u>**

Due to the importance of the language of the notice to the arguments at hand we shall quote below the main points stated therein *verbatim*:

> This is to inform you that I am considering revoking your permanent residency in Israel by virtue of the authority vested in me according to section 11A of the Entry into Israel Law, 5712-1952 (hereinafter: the Entry Law).

> At the basis of the intention to revoke your permanent residency are your actions - you are a member and a senior activist in the Popular Front organization, and all your activities are performed in the name of the organization and in order to promote its objectives. In the framework of your activity you were detained and arrested several times for security activities, you have acted to finance activities and to recruit others, and you have even conspired to carry out an attack against a public figure. Following your above actions, you were sentenced to 7 years in prison. You were subsequently released from prison in the framework of the Shalit deal. Even after your release from prison you have continued and you still continue with your hostile activity against the State of Israel and you were even held in detention for about a year due to your above activities.

21. **The Notice is Invalid**

The notice does indeed commence with the word "consider", which ostensibly points at a sincere intention to consider petitioner's arguments willingly and open-mindedly. However, as we shall prove below, it is clear that when the notice was sent, the then-Minister of Interior Aryeh Der'i had already concluded to revoke petitioner's status and the proceeding which was initiated by said notice was insincere and nothing but lip service.

The fact that the proceeding against the petitioner is initiated **retroactively** on the basis of a law which was enacted several years after the acts for which he was tried raises concerns of bad faith which also arise, *prima facie*, from the different announcements that the Minister of Interior immediately published in the media and posted on the website of her Ministry – the Population and Immigration Authority – on the very same day on which the petitioner received the notice to his hands.

These matters *prima facie* show that the decision to revoke petitioner's status had already been made, no matter what. These two matters are coupled with the fact that we are concerned with a brazen selective enforcement against the petitioner, mainly due to the fact that the indictment against him concerned the intention to harm the late Rabbi Ovadia Yosef, of blessed memory, a matter which shall be further elaborated on below.

These three matters indicate, according to the petitioners, that the sole purpose of the proceeding which was initiated against the petitioner was to pay lip service for the purpose of validating the draconian step of revoking the permanent residency of a person belonging to the indigenous population of East Jerusalem, a step the completion of which was publicly announced before petitioner's arguments have even been heard.

22. **The Notice was delivered by a third party**

As aforesaid, on September 3, 2020, the notice was delivered to the petitioner. However, although the notice had been sent by the Minister of Interior of the state of Israel according to the law, the petitioner did not receive it directly from the Ministry

but through a security official. Using a third party to deliver such a cardinal notice already raises at this stage *prima facie* queries as to the validity of the proceeding, and more specifically as to whether it is a proceeding which was initiated by the Minister of Interior of the state of Israel who has properly exercised his discretion as required according to the Entry into Israel Law, or whether the position of another body underlies the proceeding. The proceeding should appear to be proper, at least, *prima facie*, and therefore the notice should have been sent to the petitioner directly, and not through a messenger in the form of an ISA official.

23. **The intention is based on extraneous considerations – an interested party**

Contrary to the notice which was sent to the petitioner in which the identity of said "public figure" was obscured to keep it neutral in terms of "exclusion of testimony", the identity of said public figure was explicitly stated **in the announcement which was published at the same time by the Minister of the Interior to the general public** through the public liaison office of the Population and Immigration Authority. As known, said figure is none other than his mentor and rabbi for many years, **Rabbi Ovadia Yosef, of blessed memory**. It is well known that for many years the previous Minister of Interior Aryeh Der'i was one of the figures most closely associated with the Rabbi and in certain periods he was probably the closest figure to him.

Accordingly, it is clear that the notice which was sent to the petitioner, years after he had been released from the incarceration sentence which was imposed on him for his above actions, incarceration indicating that notwithstanding its severity this case is not exceptionally extreme compared to other cases to the extent justifying revocation of status on grounds of breach of allegiance, is purely motivated by personal vendetta due to the attempt to harm the Rabbi.

The Entry into Israel Law does indeed provide that the Minister of Interior can initiate a proceeding for the revocation of permanent residency **if it was proven to his/her satisfaction** that the status holder performed a deed amounting to breach of allegiance. However, with respect to the petitioner at hand his discretion was tainted *ab initio* being an interested party.

In an ideal world, the honorable Minister would have distanced himself from the case and would have disqualified himself from personally acting in matters in which his discretion was tainted *ab initio*, being an involved and interested party.

24. **Administrative Detention, Counter-Terrorism Law and a Breach of allegiance**

Alongside the principled arguments against the law underlying the notice, the arguments concerning the retroactive application of the law to the petitioner, and the fact that the relevant respondent acts in petitioner's matter for reasons of personal vendetta, respondent's notice clarifies that the proceeding at hand should be scrutinized. We shall explain.

As known, section 11A of the law defines a breach of allegiance as a deed which to the satisfaction of the Minister of Interior involves a breach of allegiance.

However, the Minister of Interior's notice to the petitioner states that after his release from prison he continued to be active and **was even held in administrative detention in connection therewith**. Section 11A of the law provides as follows:

> The Minister of Interior may cancel a permanent residency status given under this law (in this section – status), among other things, if it has been proven to the Minister's satisfaction that the status holder **committed a deed** which involves a breach of allegiance to the State of Israel

Hence, the Entry into Israel Law underlying respondent's notice explicitly states that the respondent may initiate the proceeding **when a person committed a deed** which involves a breach of allegiance to his/her satisfaction. On the contrary, according to case law, administrative detention is preventive in nature rather than punitive.

> As has been noted in our judgments more than once, **the purpose of an administrative detention** is not to punish a person for deeds committed by them in the past, **but to prevent the risk posed by them in the future** (see ADA 2135/16 A v. State of Israel) (reported in Nevo).

Accordingly, since the administrative detention is by definition forward looking it can never be used as a cause for initiating a proceeding for the revocation of status on grounds of breach of allegiance on the basis of a deed which has already been committed.

Another flaw in the administrative detention argument appearing in respondent's notice to the petitioner referred to by us below is the fact that the legislation by virtue of which the petitioner was placed in administrative detentions also shows that the deeds do not constitute deeds involving a breach of allegiance as is required by the Entry into Israel Law.

According to the Entry into Israel Law a 'deed involving a breach of allegiance' is an act of terror as this term is defined in the **Counter-Terrorism Law**, 5776-2016, providing assistance or soliciting an act **as aforesaid,** or actively participating in the activity of a terror organization or a declared terror organization as these terms are defined **in said law**.

Therefore, an explicit condition under the Entry into Israel Law for initiating a revocation of status proceeding is that the act underlying the status revocation proceeding initiated by the Minister of Interior falls within the definition of an act of terror as this term is defined in the Counter-Terrorism Law, 5776-2016 (hereinafter: the **Counter-Terrorism Law**).

The Counter-Terrorism Law dedicates an entire chapter to the manner in which a person suspected of serious security offenses under the law should be detained. In addition, section 2 of the Counter-Terrorism Law explicitly provides that **the law by virtue of which a person is placed in an administrative detention for acts which are defined**

as acts of terror is the "Detentions Law" – the Penal Procedure Law (Enforcement Powers – Detentions), 5756-1996.

However, **the law by virtue of which the petitioner was placed in administrative detentions after the Counter-Terrorism Law entered into force is the Emergency Powers (Detentions) Law, 5739-1979**, rather than the "Detentions Law" - the Penal Procedure Law (Enforcement Powers – Detentions), 5756-1996.

Hence, beyond the simple fact that the acts for which the petitioner was placed in administrative detention cannot be used as grounds for a proceeding according to the Entry into Israel Law – requiring that the proceeding is initiated on the basis of an act which was committed in the past and not on the basis of a future act – the fact that the petitioner was placed in administrative detentions by virtue of another law and not by virtue of the provisions of chapter D of the Counter-Terrorism Law, shows that these are not deeds involving a breach of allegiance.

The Appellant has never been convicted according to the Counter-Terrorism Law but rather according to the Security Provisions (Judea and Samaria – No. 378) Order, 5730-1970.

In addition, the Judea Military Court specifies in its judgment some key points which take the sting out of and significantly mitigate the severity of the act for which he was convicted and the risk posed by him:

> **".. I took into consideration the following circumstances:**
>
> - **The offense of membership and activity in a prohibited organization committed by the defendant is in fact youth activity of pasting up posters and youth propaganda.**
>
> - **The activity was not of a military nature but was of an educational nature and was made for propaganda purposes…**
>
> - **"The defendant's young age"**
>
> **"… I took into consideration the following circumstances:**
>
> - **The defendant according to the indictment was actually a hindering factor in the conspiracy.**
>
> - **The offense which is the subject matter of the conspiracy was not close to being committed and additional and essential elements for its execution were missing".**

An additional and more thorough discussion of the judgment and Mr. Hammouri's actions shall be broadly discussed in Exhibit C as aforesaid.

25. **There are no Regulations and Criteria aimed at preventing arbitrariness**

In view of the severity of the violation of petitioner's fundamental rights it should be noted that there is another flaw in the proceeding against him.

As it emerges from the notices of the state to the court in HCJ 6049/19 **Rajabi v. Minister of Interior**, the criteria for exercising the power vested with the Minister of Interior by virtue of the Entry into Israel Law were created only in September 2020. The purpose of the criteria is to prevent arbitrariness and to reinforce the rule of law. However, the Minister of Interior did not wait for the criteria and limits for the exercise of the exceptional and far-reaching power vested in him by the law to be clarified. Instead, he rushed and sent the petitioner a notice prematurely when no criteria were in place. In HCJ 7803/06 **Abu Arafa et al. v. Minister of Interior** the court referred to this matter by saying:

> **In the case at hand, not only do the provisions of the Entry into Israel Law lack criteria** for exercising the power to revoke permanent residency status - **but also the regulations promulgated by virtue of the law do not define the criteria for exercising said power** (paragraph 54 of the Honorable Justice Vogelman)
>
> (Emphases added, B.A.)

And also:

> The importance of regulating by legislation the administrative power to violate a fundamental right and the criteria for exercising it also derives from the principle of the rule of law, requiring that any act of legislation be "clear, definite and comprehensible in a manner enabling the members of the public to conduct themselves accordingly (HCJ 2740/96 **Shansi v. Inspector of Diamonds, Ministry of Commerce and Industry**, IsrSC 51(4) 481, 520 (1997)); and **from the obligation of governmental fairness which includes the obligation to warn the individual before a governmental action is taken involving a violation of their rights, enabling them to direct their conduct such that their rights shall not be violated** (Barak, page 548-549; Barak-Erez, page 346-347). Authorization which is not explicit or authorization which is drafted generally and vaguely harms the ability of the members of the public to properly know their rights and obligations (Mate Harov, page 213). The absence of an explicit authorization to violate a fundamental right - **an authorization which includes clear and uniform criteria for the construction of the administrative discretion – may** even increase the risk of error, of **selective enforcement, and may consequently lead to certain arbitrariness** in the implementation of the law. In addition, naturally, **this state of affairs** – in which the activity of the administration is not regulated and specified in detail in the law – **impedes the ability to judicially scrutinize the individual actions of the administration** (compare HCJ 11163/03 **Supreme Monitoring Committee for Arab Affairs in Israel v. Prime Minister**, IsrSC 61(1), 42 (2006)).

(Emphases added, B.A.)

The fact that no criteria were in place when the proceeding was initiated against the Appellant, did not prevent the honorable Minister from using the draconian power vested in him by the law, but has rather served him in his attempt to initiate an unlawful, arbitrary and vengeful proceeding, a proceeding which may not have been initiated had the Minister acted according to the criteria which were established only at the end of September 2020.

26. **Arbitrary proceeding contrary to the state's undertaking in HCJ 7803/06**

It should be emphasized that from the material at hand it emerges that the state does not deny its obligation to exercise the revocation power "**very narrowly**", being aware of the severe impact that this step will have on the status holders (paragraph 31 of the judgment of the Honorable Justice Hendel in HCJ 7803/06 **Abu Arafa v. Minister of Interior** (reported in Nevo).

In HCJ 7803/06 the state undertook before the court that the power to revoke permanent residency status would be exercised by the Minister of Interior **only in extreme cases**. However, the conduct thus far in some of the proceedings which were brought to the High Court of Justice and noted above, as well as in petitioner's matter, shows that contrary to said undertaking the above referenced power is exercised arbitrarily also when there is no justification for the exercise of the power. With all due respect, the Appellant was sentenced to seven years in prison and in addition to that he was placed in administrative detention several times. As noted above, the acts with respect of which he was placed in administrative detention cannot be considered as a deed involving a breach of allegiance for which permanent residency can be revoked. In additionת and without taking it lightly, a seven-year prison sentence also shows that these are not the extreme acts for which in certain circumstances, the power to revoke status on grounds of breach of allegiance can be exercised.

Hence, despite the state's undertaking before the High Court of Justice to exercise the power to revoke status only in the most extreme cases, in fact – in Appellant's matter – the power was exercised arbitrarily, not according to criteria, for motives of pure personal vengeance and also in cases which, severity wise, with all due respect, are not at the most extreme end of things. Therefore, for this reason also it is a fundamentally unlawful step which should be cancelled.

27. **The judgment in HCJ 367/19 et al. and its implications on Appellant's matter**

To summarize the limited arguments at this point, the judgment which was given on October 26, 2020 in the series of the above-noted petitions and the individual decisions which were given in the matters of other permanent residents belonging to the indigenous population of East Jerusalem that the respondents decided to revoke their permanent residency status in Israel – should apply.

By the end of a brief hearing which was held on October 26, 2020, in the series of the petitions in HCJ 367/19 et al., it was agreed between the parties, including the legal

counsel of the Minister of Interior, to accept the proposal of the honorable court to leave the existing situation in place until after judgment is given in the appeals which had been filed with the Supreme Court in AAP 8277/27 and AAP 7932/18 – dealing with decisions to revoke the status of citizenship, the above, in view of the fact that at least some of the issues which are raised in the revocation of citizenship petitions and in the revocation of residency petitions, overlap.

Hence, in the judgment which was given at the end of said hearing it was held that **after the judgment on the revocation of citizenship is given, the appellants will be able to file a petition challenging the constitutionality of section 11A of the Entry into Israel Law, and after the constitutionality issue is decided and to the extent required, individual petitions shall be filed against the individual decisions given against the petitioners in HCJ 37/19 et al**.

It was further held that in another case currently pending before the court, the parties will act in the same manner and notice in that regard shall be submitted by the state to the court – HCJ 831/20.

In view of the agreements between the parties and the judgment in HCJ 367/19 et al – that the existing situation shall remain in place until after judgment is given in the revocation of citizenship issue and decision in a future petition challenging the constitutionality of section 11A of the law by virtue of which the decision was made – Appellants' position is that the above agreements and judgment should also apply to Appellant's matter.

Hence, the decision in Appellant's matter should also be stayed until after judgment is given in the revocation of citizenship issue and until after a decision is made in a constitutional petition, if any is filed, against the Entry into Israel Law by virtue of which the Minister of Interior acts.

It should be stated that the Appellants have numerous and lengthy legal arguments concerning Israeli and international law, Israeli legislation and international legislation. The Appellants reserve the right to add these arguments and broadly discuss them if needed. The Appellants also reserve the right to discuss matters more broadly after receiving Respondents' considerations as requested.

Conclusion

The judgment challenged in this appeal validates a severe and offensive decision. Therefore, the honorable court is requested to interfere with said decision and cancel it including with respect to the costs imposed on the Appellants.

Jerusalem, February 14, 2022.

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Daniel Shenhar, Advocate	Lea Tsemel, Advocate