At the Supreme Court **HCJ 2741/22**
Sitting as the High Court of Justice

The Petitioners:

1. _____ **Abu Taleb**
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24. **Association for Civil Rights in Israel, Registered Association No. 580011567**
25. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger, Registered Association No. 580163517**
26. **Physicians for Human Rights – Israel, Registered Association No. 580142214**

Represented by counsel, Adv. Oded Feller and/or Reut Shaer and/or Dan Yakir and/or Avner Pinchuk and/or Debbie Gild-Hayo and/r Gadeer Nicola and/or Abir Joubran Dakwar and/or Maskit Bendel and/or Tal Hassin and/or Anne Sucio and/or Roni Pelli
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and by counsel, Adv. Daniel Shenhar and/or Tehila Meir and/or Maisa Abu Saleh-Abu Akar and/or Nadia Daqqa and/or Aaron Miles Kurman

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and by counsel, Adv. Adi Lustigman and/or Tamir Blank and/or Hagar Shechter and/or Aya Haj Uda
Physicians for Human Rights – Israel
Tel: 02-6222808; Fax: 03-5214947
Email: adi@lb-law.net

v.

The Respondents:

1. **The Knesset**

Represented by the Knesset's legal counsel, Jerusalem
through the State Attorney's Office,
Ministry of Justice, Jerusalem

2. **Minister of Interior**

Represented by the State Attorney's Office,
Ministry of Justice, Jerusalem

Petition for Order *Nisi*

The Honorable Court is requested to issue an order *nisi* which is directed at the Respondents ordering them to appear and show cause why the Citizenship and Entry into Israel (Temporary Order) Law, 5782-2022 would not be repealed.

Table of Contents

A. Preface and Application to Consolidate the Hearing with HCJ 1777/22

1. This petition concerns the constitutionality of the Citizenship and Entry into Israel (Temporary Order) Law, 5782-2022 (hereinafter: the **New Temporary Order** or the **New Law**). The Law was passed by the Knesset in the second and third reading on March 10, 2022, and was published in the official gazette on March 15, 2022 (book of laws 5782 2968, 808).

A copy of the New Law is attached hereto and marked **P/1**.

2. This law is the continuation of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003, which was enacted on August 6, 2003, and was extended time and again until its expiration on July 6, 2021 after the Knesset plenum has rejected the government's request to do so (hereinafter: the **Previous Temporary Order** or the **Previous Law**. Henceforth, reference to the Previous Temporary Order and to the New Temporary Order shall be collectively made where there is no distinction between them as: the **Temporary Order** or the **Law**).

A copy of the Previous Law is attached hereto and marked **P/2**.

3. Petitioners 1-23 are citizens and permanent residents of East Jerusalem and Palestinian spouses and children wishing to obtain status in Israel as family members or for humanitarian reasons. Joining the petition are three human rights organizations – Petitioners 24 – 26. All of the petitioners have conducted legal proceedings due to the refusal of Respondent 2, the Minister of Interior (hereinafter: the **Respondent**), to accept the expiration of the Previous Temporary Order, and her instruction to continue acting as if it was still valid.

4. We shall not encumber the Honorable Court with the details of the specific stories of Petitioners 1 – 23, which shall be attached as an appendix, in the same manner in which they appeared in chapter B of their petition which was filed in September 2021 with the Court for Administrative Affairs (AP 25402-09-21) together with their affidavits:

   a. Among the Petitioners are female Israeli citizens having Palestinian spouses who were not permitted to obtain any status due to the Temporary Order since they were under the age of 35 (this is the case of Petitioners 15-16 and 17-18);

   b. Among the Petitioners are male and female Israeli citizens and permanent residents from East Jerusalem having Palestinian spouses, who received stay permits or residency status years ago and whose status was "frozen", and but for the Temporary Order would have completed the graduated procedure years ago and would have long been entitled to citizenship or permanent residency (this is the case of Petitioners 1-2, 3-4, 5-6, 7-8, 10-11, 19 and 20);

   c. Some Petitioners received stay permits or residency status as children and were "trapped" in this status due to the Temporary Order without the ability to upgrade it (this is the case of Petitioners 9, 12 and 13).

   d. There are women who were married to Israeli citizens and are mothers of Israeli children, who but for the Temporary Order could have completed the graduated procedure and obtain citizenship, but the Temporary Order did not enable the procedure to be completed, their spouses passed away, and they were subsequently given stay permits or residency status to which they were bound without the ability to obtain a permanent status (this is the case of Petitioners 22 and 23);

   e. Some Petitioners grew-up in Jerusalem in difficult life circumstances, but their status applications for humanitarian reasons were not heard and they have received nothing in the absence of a family member, a "sponsor" who legally resides in Israel, which is a threshold condition according to the Temporary Order for considering applications of Palestinians for humanitarian reasons (this is the case of Petitioners 14 and 21).

Copies of Petitioners' stories and affidavits are attached hereto and marked **P/3.**[*]

5. According to data provided by the Ministry of Interior on February 28, 2022 and on March 2, 2022 in the legislation process of the New Law (hereinafter: the **Data of the Ministry of Interior**), there are currently in Israel some 12,200 spouses of citizens and permanent residents from East Jerusalem who

[*] Petitioners 1 and 2 in that case, chose to conduct another proceeding and therefore do not appear herein as Petitioners.

since 2002 have received stay permits and temporary residency status according to the Previous Temporary Order and were "frozen" in said status – about 9,200 with stay permits and about 3,000 with temporary residency. It was further informed by the Ministry of Interior that according to its last examination in 2017, there were some additional 485 children of permanent residents from East Jerusalem who received stay permits (it did not have updated data). Full details concerning the number of individuals who received stay permits or temporary residency status for humanitarian reasons were not provided by the Ministry of Interior, except that we are concerned with a few single cases per year or with some limited tens of cases per year.

A copy of the document consisting of the Data of the Ministry of Interior dated February 28, 2022 is attached hereto and marked **P/4**.

A copy of the document consisting of the Data of the Ministry of Interior dated March 2, 2022 is attached hereto and marked **P/5**.

6. Upon the expiration of the Previous Temporary Order, the general provisions of the law regulating status in Israel and the ordinary procedures applicable to this matter were reinstated. Individuals who were harmed by the Previous Temporary Order including the Petitioners at hand applied for status or for an upgraded status according to the law but the Respondent, as aforesaid, refused to act according to the applicable legal situation.

7. This was the backdrop against which the Petitioners have filed their petition with the Court of Administrative Affairs. The petition was not heard on its merits due to extensions which were granted to the respondents in said case (the Respondent and the Director General of the Population and Immigration Authority). However, Petitioners' application for an interim order in the framework of said proceeding – to order the respondents in said case to apply to the Petitioners and other Palestinians seeking status the ordinary laws regulating status in Israel – was discussed, and a leave for appeal submitted by them in that matter was partially accepted by the Supreme Court. It was held that the respondents should act pursuant to the existing law, according to the procedures established by them at their discretion (LAA 7917/21 **Khatib v. Minister of Interior** (January 11, 2022) (hereinafter: **Khatib**).

8. Consequently, in the beginning of February 2022 the Respondent published temporary procedures, which shall be discussed by us below, and has simultaneously acted towards re-enacting the Temporary Order.

9. The governmental bill was consolidated with three private bills which had a dominant and declared demographic purpose as expressed in statements made by Ministers and members of the Knesset and in the law which was passed. In addition, for the purpose of justifying the alleged security purpose, data were presented in February 2022 on behalf of the Israeli Security Agency (ISA) (hereinafter: **ISA Data**) which were unable to establish a connection between the security need and the Law. According to ISA Data,

since 2002 and until the end of 2021 the involvement in terror of individuals who received status in the framework of family unification procedures amounted to 35 persons. Despite repeated requests of members of the Knesset, the ISA did not segment the data and did not provide details about the ages of the involved persons, the nature of their involvement (perpetrator, involved, collaborator), the source of the data (convictions, indictments, interrogations, intelligence information) and the like. The ISA has mainly emphasized the involvement of the "second generation of family unification" or "family unification offspring" and in other words: children to one citizen or resident parent, who are entitled to status in Israel at birth, although it admitted that the Law had no impact on the status of these children.

A copy of the document containing the ISA Data from February 2022 is attached hereto and marked **P/6**.

10. The three organizations which joined the petition – the Association for Civil Rights, Hamoked Center for the Defense of the Individual and Physicians for Human Rights (hereinafter: the **Organizations**) – continued monitoring Respondent's policy including the re-enactment of the Temporary Order. The Organizations commented on the bill in writing on February 14, 2022. Their representatives, the undersigned, arrived to the marathon meetings held by the Knesset Foreign Affairs and Defense Committee on February 28, 2022, March 1, 2022, March 6, 2022, and March 7, 2022, in preparation of the bill for the second and third readings, and took an active part therein for many days (in fact, the undersigned participated in the meetings until the stage in which internal discussions have commenced on the reservations raised by the members of the Knesset and the votes thereon from March 8, 2022 through March 10, 2022 when the undersigned followed the discussions from a-far and commented in writing on issues which came up, for instance on March 9, 2022). Once the preparation of the bill was finalized, the Organizations sent the Respondents on March 8, 2022 an exhaustion of remedies letter in which they have specified their arguments and gave notice of their intention to file a petition after the enactment of the Law for the purpose of abolishing it. After the Law passed in the Knesset plenum they sent the Respondents on March 13, 2022 an exhaustion of remedies reminder letter.

A copy of the letter of the Organizations to the Knesset Foreign Affairs and Defense Committee dated February 14, 2022, is attached and marked **P/7**.

A copy of an exhaustion of remedies letter dated March 8, 2022, is attached hereto and marked **P/8**.

A copy of a letter dated March 9, 2022, to the Respondents is attached hereto and marked **P/9**.

A copy of the reminder exhaustion of remedies letter dated March 13, 2022, is attached hereto and marked **P/10.**

11. In a nut shell, the Petitioners argued that for two decades the legislation was critically violating a host of fundamental rights, harming the fabric of life of thousands of families and condemning them to misery and distress. Although

the government tried to adhere to a security purpose, the purpose of the Law was primarily demographic, as things were expressed during the legislation process, in the new purpose section and in the arrangements adopted by the Law. The demographic purpose was not a proper purpose and obviously did not meet the proportionality test. The security purpose was not proven, many questions were not answered and data which had been requested were not provided. Even if the Law had a security purpose and even if it was a proper purpose, it was clarified in the Knesset meetings that the purpose of the Law could have been achieved by causing a lesser harm to human rights. It was found that there was no security justification for denying individuals who were permitted to stay in Israel and have actually become its residents over the years (many of them have been staying in Israel for many years, and some even two decades) social rights and national health insurance, preventing access to welfare and housing services, limiting their employment and livelihood possibilities, preventing legal aid and the like. It was agreed that there was no security justification for not allowing the status of same sex spouses to be regulated. However, nevertheless, the version which was adopted violated these and other rights only because those who agreed to support the Law in the second and third readings demanded that the Law violated human rights more severely, regardless of the security purpose, even when the ISA agreed that a more lenient approach could be implemented. Namely, severe and unnecessary violations of human rights were presented as a "political compromise" although the law requires that the harm shall be proportionate – the means should befit the cause, the least injurious means should be chosen and the benefit should outweigh the damage. Proportionality is not determined by political aspirations to harm a certain population and cause it damage and by "compromises" in connection therewith.

12. The Law passed, as aforesaid, in the Knesset plenum on Thursday, March 10, 2022 and was published in the official gazette on March 15, 2022, The Petitioners did not rush into filing a petition but acted according to the rule of the Honorable Court concerning the obligation to exhaust remedies before filing a constitutional petition, imposing a preliminary obligation to present the arguments in writing to the authorities in order to define the dispute and limit its boundaries before the petition is filed, establish a factual and legal infrastructure which would enable the court to exercise its judicial scrutiny and for a mutual respect between the authorities (see, for instance, HCJ 2030/20 **The Movement for Quality Government in Israel v. Minister of Justice,** paragraph 15 (March 18, 2020)). It was so held in the matter of two of the petitioning Organizations in the case at hand – the Association for Civil Rights and Physicians for Human Rights – that this obligation applies even if they have participated in the legislation process and took part in the Knesset meetings (HCJ 5746/20 **The Association for Civil Rights in Israel v. The Knesset** (August 30, 2020)). Therefore, although the Petitioners have actively participated in the legislation process, they have exhausted their remedies in writing and waited for Respondents' position.

13. However, shortly after the Law was adopted by the Knesset plenum, on Sunday, March 13, 2022, a petition was filed – HCJ 1777/22 **Adalah - The Legal Center for Arab Minority Rights in Israel v. Minister of Interior** – requiring that the Law be repealed. On the very same day Justice Grosskopf ordered that the Respondents should submit a preliminary response by May 15, 2022.

14. On March 20, 2022, Adv. Miri Frenkel-Shor, the legal advisor of the Knesset Foreign Affairs and Security Committee answered Petitioners' exhaustion of remedies letters as follows:

> "The Citizenship and Entry into Israel (Temporary Order) Law, 5782-2022 was approved in the second and third readings on Adar B 7, 5782 (March 10 2022), after 8 meetings were held with respect thereto by the Foreign Affairs and Security Committee, in which you have participated.
>
> In your letter you raise numerous arguments with respect to the constitutionality of the Law, its purposes, validity the arrangements which were included therein and the arrangements which were not included therein.
>
> Before we were able to answer you, a petition with respect to the same exact matter was filed (HCJ 1777/222 Adalah et al. v. Minister of Interior at al.), raising similar arguments. In its decision dated Adar B 10, 5782 (March 13, 2022) the court held that the Respondents, including the Knesset, should submit a preliminary response to the petition by May 15, 2022.
>
> Since the matter is already pending before the court and in view of the breadth of the issues raised in your letter, the position of the Knesset with respect to the constitutionality of the arrangement shall be broadly presented in the response to the above petition."

A copy of the letter of Adv. Frenkel-Shor dated March 20, 2022 is attached hereto and marked **P/11**.

15. On April 4, 2022, an answer dated April 3, 2022, to the exhaustion of remedies letters was received on behalf of the government through Adv. Avital Sternberg, Head of (Counseling) Division in the Legal Counseling and Legislation Department at the Ministry of Justice:

> "We have received your letters in the above captioned matter, in which you have raised arguments against constitutionality of the Citizenship and Entry into Israel (Temporary Order) Law, 5782-2022 (hereinafter: the **Law**), which has been recently enacted and you have notified that you consider filing a petition with the Supreme Court to have it repealed. Your letters were brought to my attention and I hereby respectfully respond to your said letters

in agreement with the deputy attorney general (public-administrative law), as follows:

1. The Law was adopted by the Knesset on March 10, 2022 and was published in the official gazette on March 15, 2022 (book of laws 2968 5782, page 808).

2. As it emerges from the governmental bill (Government Bills 1509 5782, page 596, dated February 7, 2022), the government promoted the enactment of the Law for security purpose on the basis of a current opinion of the Israel Security Service. According to this opinion, as stated in the governmental bill, the population of family unification applicants among the residents of Judea, Samaria and Gaza, as well as foreign resident from enemy states or from areas which are in a constant conflict with the state of Israel, still constitute population whose members pose an elevated and proven risk compared to family unification applicants from other places around the world. It was therefore determined that the security reasons which have initially led to the enactment of the Law in 2003 and to extension on an annual basis still stand. For the purpose of realizing the security purpose, certain limitations were imposed on the grant of status in Israel to the residents of said areas.

3. In addition to the above it should be noted that in your letter different issues were raised with respect to the Law which was passed by the Knesset. In view of the circumstances, including the fact that the Law as eventually approved by the Knesset also includes provisions which were not included in the governmental bill, some additional time is required to provide an orderly response, without expressing an opinion with respect to any of the arguments included in your said letters. In these circumstances, and since in any event a petition against the Law has already been filed (HCJ 1777/22), and since the state intends to respond to it including to all arguments in that matter, then, as far as the state is concerned your letters and this answer thereto can be regarded as an exhaustion of the obligation to exhaust remedies imposed on petitioners prior to filing a petition with the court. If a petition is also filed on your behalf, the state's response to the different issues shall be included in the state's response to the petition."

A copy of Adv. Sternberg's letter dated April 3, 2022 is attached hereto and marked **P/12**.

16. Hence the petition. The petitioners have been handling the matter for two decades. They have also participated in the previous petition and have intensely acted with respect to the matter in the last few months – before and during the legislation procedure. They have corresponded with the authorities, petitioned, appealed, wrote to the Knesset and made comments, arrived time and again and continuously to the meetings of the Foreign Affairs and Security Committee which were conducted for many days and hours, took part in said meetings and were the NGOs which handled the matter very intensively with the sincere effort to make an impact on the legislation. They waited for the publication of the legislation in the official gazette and for the publication of the minutes of the Knesset's deliberations, properly exhausted their remedies and waited to receive answers from the Respondents before filing the petition, as required by case law. Now, having received Respondents' response and after the Passover recess, the petition is filed along with the application to consolidate the hearing.

17. The remedy which is requested in this petition and in the petition in HCJ 1777/22 is identical: to determine that the law is null and void. Therefore it shall be proper and efficient to hear the petition together, and as the court shall realize after reviewing the petitions, contrary to the Knesset's letter, the arguments in the petitions and their focus are different. The petition in HCJ 1777/22 focuses on the non-constitutionality of the sweeping prohibition established by the law on regulating the status of Palestinians in Israel. The petition at hand obviously also engages with this aspect, but not less than that with another aspect which was discussed at length by the Knesset in its long meetings and has already been broadly referred to in the exhaustion of the remedies – the harm embedded in the continuing duration for two decades of the arrangement to those who received by virtue thereof stay permits and residency status in Israel. Namely, not only persons who are completely denied status, but persons who received status by virtue of the law and remained bound to the status which had been given to them. The harmed individuals are mainly spouses and children of citizens and residents and individuals who received status for humanitarian reasons, who over the years actually became Israeli residents, but whose civil status remained inferior, unstable and devoid of any rights. The severe harm inflicted on their human rights, in view of the objectives of the law, also affects the constitutional scrutiny, and this aspect is also discussed by the petition at hand.

18. Therefore, the Honorable Court is requested to consolidate the hearing in the petitions.

B. The developments which led to the enactment of the Temporary Order

(1) 1999 and henceforth: procedures regulating the status in Israel of spouses, children and fir humanitarian reasons

19. Before diving into the depths of the legislation we should examine the arrangements with which it interferes as well as the motivation to do so. To begin with we shall review, in a nut shell, the procedures regulating the status in Israel of spouses, children and for humanitarian reasons as of the end of the last decade of the twentieth century.

20. In 1999, the Honorable Court in **Stamka** (HCJ 3648/97 **Stamka v. Minister of Interior**, IsrSC 53(2) 728 (1999) (hereinafter: **Stamka**) accepted the position of the Minister of Interior concerning the implementation of a uniform naturalization procedure to spouses of citizens – whether the citizens are Jewish or not. At the same time, in view of the fundamental right to family life the court ordered to mitigate the naturalization proceedings, following which a graduated procedure was established to regulate the status of spouses.

21. As part of the procedure, different aspects are examined including the sincerity of the relationship between the spouses, the existence of family life and joint household, center of life in Israel and the absence of an individual security or criminal preclusion (See, for instance, HCJ 05/2028 **Amara v. Minister of Interior**, paragraph 9 of the judgment (July 10, 2006)). Status is not given easily and not as a matter of routine. It is a graduated procedure, which continues for several years, in which the spouses are examined time and again, before the initial status is granted, before it is renewed, before it is upgraded and before a permanent status is acquired.

22. Upon the commencement of the procedure, stay and work visas or permits (in the case of Palestinians) are issued, thereafter temporary residency status is granted for a number of years, and by the end of the procedure - a permanent residency status or citizenship are obtained. After temporary residency status is given according to Section 2(a)(3) of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry into Israel Law**), the family members are entitled to social rights according to the National Insurance Law [Consolidated Version], 5755-1995 (hereinafter: the **National Insurance Law**) and the other social laws and to national health insurance according to the National Health Insurance Law, 5755-1995 (hereinafter: the **National Health Insurance Law**). In addition to the above, they are entitled as of that time to the rights of an Israeli resident (see AAA 1966/09 **Atun v. Minister of Interior**, paragraph 6 of the judgment of Justice Levy (November 22, 2011) (hereinafter: **Atun**).

23. The procedure for spouses who are married to citizens is based on the provisions of section 7 of the Citizenship Law, 5712-1952 (hereinafter: the **Citizenship Law**), which states as follows: "Husband and wife one of whom is an Israeli citizen or one of whom applied for citizenship and complies with the conditions set forth in section 5(a) or with the exemption therefrom, the other spouse can obtain Israeli citizenship by naturalization, even if the conditions set forth in section 5(a) are not met." Section 5 establishes the conditions for naturalization in Israel, and section 7 provides that they should

be mitigated (**Stamka**, page 793). According to the procedure, the spouses are entitled to a stay permit or to a residency and work visa valid for six months, thereafter to temporary residency status valid for four years, and by the end of a four-and-a-half year procedure – to Israeli citizenship (HCJ 7139/02 **Abbas-Batsa v. Minister of Interior**, IsrSC 57(3) 481, 485 (2003) (hereinafter: **Abbas-Batsa**)).

24. The procedures for spouses who are married to permanent residents and to common-law spouses, like all other status regulating procedures for humanitarian reasons, upon the termination of the spousal relationships or procedures granting status to children of residents, were established in procedures by virtue of the authority vested with the Minister of Interior to issue entry visas and stay permits in Israel, according to section 2 of the Entry into Israel Law.

25. Spouses who are married to permanent residents are entitled according to the procedures to a stay permit or stay and work visa valid for 27 months, thereafter to temporary residency status valid for three years and by the end of a five year and three months procedure – to permanent residency status (See HCJ 2208/02 **Salame v. Minister of Interior**, IsrSC 56(5) 950, 953-954 (2002)).

26. Common-law spouses receive according to the procedures a stay permit or a stay and work visa valid for three years, thereafter to temporary residency status valid for four years and by the end of seven years – to permanent residency status (See AAA 4614/05 **State of Israel v. Oren**, IsrSC 61(1) 211, 221 (2006)). Thereafter they can naturalize and if they are spouses of citizens – they are entitled to more lenient conditions (See HCJ 8298/15 **Maymon v. Minister of Interior** (August 18, 2016)).

27. The status of children is regulated according to their place of birth and the civil status of the Israeli parent. If the parent is a citizen, the child's status is regulated according to section 4 of the Citizenship Law (See HCJ 10533/04 **Weiss v. Minister of Interior**, IsrSC 64(3) 807, 831 (2011)). If the parent is a resident, the child's status is regulated according to section 2 of the Entry into Israel, depending on whether the child was born within or without Israel. The status of a resident's child who was born in Israel is regulated by regulation 12 of the Entry into Israel Regulations, 5734-1974 (hereinafter: the **Entry into Israel Regulations**) (See AAA 5718/09 **State of Israel v. Srur**, IsrSC 64(3) 319, 337 – 338 (2011)) and the status of a resident's child who was born outside Israel is regulated by the family unification procedure (See **Atun**).

28. In addition to the above procedures, status in Israel may also be acquired for humanitarian reasons by virtue of the general power granted under section 2 of the Entry into Israel Law. The cases which are brought before the Committee for Humanitarian Affairs which recommends to the Director General of the Population and Immigration Authority whether status should

be granted, include mainly mundane and common cases which are not at all humanitarian but relate to the most fundamental human rights such as status after termination of the spousal relationships due to the violent conduct of the Israeli spouse or the death of the Israeli spouse and when the spouses have children (see, for instance, AAA 8611/08 **Ziwaldi v. Minister of Interior** (February 27, 2011) (hereinafter: **Ziwaldi**); LAA 7938/17 **A v. The Population, Immigration and Border Crossings Authority** (September 13, 2018) (hereinafter: **A)**).

(2) 2001-2002: Measures taken by the Ministry of Interior to limit the acquisition of status by Palestinians for demographic reasons

29. Hence, in 1999, following the judgment in **Stamka**, a uniform procedure regulating the status of spouses was established, regardless of their origin and regardless of whether their spouses are Jewish or Arabs. Palestinian spouses have indeed suffered unbearable procrastination and changing document requirements, in a procedure which in many cases turned into an "aimless journey of attrition" (**Abbas-Batsa**, page 489). However, the first ones to whom the 1999 procedure was applied and who have managed to overcome the bureaucracy, should have acquired citizenship in 2003.

30. On October 21, 2001, *Yedioth Ahronoth* published an article written by Nurit Palter: "Ministry of Interior's Initiative: It is harder to become an Israeli". According to the article, which was published together with a diagram of the graduated procedure, the Ministry of Interior was examining a host of measures to tighten the naturalization procedures, and to "significantly cut the benefits currently given to temporary residents." The reason for the measures, which according to the article, were initiated by the then Minister of the Interior, Eli Yishai, "is the growing phenomenon of Arab requests from abroad and from the Palestinian Authority to unite with their families in Israel, while in doing so they in fact exercise the right of return". It was stated that officials in the Ministry of Interior warned that "Palestinians and the residents of the neighboring states are exercising the right of return using the back door, and the State of Israel must wake up". According to the article, the Ministry of the Interior was considering the cancellation of some of the social rights and national insurance benefits given to temporary residents, including Arabs seeking family unification".

A copy of the article dated October 21, 2001 is attached and marked **P/13**.

31. On January 9, 2002, Mazal Mualem's article: "Yishai acts to reduce the number of Arabas who shall receive Israeli Citizenship" was published in *Haaretz*. According to the article the Minister of Interior, Eli Yishai, directed the Ministry's legal department to examine possible legislation changes which shall reduce the number of non-Jews receiving Israeli citizenship. These are residents of the Palestinian Authority who receive citizenship as a result of their marriage to Israeli citizens, and Arabs who left Israel after the establishment of the state of Israel and now wish to exercise their citizenship and the citizenship of their family members". According to the article,

Minister Yishai held a meeting with the professional bodies of his office, and has commenced discussions with political bodies to form a majority to pass a change in the law since "he sees an urgent need to find ways to reduce the number of non-Jews receiving Israeli citizenship, including Arabs, which has dramatically increased over the last years" and "pose a threat to the Jewish character of the State of Israel." Senior officials at the Population Administration are quoted in the article as saying that it is the "exercise of the right of return in indirect ways."

A copy of the article dated January 9, 2002, is attached and marked **P/14**.

32. On February 6, 2002, another article by Mazal Mualem was published in Haaretz: "As of '93 140,000 Palestinians started a naturalization procedure in Israel". According to the article, until October 2001 no computerized registration of family unification applications was made. Nevertheless, an examination conducted by the Population Administration showed that since 1993, more than 23,000 family unification applications of Palestinians who married Israelis were submitted, each such application consisting of 6 individuals on the average, mainly children, and accordingly, some 140,000 Palestinians entered Israel (we shall refer to these data later on in this petition). Minister Yishai told *Haaretz* that "this information proves that the right of return is exercised through Israel's back door" and added that said data were "alarming and worrying and will assist us to pass a legislation change to stop this phenomenon". The graduated procedure which was established in 1999 was mentioned in the article which stated that the legal advisors at the Ministry of Interior submitted to Minister Yishai several initiatives for legislation changes including an annual quota for foreign residents married to Israelis. It was further noted that professional bodies at the Ministry of Interior have even advised a Knesset Member who had submitted a bill which passed the preliminary reading, to cancel section 7 of the Citizenship Law, by virtue of which the graduated procedure for spouses is implemented.

A copy of the article dated February 6, 2002, is attached and marked **P/15**.

33. Following the publications, the Association for Civil Rights wrote to the Ministry of Interior on October 24, 2001, January 9, 2002 and March 11, 2002. In its letters it pointed at the illegality of the discriminating initiatives and requested to receive details and segmentation of the above data. Said requests received general and laconic answers or were not answered at all. Accordingly, for instance, on November 26, 2001, Mr. Mordechai Cohen, adviser to the Minister of Interior, replied: "The Ministry of Interior intends to thoroughly examine the graduated procedure to avoid abuse and deception. For your information!". On January 16, 2002, Mr. Asher Hayun, assistant to the director general of the Ministry replied that the request had been forwarded for review, and nothing more. The request for data has never been answered.

A Copy of the correspondence with the Ministry of Interior between October 24, 2001 - March 11, 2002 is attached and marked **P/16.**

(3) March 31, 2002: The Minister of Interior orders to freeze family unification with Palestinians

34. On March 31, 2002 a suicide attack was committed in Matza restaurant in Haifa. 16 civilians were killed and about 40 were injured. The attack was committed by Shadi Tubasi, who had been given status in Israel because his mother was an Israeli citizen (his father was from Jenin). Although Tubasi did not receive his status as a spouse in a family unification procedure, on that same day the Minister of Interior, Eli Yishai, ordered the directors of all population administration bureaus throughout Israel to freeze the processing of family unification applications with Palestinians. In an article which was published on the following day, April 1, 2002, by Mazal Mualem in *Haaretz* ("Yishai froze family unification of Israeli Arabs who married residents of the OPT") data were presented again regarding the number of applications which had been submitted since 1993, the allegation that each application "entails" 6 additional applications on the average, and the initiatives of Minister Yishai to stop the phenomenon, which was manifested in his above decision.

A copy of the article dated April 1, 2002 is attached and marked **P/17**.

(4) May 12, 2002: Government Resolution 1813 and its demographic reasons

35. The decision of Minister Yishai was replaced on May 12, 2002 by government resolution 1813: Handling illegal aliens and family unification policy applicable to OPT residents and foreign residents of Palestinian origin. It was *inter alia* determined in section B of the resolution captioned "Family Unification Policy" that "Given the security situation and the effects of the processes of immigration to and settlement by foreign residents of Palestinian origin in Israel, including by way of family unification" a new policy for processing family unification applications shall be established in procedures and legislation. Until then "new applications of OPT residents for residency or another status shall not be accepted; an application which was submitted in the past shall not be approved, and the non-Israeli spouse shall be required to stay outside Israel until another resolution is adopted." Other applications shall be examined "considering the origin of the sponsored spouse". Individuals undergoing a graduated procedure shall be frozen in the status which was given to them – the permit shall be extended and the status shall not be upgraded.

36. Principles for the new policy were subsequently established, including stricter criteria for obtaining status (section C), annual quotas were set for family unification approvals (section D) and legislation amendments were established (section E).

A copy of government resolution 1813 dated May 12, 2002 is attached and marked **P/18**.

37. The above clearly shows that the decision of the Minister and the government resolution which followed it were not premised on security considerations. And if this is not enough, the population administration in the Ministry of Interior presented, as a basis for the government resolution, a presentation which consisted of 20 slides captioned: "Immigration to and Settlement of Foreign Residents in Israel". This is the factual basis underlying the resolution.

38. The document does not specify the source of the data included therein – convoluted, contradictory, dubious and questionable data - dealing with demographic aspects of status applications, their collection and processing methods by the Population Administration. Page 7 states that between 1993 and 2001, 22,414 "family unification" applications were submitted. According to page 9, 97,279 people were granted status in Israel, and another 16,007 applications were pending. According to the summary of data in page 9 more than 113,000 applications were submitted - 5 times the number of applications according to page 7. According to pages 10-12 the data are not final: the individuals seeking "family unification" have many children, who in turn, God forbid, will also marry foreign residents and will have more children. Pages 10-16 discuss the cost and financial burden which, according to the Population Administration, is imposed on the state of Israel due to the naturalization procedures. Reference is mainly made to national insurance benefits, that the children of the spouses, Israeli children according to the law, will be entitled to, according to calculations made by the Population Administration based on the demographic data, presented by it as aforesaid. Page 16 with its disgraceful caption cries out: "Where some of the budget is going to? and for what?!", and immediately continues to state along the same lines: "How much does only a child allowance cost us? Not including unemployment, income support benefit, health insurance, education, etc."

39. On page 17, in its concluding recommendations, the Population Administration asserted that “since this is a clear and present danger", action must be taken on two levels: in the immediate term, the procedures for acquiring status should be changed, and in the medium term legislation should be introduced, which "would help block this trend and preserve Israel’s character as a Jewish and democratic state in the long run”. The next pages, 18-20 include selected parts of the government resolution: new applications should not be approved, the processing of existing applications should be frozen, stricter criteria for acquiring status should be established, an annual quota for approved applications should be set and actions should be taken towards legislation changes.

40. Namely, according to the reasons presented by the Ministry of Interior to the government, in order to preserve the character of the State of Israel as a Jewish state and protect the welfare budget, the processing of family unification applications should be frozen and the naturalization of Palestinian spouses should be prevented by legislation. The government resolution was premised on this shameful document, which is nothing but a mixture of data,

contradictory in parts, the source of which is unknown and whose reliability is doubtful, filled with racist remarks and vulgar assertions.

A copy of the document "Immigration and Settlement of Foreign Residents in Israel" (Ministry of Interior, May 2002) is attached and marked **P/19**.

41. Against the decision of Minister Yishai and subsequently, against government resolution 1813, petitions were filed with this Honorable Court, but they were not resolved shortly thereafter since the government entrenched its policy in legislation (See HCJ 4022/02 **Association for Civil Rights in Israel v. Minister of Interior** (January 11, 2007)).

42. Before discussing the legislation we wish to dwell a bit longer on the general approach of the government at that time. The then Minister of Interior, Avraham Poraz, wanted to make some changes in matters relating to immigration and status, including the status of children of labor immigrants. The then Attorney General, Elyakim Rubinstein, who was alarmed by said intentions wrote on May 20, 2003, a letter to the then Prime Minister, Ariel Sharon, expressing his reservations about the Minister's initiatives. Among the reasons to refrain from regulating the status of children of labor immigrants, the Attorney General wrote as follows:

> "This rule, if applied to the children of foreign workers, shall also apply, for the same reasons, to the children of illegal aliens in Israel from the territories, Jordan and other countries. The distinction between the two groups shall constitute discrimination and shall not be legally justified.
>
> It should be pointed out that this policy does not reconcile with the instructions which have recently been given by you to the system, to take action to change the law in a manner denying automatic status from the child of an Israeli whose other spouse is a resident of the territories. It shall be difficult to justify the distinction between these two cases, while the argument that the children of a resident of the territories pose a security threat may not necessarily bear scrutiny, particularly when minors are concerned."

A copy of the letter of the Attorney General Rubinstein dated May 20, 2003, is attached and marked **P/20**.

43. It became evident once again that the decision makers are bothered not only by the Palestinian spouses, but also – by their Israeli children, who were regarded as a threat – a "security threat" – and action should be taken to cancel the status which was given to them.

44. This was the approach of the government and of the attorney general with respect to spouses of Palestinians who established families in Israel, when the legislative process has commenced.

(5) July – August 2003: The enactment of the Temporary Order and the demographic data which were presented to justify it

45. On June 4, 2003, the government presented a bill which passed the second and third readings as a temporary order on July 31, 2003, and was registered in the official gazette on August 6, 2003.

46. We shall not discuss in length the legislative process and the amendments which were made in the previous Temporary Order 2005 and 2007, since they have already been discussed by the Honorable Court, as shall be specified below. It suffices to say that the MKs spoke overtly about the demographic purpose of the law and we shall refer only to the manner by which things were presented by authority officials to intimidate the MKs with demographic data.

47. For instance, in a meeting which was held by the Interior and Environmental Committee of the Knesset on July 14, 2003, preparing the bill for the second and third reading, the then Deputy Attorney General Menni Mazuz, stated as follows:

> "This order was adopted by the government for security reasons due to the increasing settlement process of tens of thousands of Palestinians in the state of Israel through this procedure. As of a year ago, on the eve of the government resolution, the data which were presented referred to some 130, 140 thousand Palestinians who had settled in the state of Israel from 1994 until the beginning of 2002. These are not random decisions. Spouses from Sweden, Romania or Canada, several dozens per year. By 1993 the figures amounted to several dozens or hundreds per year including with respect to Palestinian residents, but as of 1994 the figures have increased significantly." (page 4 of the protocol)".

48. Namely, the then Deputy Attorney General Menni Mazuz, reiterated before the Knesset the same data concerning 140 thousand Palestinians who have acquired status since 1993 – the same data which were published by the Ministry of Interior prior to the government resolution and the legislative process. Subsequently, during the meeting, the then Head of the Population Administration Herzel Gedge, presented different data and Mr. Mazuz insisted on said data and said: "97 thousand people received identification cards or Israeli citizenship as a result of the proceeding" (page 15 of the protocol), and then corrected himself and said: 97 thousand plus 32 thousand" (Supra), and thereafter repeated the data which had been presented by him in the beginning of the meeting: "23 thousand applications were approved representing some 130 thousand people" (page 20 of the protocol). To queries which were raised in the committee as to whether the data pertained to adults who had submitted applications or also included children who were anyway entitled to status as children to an Israeli parent, Mr.

Mazuz responded as follows: "What difference does it make?" (page 15 of the protocol).

49. Subsequently, in the hearing of the petitions which had been filed against the previous law (HCJ 7052/03) a decision was given by the Honorable Court on January 31, 2006, ordering the government to provide data concerning family unification applications which had been submitted in the decade which preceded the government resolution. The data were brought in the framework of a Response which was submitted on February 7, 2006. According to the data which were furnished, as of 1993 and until the end of 2001, 22,414 applications were submitted by Palestinians and citizens of Arab countries altogether. The Ministry of Interior was unable to distinguish between them. Of these applications, 6,407 were denied. 16,007 applications were defined as "pending" and it was explained that it meant: received a permanent status or were undergoing a graduated procedure or a decision has not been made in their matter. It was further stated that apparently 12,152 had received a permanent status, but that the data was not accurate and as aforesaid also included citizens of Arab countries.

A copy of the data provided by the Ministry of Interior on February 7, 2006 from the Response is attached and marked **P/21**.

On this issue see also a copy of an article by Shahar Ilan "21 Thousand? Hardly 5,000", *Haaretz,* September 22, 2005, which is attached and marked **P/22**.

50. We shall put last thing first and note that during the legislative process of the new law the Deputy Attorney General, Raz Nizri, referred to the data which had been presented in 2003 by the then Deputy Attorney General, Mazuz, and said:

> "We were trying to locate it and I was told that they did not find the records…" (page 35 of the protocol of the meeting of the Foreign Affairs and Security Committee of the Knesset dated March 3, 2022).

and also:

> "I have previously said that we did not find records supporting the data which had been given by Mazuz. Mazuz said the things and we were familiar with them. While preparing for the meeting we tried to locate the data used by him." (Supra, page 43).

51. In other words: the data which were presented to the public, to the government prior to its resolution and as a basis therefore, and to the Knesset which discussed the bill, had no basis, were frivolous and inflated. The number of individuals whose applications were approved and who had acquired status of any kind amounted to no more than 8% of the data which had been presented, and this is also questionable in view of the fact that the

Ministry of Interior combined together Palestinians and citizens of Arab countries and could not commit to an accurate number. Hence, the data must have been used manipulatively to justify the demographic purpose of the law. As we shall show below, the same exact data were also mentioned in the judgment of the Honorable Court and as we shall show further, they were also reiterated while the new temporary order, which is the subject matter of this petition, was enacted.

(6) "It has never been limited to security reasons" – on the alleged purpose of the Temporary Order

52. The entire purpose of the previous temporary order, it was so argued by state authorities throughout the years, is a security purpose; not to enable Palestinians to acquire permanent status in Israel because they allegedly pose a threat to the security of Israel and its citizens. It was also alleged that those who received stay permits in Israel as an exception to the sweeping prohibition, their status should remain as is and should not be upgraded since a person who becomes a resident or a citizen is also a resident according to the Population Registration Law, 5725-1965 (hereinafter: the **Population Registration Law**) and according to the provisions of section 24 of said law is required to hold an Israeli identification card. It was alleged that a person holding an Israeli identification card, is not examined in the checkpoints and crossings as thoroughly as a person who does not hold an Israeli identification card, and for this security reason temporary residency and all the more so permanent residency or citizenship should not be granted to them. In other words: according to the temporary order, in general, status should not be granted to Palestinians, stay permits should not be upgraded and residency or citizenship should not be granted to persons who received status of any kind.

53. At the same time, the demographic purpose of the law continued to be conspicuous and senior politicians did not hesitate to openly discuss it. Accordingly, for instance, when the then Minister of Interior, Ophir Pines-Paz, was told at a meeting of the Knesset's Interior and Environment Committee held on January 24, 2005, that the law did not address a security problem, he honestly replied: "Let's assume that nobody in the room is stupid... whoever regards this argument as a central argument, should understand that once it is no longer meaningful this law will cease to exist " (page 14 of the protocol).

54. The authorities continued to formally adhere to the security purpose and to outright deny the demographic purpose of the temporary order. Mr. Mazuz, this time in his role as Attorney General, reappeared before the Interior and Environment Committee of the Knesset on June 28, 2005, in its meetings regarding the amendment of the previous temporary order and said:

> "The demographic argument has accompanied the public agenda throughout the last few years, regardless of this law. When we

> discuss the immigration law, we also discuss demographic considerations. This law was enacted only for security purposes. We said that if the Supreme Court was not convinced that this law or any provision thereof was not premised on a security purpose or did not serve such purpose, it could repeal the law. We do not wish to promote a demographic purpose and if the court concludes that this is the purpose of the law it will repeal the law. The provisions were formulated on the basis of security facts and assumptions". (Protocol of the hearing, page 14.)

55. Subsequently, when serving as a Supreme Court Justice, Justice Mazuz heard a petition which had been filed by the Association for Civil Rights regarding the violation of the social rights of Palestinian family members who were denied residency by the temporary order. In the hearing which was held on September 6, 2020, it was argued that the security legislation could not justify it. Justice Mazuz said: "It was never just a security matter."

A copy of the protocol dated September 6, 2020 of HCJ 3818/20 is attached and marked **P/23**.

(7) Temporary order - general prohibition alongside exceptions

56. We shall go back to the previous temporary order. And why temporary? Because according to the provisions of section 5 thereof, it shall be valid for one year as of its effective date but the government may extend it for successive one year periods at a time by an order which shall be approved by the Knesset plenum. Since the previous temporary order was enacted by the Knesset in August 2003 it was extended over and over again by the government with the approval of the Knesset plenum twenty times (18 times by an order and twice, in 2005 and 2007 by legislative amendments).

57. The rule in the previous temporary order was established in section 2 thereof and was captioned "Limitation of Citizenship and Presence in Israel": "During the period in which this law shall remain in force, notwithstanding the provisions of any law, including section 7 of the Citizenship Law, the Minister of Interior shall not grant a resident of the Area or a resident of any country listed in the addendum citizenship on the basis of the Citizenship law, and shall not give them a permit to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a resident of the Area permit to stay in Israel, on the basis of the security legislation in the Area". "Area" according to section 1 of the previous Temporary Order is "Judea and Samaria and the Gaza Strip (hereinafter: the "**Territories**"), and the countries listed in the addendum are: "Iran, Lebanon, Syria, Iraq." Namely, the temporary order sweepingly prohibit the grant of status in Israel to Palestinians from the Territories, as well as to residents of the above four countries. The Israelis who reside in the Territories were excluded from the law (see definition of the term "Resident of the Area" in section 1 of the previous temporary order).

58. Alongside the sweeping prohibition several exceptions were established in the temporary order which enabled different bodies:

(a) to grant a stay permit, but not citizenship or residency, to a Palestinian male over 35 years of age and to a Palestinian female over 25 years of age at least, to prevent their separation from an Israeli spouse – and to "freeze" them in said status (section 3);

(b) to permit the stay in Israel as residents of minors up to 14 years of age, and the stay in Israel by permit of Palestinian minors between 14-18 years of age, to prevent their separation from their custodian parents (section 3A);

(c) to grant a Palestinian or resident of one of the countries listed in the addendum to the law, whose family member stays lawfully in Israel, a stay permit or temporary residency for special humanitarian reasons at the recommendation of a special committee. The Ministry of Interior was authorized, with the government's approval, to establish a maximal annual quota for permits and visas of this kind. Spousal relationship or parenthood do not constitute, in and of themselves, a special humanitarian reason, with the exception of Druze spouses residents of the Golan Heights (Section 3A1);

(d) To permit the stay in Israel of Palestinians for work purposes, medical purposes or for another temporary purpose (Section 3B);

(e) To grant status in Israel, and at least a stay permit, to persons identifying with the state and who acted - personally or their family members – to promote its goals, or that the state has a special interest in arranging their status (section 3C);

(f) To permit the temporary stay in Israel – by a stay permit or by a temporary residency – of persons whose applications were submitted before the effective date in 2002 of government resolution 1813 which served as the basis for the law – and to "freeze" them in the status which was given to them (section 4).

59. The above exceptions remained subordinated to specific examination, but the previous temporary order provided further (in the framework of amendment No. 2 in 2007) that a person can pose a security threat not only if there is information about any risk posed by them, but only by their family members – including brothers in law and sisters in law – and even if in their place of residence activities take place which may put at risk the security of the state of Israel and its citizens (section 3D of the previous temporary order). In government resolution 1598 dated June 15, 2008 it was determined that the Gaza Strip was an area in which activities were taking place which may put at risk the security of the state of Israel, and therefore visa or permit to stay

in Israel may not be granted to a Gaza resident or to any person whose registered address is in the Gaza Strip.

60. Namely, the temporary order prohibited, as a general rule, granting status in Israel to Palestinians from the teritories and to the residents of the countries listed in the addendum to the law, and enabled, as an exception and under certain limitations, to grant inferior status in circumstances which were established. Many did not meet the exceptions to the temporary order and could not acquire any status – for instance, (male) spouses of citizens and residents under 35 years of age, or (female) spouses under 25 years of age, and anyone having humanitarian reasons but did not have a first degree relative who could act as their sponsor. Those who had spouses and children were torn from them by virtue of the temporary order.

61. Those who met the exceptions and received status of any kind were "frozen" in said status so long as the cause underlying it continued to exist. The procedure regulating their status was not completed and the applicants were repeatedly required to knock on the doors of the bureaus of the Ministry of Interior to extend the status which had been given to them, to schedule appointments and wait for them, to provide numerous documents concerning their spousal relationship and center of life, to pay fees and to have their spousal relationship, parenthood, humanitarian circumstances and the like closely scrutinized time and again for many long years.

C. The Temporary Order and its continuing violation of human rights

(1) The violation of the right to family life and the right to equality of Israeli citizens and residents: the petitions against the previous temporary order and the judgments

62. The constitutionality of the temporary order was examined twice by expanded panels of eleven justices (HCJ 7052/03 **Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of Interior**, IsrSC 61(2) 202 (2006) (hereinafter: **Adalah**); HCJ 466/07 **Galon v. Attorney General**, IsrSC 65(2) 1 (2012) (hereinafter: **Galon**)). In both cases the court held, by a majority opinion that the constitutional right of Israeli citizens and residents to regulate the status of their spouses derives from their constitutional right to family life which is entrenched in the Basic Law: Human Dignity and Liberty. It was further held by a majority opinion that the right of Israeli citizens and residents to maintain a family unit in Israel with their spouses on the basis of their right to equality forms part of their constitutional right to dignity, entrenched in the Basic Law: Human Dignity and Liberty. The temporary order, it was further held by a majority opinion, violates said constitutional rights to family life and equality.

63. In both cases, the court acknowledged the security purpose of the law, and held that it was appropriate. At the same time, in **Adalah**, Justice Joubran noted that the policy was based on both security and demographic considerations, making reference in that regard to government resolution 1813, for instance with respect to the settlement of Palestinians in Israel and the quotas which were established for approved status applications of Palestinians (paragraph 24 of his judgment). Justice Procaccia examined the credibility of the security consideration, and found that the demographic consideration "constantly hovered above the legislative process", was articulated by the Knesset members, and "had a presence" in the process in which the sweeping arrangement was established (paragraph 14 of her judgment). In **Galon**, Justice Levy noted that "the above was also reflected in the words of the then Deputy Attorney General, Mr. Menni Mazuz, at the meeting of the Interior committee of the Knesset" dated July 14, 2003 and quoted from Mr. Mazuz's remarks in said meeting concerning "the increased settlement process of tens of thousands of Palestinians in the state of Israel through this procedure", the data presented by him about "some 130, 140 thousand Palestinians who have settled in the state of Israel since 1994," and his allegation that "there was a very sharp increase in the numbers" (paragraph 1 of his judgment). On the other hand, and although the data about "some 130, 140 thousand" have already been refuted, as aforesaid, in the Response, following the decision of the court ordering that the data should be presented, they continued to be mentioned in the judgments (see, for instance, paragraph 15 of the judgment of the Deputy President Rivlin in **Galon**).

64. Indeed, in **Adalah** the court ruled by a majority of six (President Barak and Justices Beinisch, Procaccia, Levy, Joubran and Hayut) that the law was unconstitutional, since it did not satisfy the test of proportionality in the narrow sense - the harm, it was so held, outweighed the benefit. However, with respect to the remedy - the date on which the law should be repealed – the opinions of the justices were divided. Justice Levy was of the opinion that although the law was unconstitutional, the authorities should be given nine months to amend it rather than six months as his colleagues thought, and has therefore joined the opinion that the petition should be dismissed. Namely, the petition was dismissed by a majority opinion of six justices (Deputy President (retired) Cheshin and Justices Rivlin, Levy, Grunis, Naor and Adiel).

65. In **Galon** the court dismissed the petition by a majority opinion (six out of eleven) holding that the security purpose of the temporary order was appropriate and the violation of fundamental rights was proportionate (the majority opinion was delivered by Deputy President Rivlin and Justices Grunis, Naor, Rubinstein, Melcer and Hendel and the minority opinion was delivered by President Beinisch and Justices (retired) Levy, Arbel, Joubran and Hayut). While the minority Justices, in most part, reiterated the position that the law was unconstitutional because it did not meet the proportionality test in the narrow sense, Justice Levy was of the opinion that the law did not

meet any of the constitutionality tests, that it was inconsistent with the values of the state of Israel due to unlawful racial profiling and curtailed the rights of citizens only because they were Arabs, its purpose was inappropriate because it was not sensitive to human rights and even if its purpose was appropriate, the harm caused by it was excessive according to the three proportionality tests: it did not meet the rational connection test since it intensified frustration and deprivation; specific examinations are a less injurious measure and the damage outweighs the benefit.

66. It should be noted that the judgments in **Adalah** and **Galon** focused on the violation of the human rights of Arab citizens and residents – rather than on those of their spouses – and the constitutional examination focused on the prohibition imposed by the law on regulating the status of family members and its effect on the rights of Israeli citizens and Arab residents of the state of Israel. Issues pertaining to the rights of family members who received status in Israel and were "frozen" in said status were not examined from a constitutional perspective. This issue was raised, among other things, in the petition in HCJ 813/14 **A v. Minister of Interior** (October 18, 2017) (hereinafter: **A**) which was subsequently filed and has also challenged the constitutionality of the previous temporary order. The court decided not to revisit the constitutionality of the law, *inter alia*, in view of the decision of the Minister of Interior, which was made during the process, to give temporary residency for two years at a time and to upgrade the status of individuals who had received permits prior to the end of 2003 and give them temporary residency; about 1,600 individuals received temporary residency due to the proceeding. The judgment therein was given by President Naor who was joined by Justices Danziger and Amit. Referring to the judgments in **Adalah** and **Galon**, Justice Amit noted as follows (with Justice Danziger joining these words):

> Given that the result in these two judgments was decided on the edge of a single vote and in view of the passage of time, I am of the opinion that the provisions of the temporary order should be softened, at least in the spirit of the opinion of my colleague the President, with respect to individuals who have already embarked on a family unification process on the eve of the government resolution (residents of the Area whose applications have already been in the "pipeline"). The decision of the Minister of Interior to upgrade the status of the residents of the Area whose family unification applications were approved by the end of 2003 is a significant step that should be welcomed. I personally would not have ruled out the possibility of taking one more step, and soften the temporary order even further.
>
> In conclusion, I agree with my colleague that at this time there is no room for granting constitutional remedies, but it should not be ruled out that this court will reconsider in the future constitutional

remedies in relation to the temporary order, and the respondents are bound to take the court's comments to their attention".

(2) The harm caused to the course of life and safety of families, children and women trapped in status procedures

67. The individuals harmed by the temporary order were divided, as aforesaid, into two groups: those who due to the sweeping prohibition were prevented from receiving any status whatsoever, and those – spouses, children and in humanitarian circumstances – who were allowed to stay in Israel under inferior renewable permits, to which they remained bound, unable to upgrade them (according to sections 3, 3A and 3A1 of the previous temporary order). The harm to the former and their family members is obvious. In this sub-chapter and in the following one we shall elaborate on the continuing harms caused to individuals who had received permits or temporary visas and were bound to them, and have been actually living in Israel as *de facto* residents for many years. We shall dedicate this sub-chapter to the harm caused to the course of life and safety of the families, children and women who were bound to the never ending status procedures.

(2)(a) The Families

68. As stated in the beginning, the procedure regulating the status of family members of non-Palestinians is a graduated procedure. It continues for several years during which the sincerity of the relationship, the existence of family life and joint house hold, center of life in Israel and absence of security, criminal or individual preclusion are examined over and over again. Eventually a permanent status is given – citizenship or permanent residency.

69. Family members and children to whom the temporary order applies and had received permits or visas to stay in Israel are trapped in the procedures, unable to complete them. Even if they are known to the Ministry of Interior for many years, at times for two decades, they are bound, without any limitation, to a devastating procedure: unbearable bureaucracy, legal representation which they need and which requires the investment of resources, queues, fees, loss of work days, Sisyphean and repeated collection of countless pieces of evidence concerning their spousal relationship and center of life to the satisfaction of the clerks time and again, intimate and invasive investigations and interviews and more and more for many years, all for the purpose of renewing their permits and visas (we shall elaborated below on the procedure for issuing permits at the DCO). They cannot leave the country for an extended period for any purpose - for instance for studies or employment - because they will lose their center of life and the opportunity to prove the existence of a joint household in Israel. Their lives are subordinated to the never-ending status procedure.

70. Among these, the situation of children and women is particularly severe.

(2)(b) The Children

71. If due to the difficult reality of life in East Jerusalem (see East Jerusalem - facts and figures (The Association for Civil Rights in Israel, 2021; **East Jerusalem - Key Data**) Ir Amim, 2021)) and if due to the inability to regulate the status of the Palestinian spouses until they reach the age established in the temporary order, families often live, in the absence of another alternative, in the territories. Naturally children are born, and are caught in the jaws of the law - either because they are registered in the Palestinian registry or because the mere fact that they have resided in the territories, even for a short period turns them into "residents of the area". It should be noted, on the other hand, that sometimes even a short stay of a child in the territories without registration in the registry suffices to determine that he/she is a "resident of the area" (See, for instance, LCA 7065/20 **Abu Tir v. Population and Immigration Authority – Ministry of Interior** (February 10, 2021) Such a child who comes to Israel when he is over 14 years of age will receive nothing but a permit. They remain bound to this permit also when they come of age, even if they live in Israel continuously for years.

72. The results for the future to come are difficult. These children grow up and become adults who are not entitled to any rights that a resident is entitled to: social rights, higher education, free employment, possibility to drive, housing assistance and so on and so forth. Such a child who in his/her adulthood will establish a family with a resident of the territories, will not be able to apply for status for him/her since permit holders are not eligible for family unification. Their sons and daughters will also be left without status, because permit holders cannot pass the permits on to their descendants. If in their adulthood they seek employment outside Israel, or wish to acquire higher education abroad, or if they meet a spouse abroad and wish to establish a family with him/her there – they will lose their center of life and the permit and will not be able to return to their home. This in fact means that these children, who grow up in Israel, know from early age that the law does not allow them to live a full human life and create their own life story. As talented as they may be, they are tracked by the temporary order to a limited course of life, devoid of opportunities, and they are condemned by law to livelihood difficulties, poverty and distress.

(2) (c) The women

73. A woman holding a permit or a temporary status is at the bottom of the social ladder. She is extremely vulnerable and her ability to reach the welfare and enforcement authorities is not easy. Her financial and earning capacity are limited. Often she does not know, has difficulty, or is afraid to stand up for her rights. Her status in Israel depends on her spouse and her relationship with him. Her status will be revoked if the relationship with the Israeli spouse is severed - due to his death or as a result of divorce or violence - or if he chooses to marry another woman while married to her. The above, regardless of the duration of her stay in Israel or the connection with her children. At most, she shall be able to request to regulate her status for humanitarian reasons, a very

rocky way which shall require years of legal proceedings (See, for instance, **Ziwaldi** and the **A**).

74. Unfortunately, women often prefer to remain in an unsafe relationship or with a violent spouse and finalize the process with him, at which time they shall be granted a permanent status. All of the above is also true with respect to a non-Palestinian woman, but while a non-Palestinian woman will be able to finalize the graduated procedure after a few years and acquire citizenship or permanent residency, the Palestinian woman is bound, due to the temporary order, to proceedings whose end is unforeseeable, and the results of which are devastating. A Palestinian woman who does not wish to lose her status and sometimes her children since she would be deported without them, may not divorce a spouse with whom she does not want to live and may not free herself from a violent and abusive relationship. Similarly, a woman who is married to a man who married another woman in polygamous marriage, may stay with him since the fact that her children are Israelis does not constitute sufficient humanitarian grounds for the purpose of having her status regulated (See AAA 5645/21 **A v. Ministry of Interior** (April 11, 2021)).

(3) Additional violations of human rights having no connection to the alleged security purpose

75. We have discussed in length the harm caused to the course of life and safety as a result of the never ending status proceedings according to the law. We shall now turn to discuss additional violations of human rights which are inflicted by the temporary order which have no connection to its alleged underlying purpose.

76. The stated purpose of the temporary order, as aforesaid, rests on security. This purpose is intended to justify the sweeping prohibition on regulating the status of Palestinians in Israel. At the same time, abusive arrangements were established by legislation, which can hardly be reconciled with this purpose, and in most cases, cannot be reconciled with it at all. We shall now discuss some of these excessive violations of human rights (that the Knesset was given an opportunity to cure upon the enactment of the current temporary order, as shall be discussed below).

(3)(a) The cumulative and ongoing violation of human rights of individuals who are bound to their permits

77. The temporary order binds spouses, children and recipients of status for humanitarian reasons to DCO permits. It should be reminded that permit, similar to temporary residency, is a temporary status that should be renewed. Individuals holding a permit or temporary residency are examined over and over again. Therefore, security wise, a permit is not more advantageous than temporary residency. However, a permit entails very few rights, while residency grants a basket of tights. Why should a permit be granted rather than temporary residency? The odd reason which was given throughout the

years was that permit holders are checked more extensively in the crossings. This – and nothing more – is the security reason for denying the basket of rights embedded in residency. We shall obviously discuss it later on. We shall now discuss some of the consequences of being bound to a permit.

78. While the issuing process of a temporary residency visa (temporary residency) begins and ends with the receipt of documentation at the bureau of the Ministry of Interior, the permit renewal procedure is burdensome and requires dealing not only with the bureaucracy of the Ministry of Interior, but also with that of the DCO. First, an application should be submitted to the bureau of the Ministry of Interior and if the permit application is approved referral is made to the DCO where the permit, and once every few years a magnetic card (a separate procedure involving hassle and additional costs) are issued. One should wait for the permit to be issued by the DCO, a process which often involves repeated inquiries adding to the aggravation and costs. Since two authorities are involved in the issuance of the permit, there is often a time gap between the date of approval by the Ministry of the Interior and the date approval by the DCO. Applicants are sent back and forth to distant locations (for permit purposes the applicants are "allocated" to the DCOs located in their former place of residence in the territories and they are required to reach them even if today they live in Israel far from the DCOs). They miss work days and routinely need the help of lawyers also in connection with the permit issuance process. Due to the time gap between the approval date and the actual issuance date of the permit, applicants often remain without valid permits and therefore lose their rights – to stay legally, to work, to receive health services and more. In contrast, individuals who are entitled to residency, receive their visas in the form of identity cards from the Ministry of Interior when their applications are approved.

79. Hence, residency is reflected in an identification card including an annex listing the children, while a permit is a printed piece of paper referring only to its holder. Due to this documentation format, parents holding permits do not have an identifying document listing their resident or citizen children creating a link between them. In addition, a parent holding a permit cannot receive allowances from the National Insurance Institute for their resident child even if the child is entitled to receive them, since a non-resident guardian is not entitled to receive them. Accordingly, for instance, battered women, who have left their home, or widows holding permits, cannot receive child allowances for their children. Furthermore: the Assistance Law for Families Headed by an Independent Parent, 5752-1992 also applies to a parent who is an Israeli resident and a parent holding a permit does not fall within said definition.

80. Individuals holding permits are not entitled to social rights. The general provisions of section 2A(b)(2) of the National Insurance Law – which were enacted prior to the temporary order and have no connection thereto – provide that a Palestinian holding a stay permit shall not be regarded as a resident for national insurance purposes, and therefore, is not entitled to social benefits.

Accordingly, Palestinian family members are denied unemployment insurance; Israelis having Palestinian spouses who are not "residents" are denied full guaranteed minimum income benefits and 7.5% are deducted from their allowance only because their spouses are "non-resident" Palestinians (although the full income of the Palestinian spouse is added to the income of the Israeli spouse for the purpose of determining the family's eligibility for guaranteed minimum income benefits); disability insurance is denied (including payments to dependents who are not "residents"), mobility allowance is denied; nursing allowance is denied; old age allowance is denied; survivors insurance to Israeli family members of Palestinians is denied; orphan allowance due to violence in the family is denied; child allowance paid directly to a parent who is not a "resident" is denied and more.

81. Together with the denial of the social rights the right to national health insurance which is granted to residents according to the National Health Insurance Law is also denied. This right is granted only to persons having at least a temporary residency status. According to section 3(a) of the National Health Insurance Law, all residents are entitled to health services. A "resident" according to section 1 of the National Health Insurance Law is any person who is a resident according to the National Insurance Law.

82. Following a petition which demanded that the National Health Insurance Law and the National Insurance Law be applied to permit holders staying in Israel (HCJ 2649/09 **Association for Civil Rights in Israel v. Minister of Health**), the state appointed a special inter-ministerial committee headed by Dr. Tuvia Horev, the then Deputy Director General for Health Economics and Insurance at the Ministry of Health, to look into the matter. The discussions were conducted slowly, and on May 29, 2011, the committee unanimously recommended to the Ministers to adopt a special arrangement with respect to the National Health Insurance Law, and by a majority opinion recommended not to apply the same arrangement to the National Insurance Law. With respect to the recommendation not to apply the arrangement to the National Insurance Law the majority of the members of the committee were of the opinion (as was briefly described in the response which was submitted in said proceeding on April 4, 2012), that there was no need for expansion "beyond the existing solution" and that the "solution currently given by primary legislation in the field of social security is broad and takes into consideration in a satisfactory and exhaustive manner the additional considerations which should be taken into account, beyond the residency criterion, and no additional coverages should be added…".

A copy of the report of the inter-ministerial team dated May 29, 2011 is attached and marked **P/24**.

83. Two members of the committee, Ms. Avital Sternberg and Mr. Shai Somech from the Advisory and Legislation Department at the Ministry of Justice, in a minority opinion, recommended to also include an arrangement according to the National Insurance Law. In their letter to the Ministers dated May 31, 201, they noted, *inter alia*, as follows:

> "We must not forget that the social rights at hand are intended to secure the proper existence of Israel's citizens and residents. The family members to whom the temporary order applies stay in Israel legally (by virtue of a DCO permit issued by IDF authorities in Judea and Samaria), are the closest family members of Israeli citizens and residents, who settled in Israel as part of an Israeli family unit and proved a strong, stable and continuing connection to Israel. […] Therefore we are of the opinion that these family members should also be entitled, over time, to the proper existence provided by the state of Israel to its citizens and residents. […] We are of the opinion that it is inappropriate that the family members to whom the temporary order applies, and consequently, the entire family unit, shall have limited social rights. This state of affairs may lead to a situation whereby at a time of crisis in which Israeli families having a family member holding a DCO permit shall require the safety net provided by society, they will have less resources to deal with the financial difficulty than those available to other Israeli families. If social rights are not afforded to these family members, financially weak families may be created over time, creating gaps in all areas of life relative to Israeli society as a whole."

A copy of the minority opinion of Ms. Sternberg and Mr. Somech dated May 31, 2011 is attached and marked **P/25**.

84. A long period of time passed before the government adopted the recommendations of the inter-ministerial committee and before the National Health Insurance (Health Fund Registration, Rights and Obligations of Individuals holding a stay permit according to the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003) Regulations, 5776-2016, were promulgated. Following the decision to anchor the health insurance arrangement in regulations the court decided on November 4, 2015, to delete the petition, without prejudice to petitioner's rights concerning the issue of social rights.

85. The regulations applied to Palestinian family members a health insurance arrangement, but, in fact, this arrangement is costly and more complex than the arrangement available to family members who are not subordinated to the temporary order. The insurance fee does not derive from the salary and does not depend on the earning ability, similar to the national health insurance arrangement. For illustration purpose, an Israeli citizen or resident earning minimum wages having a non-Palestinian spouse undergoing the graduated procedure and is insured by the national health insurance, shall pay approx. NIS 200 per month. Their children shall also be covered at no additional cost. The arrangement which applies to permit holders according to the temporary order imposes a fixed monthly fee on all Palestinian family members: NIS 1,710 for a long registration period, and thereafter a monthly fee in the sum of NIS 285 per month. The same amount should also be paid for each child,

although children who are citizens and residents are not required to make any payment for national health insurance. Non-payment revokes the entitlement to health insurance for long periods, during which the insured accumulate debts without having any access to health services. Consequently, as it emerges from the answers of the Ministry of Health in the legal proceedings which were conducted in that matter, about fifty percent of those who are entitled to insurance as aforesaid are not insured at all (HCJ 7470/16 **Shweiki v. Minister of Health** and HCJ 4391/17 **Jawawdeh v. Minister of Health**. Following the petition, criteria were established for certain discounts like a monthly fee in the sum of NIS 140 for individuals whose Israeli spouses receive guaranteed minimum income allowance, but many still accumulate debts without any ability to enjoy health service).

86. To date, the issue pertaining to the application of the social rights has not yet been solved. It became evident that during an economic crisis, like during the corona crisis, permit holders are particularly vulnerable and susceptible to distress and economic deterioration. While their co-workers working shoulder to shoulder with them in the same professions, enjoyed assistance when they were put on unpaid leave, they were left without any solution, although they had been working in Israel for many years.

Copies of four affidavits of spouses and fathers to children staying by virtue of renewable permits, attesting to what happened to them during the corona crisis, are attached and marked **P/26**.

87. Another petition which was subsequently filed was deleted after the court was of the opinion that additional exhaustion of remedies was required (although the petitioners approached the National Insurance Institute and were denied by it twice (while reserving petitioners' right to petition again (HCJ 3818/20 **Rabi'a v. Minister of Labor, Welfare and social services** (September 6, 2020). Additional exhaustion of remedies letters which were sent after the submission of the petition – were never answered.

88. Additional harms should be noted. Permit holders are not eligible for assistance from the welfare authorities, and only exceptional cases will be examined, for instance, cases involving minors at risk or women who are victims of violence. Similarly, permit holders are not entitled to public housing and rent assistance, other than in exceptional cases depending on Israeli family members or when the applicant is a woman victim of violence. Permit holders are not entitled to the assistance of the employment service and to vocational training, nor are they entitled to tuition subsidy in public institutions for higher education.

89. Residents are allowed to work in any job, without limitation and without costs. The same does not apply to permit holders. Another legal proceeding was required to obtain the authorities' undertaking that permit holders by virtue of the temporary order shall be entitled to work in Israel (HCJ 6615/11 **Salhab v. Minister of Interior**) and another proceeding to prevent the

imposition of foreign workers levy on their employment (HCJ 1189/18 **Taba'uni v. Service for Employers and Foreign Workers, Population and immigration Authority**). And yet, employment in Israel for employees holding only permits is difficult, and they obviously find themselves in the low end of the labor market, performing low-wage hard labor jobs. Furthermore, unlike a resident, it is difficult for a permit holder to operate as a self-employed due to the need to be recognized as an "authorized dealer" or as an "exempt dealer" and the difficulty to obtain said recognition. Professional work permits may not be granted. For instance, according to section 4(a)(4) of the Physicians Ordinance [New Version], 5737-1976 and section 5(a)(3) of the Pharmacists Ordinance [New Version], 5741-1981, professional licenses are granted only to citizens or permanent residents. A license according to section 42 of the Bar Association Law, 5721-1961 is granted only to an "Israeli resident" (in the past it was argued before the Israel Bar Association that this section should be interpreted according to the reality of life, and not according to the status given by the authorities).

90. Permit holders are not entitled to legal aid from the Ministry of Justice in the civil matters in which assistance is granted, even if they meet the legal aid's economic eligibility test. Moreover – they and their family members are not entitled to assistance in status matters. We shall explain: a citizen having a spouse from any country in the world, who meets the economic eligibility test, will receive legal aid for the purpose of regulating the status of their spouse according to Regulation 5(7) of the Legal Aid Regulations, 5754-1994, which also includes the Citizenship Law. When the temporary order was enacted the legal aid decided that it was a different law to which the Regulation did not apply, and therefore the legal aid does not handle status applications of Palestinian spouses. The applications sent by the Association for Civil Rights to the Ministry of Justice in an attempt to arrange the matter – were not answered.

91. It is very difficult for permit holders and temporary residents to adopt children in Israel, even if they have been actually residing in Israel for many years with spouses who are citizens or residents. In international adoption – they cannot take part.

92. Family unification permit holders are not entitled to drive in Israel, without a permit (see Regulation 578B of the Traffic Regulations, 5721-1961). In June 2021the "Procedure for issuing a driving license in an Israeli vehicle to Palestinians residents of Judea and Samaria" of the Coordinator of Government Activities in the Territories (hereinafter: **COGAT**) was amended. It provides that an application for a driving permit shall be examined after the elapse of three years from the date on which a DCO permit was issued, The DCO permit holder should present, *inter alia*, a vehicle license and insurance, namely – to own a vehicle or receive permission to use a specific vehicle. The arrangement does not enable professional driving – like driving a truck, a bus or a taxi. It is a bureaucratic procedure involving several bodies and the applicant must only hope that the DCO permit does not

expire and will have to be renewed at the Ministry of Interior and at the DCO while the driving permit application is still pending.

93. Following a petition, Palestinian family members living in Israel for many years as temporary residents were allowed to exit and enter Israel through the Ben Gurion Airport, subject to an application and coordination months in advance. This arrangement does not apply to permit holders (HCJ 4427/16 **Badran v. COGAT – Ministry of Defense** (November 21, 2019)). In addition, family members undergoing family unification are not allowed to exit Israel from the Taba crossing. This means, that as a general rule, families wishing to travel together from Israel encounter many difficulties.

94. In conclusion, persons to whom the previous temporary order applied, even if their center of life is in Israel and even if they have been living lawfully in Israel for many years with their family members, are not entitled to the rights afforded to residents. These are spouses and parents to children, as well as children over 14 years of age who according to the temporary order could have only received a permit and persons who received permits for humanitarian reasons. They remained devoid of any rights or were given limited rights inferior to those afforded to residents, bound to exhausting bureaucratic procedures, allegedly for a security purpose intended to encumber their passage in the crossings. The rights to family life, equality, dignity, dignified existence and freedom of occupation have all been crushed.

(3)(b) Discrimination against same sex spouses

95. Section 3 of the previous temporary order provided that a stay permit in Israel may be given to a (male) Palestinian over the age 35 "to prevent his separation from his (female) spouse lawfully staying in Israel" and to a (female) Palestinian over the age of 25 "to prevent her separation from her (male) spouse lawfully staying in Israel". According to the interpretation of the Ministry of Interior, this section does not apply to spouses of the same sex who were told to apply for status for humanitarian reasons, according to section 3A1 of the previous temporary order. However, they cannot use this track since according to the provisions of section 3A1(e) "The fact that the family member of the permit or visa applicant, staying lawfully in Israel, is their spouse, or that the spouses have joint children, shall not constitute, in and of itself, a special humanitarian reason." Therefore, spousal relationship in and of itself does not suffice to acquire status. Consequently, the previous temporary order denied same sex spouses the opportunity to receive permit, without any security justification.

(3)(c) Inability to regulate status for humanitarian reasons without a "sponsor"

96. According to section 3A1(a) of the previous temporary order a condition for receiving a permit or temporary residency for humanitarian reasons is that "the [applicant's] family member is lawfully staying in Israel." Namely, the

applicant should have a "sponsor" in Israel, without whom status may not be obtained. Non-Palestinians applying for status for humanitarian reasons are not required to have a "sponsor" (see, for instance, AAA 2357/14 **Asbrook v. Ministry of Interior** (March 19, 2015)). Accordingly, for instance, persons who grew up and came of age in Israel without a family and have humanitarian circumstances, or childless battered women - can regulate their status if they are not Palestinians. If they are Palestinians – they cannot do it, even if they do not pose any security threat, and they themselves are at risk in the absence of status.

97. This is also the situation of those who fled to Israel from the territories due to persecution based on gender identity or sexual orientation. In extreme situations they can get, at the most, limited permits from the welfare coordinator at the DCO to acquire time to leave Israel, the above without a work permit, without social rights and without health insurance (See HCJ 7126/19 **Physicians for Human Rights - Israel v. State of Israel**) (partial judgment dated July 26, 2021 and decision dated February 9, 2022). In the absence of a "sponsor" they cannot apply to the Committee for Humanitarian Affairs, no matter how difficult their life circumstances may be, and even when there is a pertinent justification for acquiring status in Israel.

(3)(d) A "resident of the area" is defined as a person who is registered in the Population Registry of the Palestinian Authority

98. Section 1 of the previous temporary order defined a Palestinian to whom the law applied as a person who is registered in the population registry of the Palestinian Authority, and anyone residing in the territories (excluding Israelis). The temporary order, in as much as its purpose rested on security, could have been satisfied with the examination of residency and connection to the territories. However, according to the definition anyone who has ever been registered with the Palestinian Authority, even if they have never lived in the territories, was captured by the law, and will not be able to obtain permanent status (see AAA 1621/08 **State of Israel - Ministry of Interior v. Khatib** (January 30, 2011)).

99. The authorities argued that the security risk stems from the fact that registration in the Palestinian registry is comparable to "citizenship", which creates affiliation with the Authority, imposes a duty of loyalty and grants the right to vote in the elections (see AAA 5569/05 **Ministry of Interior v. Awisat**, paragraph 6 of the judgment (October 8, 2008)). However, this argument is problematic on two levels: first, a person cannot be deleted from the Palestinian registry even if they have never stayed in the territories and have no way of proving that they do not wish to have said "citizenship" (if any does exist); and second, because residents of East Jerusalem, whose children may be registered in the Palestinian registry, are anyway entitled under the Oslo Accords to participate in the Palestinian Authority's elections, although they are registered in the Israeli Population Registry. Namely, a

permanent resident from East Jerusalem has according to Israeli law, affiliation with the Palestinian Authority and can vote in its elections.

100. Sometimes things become totally absurd. Accordingly, for instance. in AAA 10667/05 **Sarahin v. Minister of Interior** (May 5, 2006), the matter of a woman who was born to Bedouin parents who came to Israel from Sinai after 1967 was discussed. For administrative reasons, the Civil Administration of North Sinai was located in north Sinai, in Rafah, where Ms. Sarahin's father was registered, and therefore she was registered there by her father upon her birth. Since the Civil Administration in north Sinai ceased to exist, and due to the fact that with the establishment of the Palestinian Authority, the population registry of the Gaza Strip was transferred to it, Israel bequeathed the registry of Sinai residents to the Palestinian Authority. Hence, Ms. Sarahin, a resident's spouse and mother of resident children, was "caught" by the temporary order, although she has never set foot in the Gaza Strip.

(4) Violations of human rights by the authorities

101. Before concluding this chapter, which concerns violations of human rights caused by the temporary order, we wish to discuss several additional aspects which, we must emphasize, are not situated on the constitutional level, but rather on the administrative level, and relate to the ways in which the authorities act, and the manner in which the law and the reality which it created enhanced and contributed to additional violations of human rights of Arab citizens and residents whose rights have anyway been violated.

(4)(a) Violation of the rights of individuals applying for status for humanitarian reasons

102. First, the manner of operation of the humanitarian committee. The committee's procrastination is unbearable, and its positive decisions are scarce. Applicants sometimes wait years for a decision in their application. The committee operates without a real protocol documenting its deliberations, the names of its members are unknown, and the summary of the hearings is given to the applicants only after repeated requests or if legal action is taken.

103. The Honorable Court has already commented in **Galon** on the tight-fisted policy pertaining to the issuance of permits and visas for humanitarian reasons (see, for instance, paragraph 7 of the judgment of Justice (retired) Levy, paragraph 16 of the judgment of Justice Joubran, paragraph 26 of the judgment of Justice Arbel and paragraph 2 of the judgment of President Beinisch). More than a decade has passed and things have not changed.

104. According to an answer to a freedom of information request which was received by the Association for Civil Rights in July 2021, the Ministry of Interior does not hold computerized data prior to 2018, does not know how to

segment requests, and there is no timeline for the decision-making process. In 2018, 247 applications were rejected and 58 were approved. In 2019, the committee held 23 meetings in which 155 applications were denied and 14 were approved. In 2020, 27 meetings of the committee were held, in which 69 applications were denied and only 5 were approved. The submission dates of the applications which were denied or approved are not known.

105. It should also be noted that according to the data of the Ministry of Interior from February 2022, which were presented in the legislative process of the new law, in 2019, 291 applications were submitted, of which, until now, 179 were denied and 35 were approved. Namely, 77 applications which were submitted in 2019 have not yet been decided and some are pending for more than two-three years. In 2020, 267 applications were submitted, of which, until now, 107 applications were denied and 24 were approved. Namely, 136 applications which were submitted in 2020 have not yet been decided.

(4)(b) Violation of the rights of individuals who moved to the Territories

106. Citizens and residents who for the lack of any other option move to live with their relatives in the west bank or in the Gaza Strip risk losing their social residency in Israel. If they move to the territories they lose their national insurance rights, their national health insurance rights and their right to receive social aid from the state. Moreover – according to the Ministry of Interior they are not regarded as "residents staying in Israel" according to section 24 of the Population Registration Law, and therefore they lose their right to identification card and according to the Ministry of Interior's procedures a passport will not be issued to them.

107. As aforesaid, moving to live in the territories, mainly by residents of East Jerusalem, shall also affect the status of their children. To the extent residents from Jerusalem wish to live with their spouses in the territories, and their children will be born there, the latter will be "caught" in the temporary order – either because they were registered in the Palestinian registry to receive services, or because the mere fact that they have lived in the territories for a short period of time shall entrap them in the definition of "resident of the Area" under the law.

108. Moreover, for the purpose of regulating the status of spouses in Israel a center of life in Israel should firstly be proven. It is incumbent upon the Israeli citizens and residents to prove it at least two years prior to the submission of the application. However, if they are forced to move with their spouses to the territories, since they have not yet reached the age allowing the submission of a permit application on their behalf, how can they prove a center of life in Israel? The result is one of three: to either be torn from their spouses and return to live alone in Israel for two years; or remain in the territories and forego the possibility of proving a center of life and the family unification procedure in Israel; or risk joint residence in Israel without a permit to accumulate seniority for the purpose of meeting the criteria which would

enable them to prove center of life (see AAA (Jerusalem) 1140/06 **Za'atara v. Minister of Interior** (November 30, 2007)).

(4)(c) Violation of the rights of individuals living in Israel separately

109. The Population and Immigration Authority denies registration and documentation services to citizens and residents whose family members live in the territories and cannot acquire status in Israel (for instance, spouses who cannot acquire status due to the fact that they have not yet reached the age of 35). Not only are these families divided and their rights are violated, but the authority persecutes them and imposes on them additional difficulties. These citizens and residents are held by the authority to be living in the territories, and therefore the authority takes the liberty to demand, as a condition for providing services (issuance of identification card, birth certificate for a child, registration of a child in the identification card's annex and the like) that more and more evidence substantiating a center of life in Israel be submitted to it. The above, even if there is no indication that they have left Israel. Consequently, these citizens and residents are hassled and many of their rights are violated – beyond their dignity - such as health insurance for unregistered children, the possibility of enrolling them in educational institutions, eligibility for assistance and subsidy and more. Repeated requests to the authority and the Ministry of Justice in a series of such cases were to no avail and even a petition which was filed in that regard led only to a specific solution only, due the authority's undertaking to review its policy (AAA (Central) 35618-01-21 **Abdu v. State of Israel - Population and Immigration Authority** (July 9, 2001)) Notwithstanding the above undertaking, to date no such report has been delivered and the abusive policy stands.

110. The National Insurance Institute also holds a similar position, whereby a woman who is married to a resident of the territories who does not live in Israel is assumed to have moved to live with him in the territories. Namely, a citizen or a permanent resident who married a resident of the territories who did not acquire status due to the temporary order and continues living in Israel, the burden is on her to prove that she is still a resident. This policy is explicitly stated in the judgment of the Be'er Sheva Regional Labor Court, which adopted the position of the National Insurance Institute:

> "As for the burden of proof - in the case at hand, there is no dispute that the plaintiff holds an Israeli citizenship. Therefore, the burden of proving that the plaintiff is not an Israeli resident rests with the party wishing to refute it, namely, the defendant [the National Insurance Institute]. [...] However, there can be no dispute that marriage, in essence, is an expression of the spouses' desire for cohabitation. Therefore, marriage creates the presumption of cohabitation and the burden to refute said presumption rests with the party contesting it." (LabC (Be'er

Sheva) '**Atiwi - National Insurance Institute**, paragraph 11 of the judgment (May 6, 2020)).

D. Palestinians in Israel and Israelis in the "Area" – Dramatic changes in the two decades in which the policy has been implemented

111. In the long years that passed the temporary order harmed the lives of thousands of families, and inflicted upon them distress and suffering. It has been extended over and over again by an almost automatic procedure. Only following the **A** petition, the Knesset decided in 2015 that before the decree extending the temporary order is brought for the approval of the plenum, a hearing shall be held by the Joint Committee of the Foreign Affairs and Defense Committee and the Interior and Environmental Protection Committee. This committee convened from time to time between the years 2016 and 2021, heard the reports of the Ministry of Interior and the ISA and even heard representatives of human rights organizations, but had no authority to make any changes in the temporary order, similar to the Knesset plenum which discussed and approved the committee's recommendation to extend the validity of the temporary order time and again.

112. At the same time, while the authorities keep justifying the temporary order and the need to extend its validity, dramatic changes have occurred which have never been discussed or considered.

(1) Tens of thousands of Palestinian workers

113. The number of Palestinian workers in constantly on the rise. In general, work permits are given to individuals who are 22+ years old and are married, other than in the fields of health and nursing in which permits are also given to individuals who turned 21 including bachelors. Namely, Palestinians who turned 22 can enter Israel on the basis of an individual examination if they are married, on the basis of the security approach that above this age and given the fact that they are married they do not pose a general threat which justifies prohibiting them from entering and staying in Israel, travelling from the territories to Israel and back on a daily basis. Moreover, in the health and nursing sector where they are particularly needed, the age limit is lower and there is no marriage requirement.

114. According COGAT's data, as of January 13, 2022, 250,102 permits were issued to permanent Palestinian workers: 74,000 for construction, 8,550 for industry and services, 6,650 for agriculture, 270 for health in Israel, 2,680 for health in East Jerusalem and 1,000 for nursing institutions (sectors in which workers over the age of 21 who are not married may be employed), 2,000 for hotels in Israel and 300 for hotels in East Jerusalem (where individuals over the age of 25 who are not married can be employed), 2,000 for restaurants,

200 for high-tech, 25 for journalism, 3,600 for Atarot industrial zone and 875 permits on the basis of past issuances.

Additional 12,500 permits were issued to seasonal agricultural workers.

Copies of the relevant pages from the document "Status of Authorizations for the Entry of Palestinians into Israel" (COGAT, January 13, 2022) is attached and marked **P/28**.

115. For comparison purposes, according to "Kav LaOved" data, in 2020 the number of permanent Palestinian workers amounted to about 80 thousand, of whom about 60 thousand in the construction sector, about 5,000 in agriculture, about 4.500 in the industry sector, about 1,200 in health sector and about 300 in other sectors (see Ma'ayan Naizana and Michal Tajer **Snapshot - Development and changes in the employment of Palestinian workers in Israel** (Kav LaOved, 2021)).

116. The State of Israel became so "addicted" to Palestinian workers, to the extent that at the beginning of the Corona pandemic, while lockdowns were imposed on the citizens of Israel and its residents and they were ordered to stay in their homes, it continued allowing tens of thousands of Palestinian workers enter Israel, subject to the condition that they separate from their families, stay overnight in Israel and do not return to the territories, to prevent them from being infected by the virus over there before they return to Israel. Following a petition Israel was forced to regulate for the first time in legislation the rights of Palestinian workers staying overnight In Israel (see HCJ 2730/20 **Kav LaOved v. Minister of Health** (Decision dated August 3, 2020) Foreign Workers (The New Corona Virus - Temporary Order - Amendment No. 21) Law, 5780-2020.)

117. To summarize this aspect: Palestinian workers, married over the age of 22 (and in the health and nursing industries also bachelors over the age of 21) do not pose any security threat. The Israeli economy heavily relies on them, and perhaps really needs them, to the point that the entry of more and more workers became a necessity. The only risk potentially posed by said tens of thousands of Palestinians which concerned Israel was not a security risk, but rather the risk that they would transmit the coronavirus.

(2) Changes in the passage and inspection procedures at the checkpoints and crossings

118. The inspection method at the checkpoints and crossings has changed, and the argument that permits rather than residency should be granted since permit holders, unlike identification card holders, are examined more thoroughly at the checkpoints and crossings – an argument that has always been nothing but an excuse to deny the rights embedded in residency - has faded. Permits are currently issued digitally via an Application, and generally, in the large crossings between Israel and the territories documents are no longer examined. The passage to Israel became sterile – through carrousels,

scanners, cameras and biometric identification measures. Tens of thousands of Palestinians who enter Israel daily are watched, photographed, documented and scanned without a "human touch". Accordingly, for instance, the situation in checkpoint 300, also known as the "Rachel Checkpoint", between Bethlehem and Jerusalem, has recently been described by the Honorable Court as follows:

> "The passage begins on the Palestinian side of the plaza leading to a roofed corridor, at the entrance of which two remotely operated carousels were placed. After entering the two carousels, the Palestinian worker enters three entry sleeves leading to four doors opening up to eight inspection lanes leading in turn to 28 identification points (Speedgates). The Palestinian worker inserts the magnetic card, the entry is approved and within seconds he passes to the Israeli side, also through carousels leading the exit plaza and therefrom to the road leading to Jerusalem". (HCJ 8732/20 Association for Civil Rights in Israel v. Israel Police, paragraph 5 of the judgment, January 3, 2022).

119. Moreover, Palestinian men from the west bank over the age of 55 and Palestinian women over the age of 50 do not need permits and can arrive to the checkpoint, cross it and enter Israel.

(3) Hundreds of thousands of Israeli citizens in the "Area"

120. While the law wishes to distance Palestinian family members from Israel, since they pose a threat to its citizens, the latter have not hesitated to settle near these Palestinians in recent years. According to data provided by the Central Bureau of Statistics, 220,200 Israeli citizens had been living in the territories in 2002, when the policy was initiated. By the end of 2020 their number amounted to 451,700. According to "Yesha Council" their number is higher, and in January 2022 amounted to 491,923. Namely, despite the security threat posed by Palestinians wherever they may be, and while Palestinians are not allowed to move from the territories and live in Israel, and to the extent they are allowed to do so they are granted an inferior and unstable status devoid of rights – the number of Israeli citizens who have settled near said dangerous Palestinians, in very close proximity to them and live in the Area as citizens for all intents and purposes – has more than doubled itself.

"Yesha Council" data

(4) In conclusion

121. Hence, tens of thousands of said Palestinians, who were repeatedly referred to, in connection with the temporary order, by the Respondents in some of the literature which sided with the temporary order and even in case law, as "enemy subjects", enter Israel daily on the basis of specific examinations; once they reach the age of 22 and are married they no longer answer the risk

profile) (and when necessary, even when they are 21 years old and unmarried); different sectors in the Israeli market depend on them; enormous, sophisticated and costly mechanisms were established and implemented to ensure it; and (men) over the age of 55 and (women) over the age of 50 enter Israel without a permit. Moreover – some half million Israeli citizens settled in the midst of the "Area", the same place from which "enemy subjects" immigrate, and more than half of said Israelis have done it over the last twenty years, after the policy which was anchored in the temporary order, was implemented.

E. The expiration of the previous temporary order and the decision to continue acting as if it is valid

(1) The expiration of the previous temporary order and its consequences

122. More than 19 years have elapsed since the initiation, in 2002, of the policy prohibiting, as a general rule, the grant of status to Palestinians and "freezing" the upgrade of stay permits of Palestinians living in Israel. The temporary order was not temporary. It became a permanent painful reality for thousands of families. On the morning of July 6, 2021, the Knesset plenum rejected by a majority of votes the government's request to extend the validity of the previous temporary order. At midnight it expired and after 18 years it ceased to exist, along with the source of the authority to critically violate fundamental human rights.

123. Consequently, the ordinary legal provisions regarding the regulation of status in Israel according to the Citizenship Law, the Entry into Israel Law and the regular procedures thereunder were reinstated. There are family members who, as a result of the temporary order were "frozen" in a permit or temporary residency and according to the regular procedures have already been entitled to complete the status procedure and obtain permanent residency or citizenship. Some were "frozen" in a permit and were entitled according to the regular procedures to upgrade their status to temporary residency. Some were granted status for humanitarian reasons and were "frozen" in it, unable to obtain a permanent status. There are spouses and children who were unable to regulate or upgrade their status due to their age according to the previous temporary and upon its expiration could have done it. There are individuals who were unable to regulate their status in Israel for humanitarian reasons due to the legal demand requiring a "sponsor" lawfully staying in Israel as a condition for processing their application and in the absence of said condition could have applied for status, and more. Individuals who were harmed by the temporary order, including the Petitioners at hand, submitted status or status upgrade applications according to the legal situation.

124. However, the Respondent instructed to continue acting as if the temporary order was in force.

A copy of the letter of the Director General of the Population and Immigration Authority dated September 9, 2021 is attached and marked **P/29**.

125. Against this background, as stated in the beginning of the petition, the Petitioners at hand filed a petition with the Court for Administrative Affairs (AP 25402-09-21). The Petitioners in the petition, other than the human rights organizations accompanying them, were harmed by the law and wanted, upon its expiration, to receive what they were entitled to. As aforesaid, said petition was not heard on its merits due to extensions which were granted to the respondents in said proceedings (the Respondent and the Director General of the Population Authority). However, Petitioners' request for an interim order in the framework of the proceedings - ordering the respondents there to apply to the Petitioners and to other Palestinians seeking status the regular laws applicable to status regulation in Israel – was discussed, and an application for leave to appeal which had been filed by them was partially accepted by the Supreme Court in **Khatib,** where it was ruled that the respondents should act within the scope of the existing law, according to procedures to be established by them at their discretion.

(2) The procedures which were published after the Khatib judgment

126. On February 1, 2022, two procedures were published. The first procedure: "Temporary Procedure for granting status to a spouse, resident of the Area, who is married to a citizen or permanent resident of Israel" (hereinafter: the **Spouses Procedure**), and the second procedure: "Procedure regulating the work of the Advisory Inter-ministerial Committee for the purpose of establishing and granting status in Israel to residents of the Area for Special Humanitarian Reasons" (hereinafter: the **Humanitarian Committee Procedure**).

A copy of the Spouses Procedure is attached and marked **P/30**.

A copy of the Humanitarian Committee Procedure is attached and marked **P/31**.

127. The validity of the Spouses Procedure was limited until the end of the Knesset's 5782 winter sitting or until the completion of the re-enactment proceedings of the temporary order, whichever is earlier. According to the procedure, spouses, regardless of their age, will be able to submit applications which shall be numbered (but not processed). At the same time, and based on what was defined as an "order of priorities for processing applications" the procedure stated that the only applications which would be examined would be applications for status upgrade from permit to temporary residency submitted by spouses over the age of 50 who have been holding a permit during the last five years in the framework of a family unification proceeding, subject to security check and examinations of center of life, sincerity of the connection and joint household.

128. According to the Ministry of Interior's data, the list of potential status upgrades from permit to temporary residency (individuals over the age of 50 holding a permit during the last five years) consists of 1,457 individuals, and

between February 1, 2022 and February 23, 2022 the status of some 130 of them has been upgraded.

129. The second procedure, the Humanitarian Committee Procedure, outlined the working procedures of the special committee which was established under the temporary order solely for Palestinians, advising the Minister of Interior on the grant of permits or temporary residency to Palestinians (namely, the decisions are not made by the high-ranking officials at the Population and Immigration Authority, similar to other cases). It was further established in the procedure that a "sponsor" is required for the purpose of submitting an application: "a family member lawfully staying in Israel (family member – spouse, parent or child)."

F. The initiative to re-enact the temporary order and the demographic justifications therefor

130. In order to understand the way the new temporary order was enacted, the reason for its expiration should be explained. As stated, in order to extend the validity of the temporary order the government must accept the approval of the plenum in one vote. The coalition composing the 36th government of Israel consists of different parties from different ends of the political spectrum. Its members include, *inter alia*, Meretz and Ra'am, which oppose the law (Meretz and members thereof and members of Ra'am have even petitioned in the past to repeal the temporary order). In July 2021, when the plenum was requested by the government to extend the validity of the temporary order, the coalition was supported by 61 MKs, and the opposition parties decided not to support the government's request and to vote against it. Therefore, those who wanted to extend the validity of the temporary order had to recruit the support of Meretz and Ra'am, or find opposition members to vote in favor of the law.

131. Yair Lapid, the Deputy Prime Minister and Foreign Minister, called the right-wing opposition parties to support the government's request. For this purpose he decided to rip the mask off the security excuse, and admit to the demographic purpose of the law. On July 5, 2021, he said in public:

> "One should not disregard the essence of the Citizenship Law. It is one of the tools designed to ensure a Jewish majority in the State of Israel. (Michael Hauser Tov, *Haaretz*, July 5, 2022)

A copy of the article dated July 5, 2022 is attached and marked **P/32**.

132. The Prime Minister, Naftali Bennett, and the Respondent, the Minister of Interior, Ayelet Shaked, pledged to Meretz and Ra'am, that in consideration for their support, a status upgrade of some 1,600 permit holders shall be approved – on the basis of a specific examination - in the same number and in the same way that things were done when the **A** petition was filed. The two parties agreed to vote in favor, and the government asked to treat the vote

which was held on July 5, 2021, as a vote of confidence. Nevertheless, it was to no avail. MKs Sa'id Al-Kharumi and Mazen Ghanaim from Ra'am abstained from voting. 59 supported, 59 opposed and the government's request to approve the order was denied. The temporary order expired on July 6, 2021.

133. The Respondent sought to re-enact the temporary order, but Meretz and Ra'am refused to support it. On January 9, 2022, the Ministerial Committee on Legislative Affairs decided, by a majority of votes, to approve the promotion of the enactment of the new temporary order, and on February 6, 2022 the decision of the Ministerial Committee took effect of a government resolution, also by a majority of votes, after an agreement was reached with the opposition parties on supporting the legislation. In exchange for their support, it was decided that the government would also support a private bill submitted by MK Simcha Rotman and 27 other MKs from the opposition, which shall be attached to the government bill with two additional private bills submitted by MK Zvi Hauser (on behalf of the coalition) and by MK Avi Dichter (from the opposition). On July 2, 2022, the government bill was submitted.

A copy of the government bill is attached and marked **P/33**.

A copy of the bill, led by MK Rotman, is attached and marked **P/34**.

A copy of MK Hauser's bill is attached and marked **P/35**.

A copy of MK Dichter's bill is attached and marked **P/36**.

134. When the bill was submitted, the Respondent, Minister of Interior Shaked, was interviewed by *Yedioth Ahronoth* on February 9, 2022 and made the following statement about the demographic purpose of the law:

> "The law basically protects the security and the Jewish character of the State of Israel. There is no need to launder words here - the law also has demographic reasons. [...] There is also a demographic argument for this law, to prevent a gradual right of. [...] The law seeks to decrease the motivation to immigrate to Israel. First, for security reasons, and then for demographic reasons. "

A copy of the article dated February 9, 2022 is attached and marked **P/37**.

135. While the government bill is identical to the previous one, and is premised on security reasons, the three private bills that the government decided to support emphasized the demographic purpose.

136. The bill led by MK Rotman is identical to the previous temporary order other than three aspects which were added to it: a monthly reporting obligation to the Knesset of the applications which were approved according to the law; establishing a maximum quota of approved applications according to the law

("it can be determined that according to the quota not even one application shall be approved") and turning the temporary order into a permanent law upon the enactment of the Basic Law: Immigration. The explanatory notes stated as follows:

> The purpose of the law is to amend the temporary order which was in force between the years 2003 – 2020 in Israel, the power of which has eroded over the years, in view of the Supreme Court judgments, which eventually led to that the Citizenship Law could no longer stop the flow of the applications and therefore there was no longer any point in extending it.
>
> The Citizenship and Entry into Israel (Temporary Order) Law, 5773-2003 (hereinafter: the Temporary Order) was firstly enacted in 2003, and its purpose was to prevent family unification between Israeli Arabs and Arabs from Judea and Samaria who do not have an Israeli citizenship, thus enabling thousands of Palestinians to enter Israel, while in fact establishing an actual 'quiet right of return' of Judea and Samaria Arabs.
>
> An additional purpose underlying the law was the need to prevent the entry of Arabs who could commit terror attacks, by receiving Israeli citizenship which would give them, *inter alia*, freedom of movement in Israel, using it to harm the state while abusing the rights granted to them by the state.
>
> However, over the years several petitions were filed against the law with the High Court of Justice, petitions which resulted in the amendment of the law and in the addition of additional exceptions. Consequently, the percentage of applications which were approved has consistently grown over the years, such that in 2019, 76% of the applications which had been submitted were approved.
>
> In view of the aforesaid, it is proposed to re-enact the Citizenship Law as a temporary order, while establishing maximum quotas for stay permits and citizenship approvals in a manner which shall close the loopholes in the law and the number of permits which shall be issued will be at a supervised rate established by the Knesset. It is further proposed to determine that the Minister of Interior reports to the Interior and Environmental Protection Committee each month of the number of approvals which were granted in the month preceding the report. It shall make the process and its results transparent, and shall increase the effective supervision of the process by the Knesset.

> In addition, it is proposed to determine that after the enactment of the Basic Law: Immigration and Entry into Israel, the law shall become a regular law instead of a temporary order. The Basic Law: Immigration shall establish the guiding principles for receiving status in Israel and the principles enabling immigration to Israel. Hence, after the enactment of the Basic Law: Immigration, the Citizenship Law may be given the status of a permanent law constituting a supplementary arrangement which together with the Basic Law and the Law of Return, shall constitute the full legal framework for immigrating to Israel or receiving status in Israel."

137. In the bills submitted by MK Hauser and MK Dichter it was proposed to determine that the Minister of Interior will exercise his/her authority by virtue of the law "according to values of the state of Israel as a Jewish and democratic state, including according to the fundamental principles established in section 1 of the Basic Law: Israel the Nation State of the Jewish People, and in section 1 of the Basic Law: Human Dignity and Liberty". In the explanatory notes to MK Hauser's bill the following was written in this context:

> "It should be noted that since the enactment of the temporary order substantial constitutional developments have taken place which anchored in a Basic Law, alongside the core democratic principles of the state, the national character of the state of Israel. The temporary order as currently drafted specifies the nature of the security interest, but the latter cannot be considered without taking the fundamental principles of the state of Israel into consideration. Therefore, it will be appropriate to also include in this context an explicit reference to the relevant fundamental principles on such a material issue – particularly in view of the fact that it is an issue which is subject to public and interpretive debate".

Similar things were included in the explanatory note to the MK Dichter's bill.

138. MK Dichter's bill also provided that the quota of humanitarian permits that may be determined by the Minister of Interior would also be approved by the Knesset's Foreign Affairs and Defense Committee, and that if no quota is set, the quota from the previous year shall apply.

139. The bills of MK Rotman and MK Dichter also established monthly reporting obligations of the Minister of Interior to the Knesset on the number of permits issued.

A copy of an explanation distributed by the Knesset's Legal Advisor concerning the difference between the bills is attached and marked **P/38**.

140. On February 7, 2022, the Knesset plenum approved the government bill in the first reading and the private bills which were attached to it in a preliminary reading.

141. In the past, the temporary order was discussed by the Knesset's Interior and Environmental Protection Committee. Since the committee was headed by MK Walid Taha from Ra'am, the Knesset Committee decided, in three meetings which took place on February 9, 2022 and on February 21, 2022, that the hearing of the bill shall be held by the Foreign Affairs and Defense Committee.

G. The Legislative Procedure and the Arrangement which was adopted – A Declared Demographic Purpose and Abusive Measures unrelated to Security

142. As recalled, the extension mechanism of the temporary order is in one reading in the plenum. It is a mechanism whose violation of human rights is disproportionate since it only enables the MKs to either approve or reject all of the arrangements as a whole. The law is either extended – as has been happening over and over again for 18 years – or expires – as happened in July 2021 – and nothing more. Even if it consists of arrangements which should be amended, the procedure does not allow it. It so happened, that the last time that the law was amended and its arrangements were discussed was in 2007. The Foreign Affairs and Defense Committee had been given for the first time in 15 years the opportunity to thoroughly examine the different aspects of the law, its violations of human rights, the impact of the law on the reality of life for two decades and the measures taken vis-à-vis current data and vis-à-vis the need. All of the above should have been manifested in the constitutional balancing process which is required by law. The Foreign Affairs and Defense Committee has succeeded in the first task but failed in the second.

143. It succeeded in the first task since long meetings were devoted by it to understanding the implications of the previous temporary order including the harms caused by it and the arrangements included therein and their impact on those who are not entitled to enter Israel and acquire status therein, and particularly – and most meetings were devoted to this issue - on those who were allowed to stay in Israel with an inferior and unstable status, devoid of any rights. The committee stressed the severe violations of human rights of the latter and the fact that such violations have no security justification. Accordingly, *inter alia*, there is no security justification for denying social rights and national health insurance, for denying accessibility to welfare and housing services, for limiting employment opportunities and the ability to make a living, for denying legal aid, and more. There is no security justification for denying rights to children, women and the elderly. There is no security justification for preventing same sex spouses from the ability to regulate their status. There is no security justification for binding status applicants for humanitarian reasons to a "sponsor", and there is certainly no

justification for imposing quotas on the approvals of status applications for humanitarian reasons.

144. Nevertheless the committee has failed. As aforesaid, Meretz and Ra'am, coalition members, objected to the bill and therefore the meetings of the Foreign Affairs and Defense Committee of the Knesset concentrated on the attempt to please the members of the opposition, as well as right-wing members of the coalition, and cause them to support it. The result, for the first time, is public adoption of the demographic purpose of the law, along with the re-anchoring of arrangements that violate human rights with the intent to harm, encumber and hurt, without a security need.

145. MK Ram Ben-Barak, chairman of the Foreign Affairs and Defense Committee, said in this regard, among other things:

> "We need to maintain state security and not be mean." (Page 70 of the meeting's protocol dated March 6, 2022).

He summarized the legislative proceedings in the committee headed by him by saying:

> "It's no secret that I would have liked to do more, but in the political reality I have not succeeded." (Page 3 of the meeting's protocol dated March 7, 2022)

And also:

> "Everyone knows what I think, and I think that this law could have been greatly improved and could have been much more considerate than it currently is. I also think that this could have been done and that security could have been maintained at the same time but we failed. […] There are severe disagreements in different parties. I do not want to go into detail here. We are live and there is also a protocol". (page 116 of the protocol).

(1) The declared demographic purpose

146. As aforesaid, the demographic purpose was expressly presented in the private bills and the proposing Knesset members have repeated it time and again in the meetings of the committee.

147. Accordingly, for instance, in the opening meeting held on February 27, 2022, MK Dichter presented his bill and said, *inter alia*, the following:

> "According to section 9 of my bill the Minister of Interior shall exercise his/her authority according to the exceptions established in the governmental bill, on the basis of the values of the state of Israel as a Jewish and democratic state, including according to

the fundamental principles established in section 1 of the Basic Law: Israel the Nation State of the Jewish People, and in section 1 of the Basic Law: Human Dignity and Liberty. I think that this is the correct balance which is required when we speak of a bill which concerns immigration. It should be remembered that there is a struggle here between two very existential things: the demand, mainly but not only of Arab MKs, to eventually exercise the right of return here, in the state of Israel, and turn Israel into a state of all of its nationals. We have also seen it in the numerous discussions which were conducted on the Basic Law: Nationality, which I had the right to promote and submit to the Knesset in 2018. I think that we all understand the reasons for the need to have such a law in 2003, to date and in the future. A permanent law dealing with immigration, but in the absence of the ideal we deal with the optimal and if not optimal, then something which is reasonable."(Pages 5-6 of the protocol).

148. MK Rotman presented his bill and said, among other things:

"The Citizenship and Entry into Israel Law (Temporary Order), has been from the beginning a kind of bandage, and truth must be said. It is a kind of bandage that we put on the entry to Israel including, *inter alia*, due the HCJ judgments. Very many people, including among those who have initially voted for it – it has also been changed throughout the years, and more and more exceptions were added to it since it had been initially enacted – would have said, had they been asked, and have already said it in their voice, that they would have preferred a total closure. To prevent the exercise of said fabricated right of return of the Arabs into the territory of the small state of Israel, by marriage, this thing should be totally banned. […] The exercise of the non-existent right of return that they are trying to do into the territory of Israel, an attempt was made to present it as if it is in conflict. As if the fact that the state of Israel tries to block it violates the right to family life. Due to said argument, which is legally frivolous and also creates a frivolous precedent internationally, the state of Israel enacts and re-enacts the Citizenship law as a temporary order. It extends it from time to time and adds to it from time to time exceptions and exclusions. All, in awe of the Supreme Court. The main road for fixing it as said before me MK Avi Dichter, is to establish these principles in the Basic Law: Immigration. Thus, the state of Israel shall be a sovereign state which determines by itself who can enter its gates. Until this happens […] we should try to maintain the *status quo*. Maintaining the status quo was at risk from the first day of this government. […] Therefore we demanded that a quota shall be set. I wish we could have included such a quota in the Basic Law: Immigration, as we wanted, but it is not possible at this time. […]

The main idea of the quite rare cooperation which we had here between parts of the coalition and the opposition, was intended to maintain the status quo and not to turn the political situation of the coalition into a garbage dump for the right of return." (pages 8-10 of the protocol).

149. MK Hauser said:

One should understand the context and circumstances which led to said legislation, said temporary order, which has been accompanying Israel since 2003. From 1993 until 2003, when this order did not exist, after the Oslo Accords, some 140 thousand Palestinians settled in Israel. This figure was presented before this committee by the then Deputy Attorney General, Menni Mazuz. There are protocols, there is testimony and the context of things should be understood – some 140 thousand people immigrated in a decade when Israel facilitated such marriages without any distinction and without any interference. […] What is the situation that we discuss here? Israel is in a situation that no other country in the world has ever experienced. It is in an ethnic conflict between Jews and Palestinians; a Palestinian community lives both in Israel and in Judea and Samaria; and the problem is that there is an incomprehensible economic gap between Judea and Samaria/Gaza and Israel. We have here an economy which has recently crossed 50 thousand dollars GNP compared to 5,000. There is no doubt that if the borders were open, any person wishing - a Palestinian community - to live here or there, would prefer to live here. If he wants the well-being of his family, children and grandchildren, he would prefer to live under the Israeli system, under an economy of $50,000 GNP rather than $5,000 GNP. It's only a financial question and whoever denies it, buries his head in the sand. [...] I think that due to the constitutional change which we have assumed upon ourselves about two years ago, with the adoption of the Basic Law: Israel, the Nation State of the Jewish people, it is incumbent upon the Minister to consider, *inter alia*, the constitutional arrangements, namely, the Basic Law: Human Dignity and Liberty - it is a serious consideration - and Nationality Law. [...] There may possibly be Ministers who will refuse to consider all of the necessary considerations, who will be inclined to consider only some of the considerations, for these and other reasons. Therefore, and this is my bill, the Minister should be instructed that while exercising his/her discretion, and it’s the Minister's discretion with respect to all of these restrictions, to take into consideration the entire constitutional system. I say it here again for the record, and it is important for future HCJs, that in my opinion the constitutional arrangement has changed and the Minister must take into consideration all of

the constitutional arrangements, namely, the Basic Law: Human Dignity and Liberty, and the Nationality Law. Together and on an equal footing, while exercising his/her discretion. "(Pages 11-13 of the protocol).

150. The representative of the Ministry of Interior, Hagit Tzur, Director of the Bureau of the Population and Immigration Authority in East Jerusalem, presented the data at the meetings of the committee on February 27, 2022 and March 1, 2022. Half of the family unification applications were submitted by Israeli citizens and half of these applications were submitted by residents of East Jerusalem (page 10 of the protocol of the meeting dated March 1, 2022). In Israel there are currently about 12,200 spouses of citizens and permanent residents of East Jerusalem who since 2002 have received permits and temporary residency according to the previous temporary order and were "frozen" in this status – about 9,200 with permits and about 3,000 with temporary residency. However, despite repeated requests made by MKs and the representatives of the petitioning organizations, no data were provided specifying how many years the permits and temporary residencies are held by those who have received them, and no gender segmentation of the data was presented.

151. It also emerges from the data presented by the Ministry of Interior that in 2020, 2,258 applications were submitted to regulate the status of children of East Jerusalem residents, and in 2021, 2,870 applications were submitted. However, the Ministry of Interior could not segment the data into groups of children under the age of 14 who received residency and children above the age of 14 who have only received permits without rights and were "frozen" in this status. Following questions in this regard, a written response was submitted to the committee on March 2, 2022, stating that according to the most recent examination conducted by the Ministry in 2017, only 485 children of permanent residents from East Jerusalem received permits, however, the data in its possession was not current (see page 7 of the protocol of the meeting dated March 3, 2022). No Segmentation was provided on the number of years that permits were held by those who have received them (see page 10 of the protocol of said meeting),but only that they shall continue to hold them when they turn of age (see page 5 of the protocol of the same meeting). A gender segmentation of the data into groups of girls and boys who received permits without rights or residency was not presented as well.

152. Full data were not provided regarding the number of persons who received permits or temporary residency for humanitarian reasons, except that we are concerned with a few single cases per year or with some limited tens of cases per year. No age or gender segmentation was provided. The only thing which was provided, as mentioned above, was that according to the data of the Ministry of Interior from February 2022, in 2019, 291 applications were submitted, of which, since then and until now 179 applications were rejected and 35 were approved. Namely, 77 applications which were submitted in 2019, have not yet been decided, and some are pending for two-three years.

In 2020, 267 applications were submitted, of which since then and until now 107 applications were rejected and 24 were approved. Namely, 136 applications which were submitted in 2020 have not yet been decided.

153. It should be emphasized with respect to gender and age segmentation - which was not provided as aforesaid, with respect to each one of the groups – that it does not stem from the desire to satisfy curiosity. The legislature directed that gender effects of bills should be examined in the framework of the legislative procedures (see Gender Effects in Legislation) (Legislation Amendments), 5768-2007, which added section 6C2 to the Equal Rights of Women Law, 5711-1951), and the effects of bills on children's rights (see the Law for Marking Information regarding the Effect of Legislation on the Rights of the Child, 5762-2002).

154. It also emerges from the data of the Ministry of Interior that since the previous temporary order has expired on July 6, 2021 and until February 22, 2022, about 2,800 new family unification applications were submitted – more than in past years when the law was in force. At the same time, about 4,000 individuals who had received permits and were "frozen" in them submitted applications to upgrade their status into temporary residency and about 900 who had been "frozen" in temporary residency submitted applications for permanent residency.

155. It was also stated that according to the temporary procedure which was established following the **Khatib** judgment, 1,457 permit holders under family unification were found to be potentially eligible for status upgrade to temporary residency since they were over 50 years of age and were holding a permit for five years, of which the status of about 130 was upgraded. Ms. Tzur stated in the committee's meeting which was held on March 1, 2022, that all upgrades were made with the consent of the ISA and the police (page 30 of the protocol of the meeting).

156. MK Rotman referred in said meeting, on March 1, 2022, to the data which were presented by the Ministry of Interior and the questions which were asked in that respect:

> "The issue at hand is at the core of the existence of the state of Israel as the nation state of the Jewish people […] It means that these enemy subjects are simply taken and through the family unification funnel, real or unreal, the demographic balance of the Negev, the Galilee, the mixed cities is changed, and from Israeli Arabs they undergo a Palestiniazation process through marriage. It's a question which goes far beyond the question of what happens to this person or another. It is a national question, and a question that should be referred to on the national level. […] and let's not kid ourselves: the meaning of a specific examination is that there shall be no citizenship law. […] without quotas and transparency there will be no law, because we shall not be able

to support it. […] The question is how many permanent residencies will be approved, how many A/5 visas will be approved, how many permits will be granted for each one of its sections. These details – on the macro level – shall determine whether the law shall pass or not." (pages 35-36 of the protocol)

157. And MK Hauser added:

"During the first six months of 2021, 698 applications were submitted. […] Since the order expired until February 22, in the seven months that followed, you say that 2,800 applications were given, is that correct? […] It means that since the law has expired, if I am trying to get to the annual rate, they amount to about 5,000-6,000 annual applications […] As far as I am concerned, from 1993 to 2003, in the decade before the enactment of the law, about 140,000 citizens are presumed to have settled. I quote Menni Mazuz, acting as the then Deputy Attorney General. It is the starting point of this entire discussion. When we look at the numbers of these six months,

regardless of whether the law passes or not, whether the order enters into effect or not, whether it stands or not, the application rate amounts to 5,000-6,000 applications per annum and between 20 to 21 in the children's world. […] I said it in the previous discussion: when there are two adjacent economies separated by an imaginary border line and a community sitting on both sides of the border, on one side a GNP of $5,000 and on one the other side GNP of $ 50,000 – the number of applications per annum shall not amount to 6,000 but to 12,000 per annum, 15,000 applications per annum or 18,000 applications per annum. This is human nature. Nobody can tell me that between living in Acre and living in Jenin there is any indifference. For the time being, people will always prefer living in Acre than living in Jenin. A second point, a more marginal note which nevertheless should be considered: in 2020, 2,258 applications were submitted for the naturalization of children and in 2021, 2,870 such applications were submitted. Namely, there was some increase. I do not know how to explain it, because these people have already received a DCO status, but the trend can also be seen here. According to a conservative working hypothesis, Mr. Chairman, we are concerned with a phenomenon of about 10,000 persons per annum and I assume that in the absence of said arrangement the scopes shall grow." (pages 36-38 of the protocol).

158. MK Dichter said in the meeting of the committee on March 3, 2022, as follows:

"We understand that this is an attempt to exercise the so-called right of return in one way or another, provided that Palestinian

> settlers from Judea, Samaria, Gaza, and Lebanon and Syria are brought over here. We stand up to the threat and we are not the Dutchman with the finger. We are a country with a fist. We stop it. This law was intended to stop it for security reasons, which began in 2003 to show the absurd. The scope of people who came in here until 2003 was insane, and the State of Israel was in the process of national suicide. Even the numbers were unclear, because the scope of the entries was insane." (page 29 of the protocol).

159. Knesset members Rotman and Hauser reiterated the future demographic purpose of the law, while MK Hauser meticulously reiterating, over and over again, the data presented by the Deputy Attorney General, Menni Mazuz, in 2003 (see, for instance statements made by them in pages 11, 24, 34, 41-42, 57-58 of the protocol dated March 3, 2022). As aforesaid, the Deputy Attorney General, Raz Nizri, responded to said data by saying that a search was conducted in the Ministry of Justice, but no written basis was found for the data presented by Mr. Mazuz (pages 35 and 43 of the protocol of the said meeting).

160. Mr. Nizri stated on behalf of the government that the law was premised on security reasons. The inclusion of quotas in legislation and the addition of the Basic Law: Israel – the Nation State of the Jewish People (hereinafter: the **Basic Law: The Nation**) as a consideration which should be taken into account were not discussed by the government. The government did not establish a position with respect thereto and did not support them (page 33 and page 36 of the protocol).

161. Addressing the issue of the quotas he said:

> "There is no doubt, this will present constitutional difficulties. It is not on the level of prevention, but it will certainly present constitutional difficulties, since the quotas, no matter how we look at this issue, introduces into the bill the demographic purpose. […] In the context of quotas, and in my opinion it also emerges in the explanatory notes to MK Rotman's bill, the demographic purpose of the law is laid on the table. With respect to the demographic purpose, our legal position is not that it is necessarily illegitimate. We have also said in the past that even if the law was premised on the demographic consideration, it is a legitimate consideration. It is a consideration which reconciles with the values of the state of Israel as a Jewish and democratic state. Obviously, since it has not been discussed and in the previous rounds the government and the state, in their responses to HCJ, did not premise this law on a demographic purpose but only on a security purpose, an attempt to introduce now a demographic purpose, although I have previously said that we find it to be a legitimate consideration befitting the values of the

state, certainly presents another constitutional challenge and will raise additional constitutional difficulties. I shall briefly say that like any constitutional test, with which MK Rotman must be familiar, it should be established by law – and a law will be here – in a manner befitting the values of the state, for a suitable purpose in the least intrusive manner. The law exists, the purpose – we find this consideration to be legitimate and as far as the proportionality tests are concerned there is a question at least due to the fact that we currently do not have data. Since we are concerned with a demographic purpose, the first proportionality test is known as the suitability test, namely, the rational connection between the purpose and the measure. If it is a demographic purpose, and we are actually concerned with harming the Jewish majority, harming the nature of the state of Israel as the nation state of the Jewish people, it must be shown that the relevant numbers do indeed prejudice the above. Who can give us the relevant number? Does any number win? Who is the authorized body? We do not have these data. We have received data from the Population Authority about some 20 thousand applications over the last twenty years, namely, about one thousand per year. Does it harm the demographic purpose, yes or no? It certainly raises the question whether it is harmful or not. We do not data indicating same, there is no government position, and therefore what I can say is that it will certainly raise legal difficulties because there will be difficulties in substantiating the first test of the rational connection between the measure which was chosen and the purpose. Second, it should be remembered that if we are concerned with a demographic purpose the fact that we are concerned with a Palestinian population is not as relevant, and its is more relevant when a security purpose is concerned. If we are concerned with a demographic purpose, it makes no difference whether these are Palestinians from Judea and Samaria, from enemy states or Swedish or Norwegian citizens […]". (pages 33-34 of the protocol).

And also:

"I accept that there can be a narrower or broader demographic purpose, only in context of a demographic purpose which is relevant to persons who are not Jewish. This is one demographic purpose, and you were talking about another demographic purpose, perhaps a narrower one, in the sense of the national struggle taking place here opposite a certain population in these contexts. Either way, things should be substantiated. We do not have this substantiation, and MK Hauser mentioned the figure that was referred to by the then Deputy Attorney General Mazuz. We have searched for it, and I was told that the records

documenting it were not found […]. The connection between the measure and the purpose should be established. […] the purpose that you refer to, it should be substantiated by a professional body, it should be substantiated by data. By the way, I do not know who should say it, maybe the National Security Council or the government. What does national security mean? and where is national security harmed. I do not deny anything, but I want to be precise. All I'm saying is that when it raises constitutional difficulties, to pass it, the connection between the measure and the purpose must be established. Therefore, data that we do have here are required. […] a national or official body should say these things". (pages 35-36 of the protocol).

And in response to MK Rotman who said (page 45 of the protocol) that the purpose of the quotas was demographic:

> "A constitutional examination does not end with the law having a proper purpose. The first test is the connection between the means and the purpose. […] In this context we have no data. [...] Why do you establish a quota? To avoid a demographic harm. […] You should specify the quota, whether the quota is X or Y. Do five people harm demographics? Do thousand people harm demographics? [...] The demographic purpose, although it is a proper purpose, raises constitutional difficulties because the data should be substantiated. "(pages 45-46 of the protocol).

162. With respect to the Basic Law: the Nation, he said:

> "We said that a demographic purpose as a purpose is a legitimate consideration. We said it before the Basic Law: the Nation, we told the Supreme Court. The Basic Law: the Nation, may strengthen it, but the law does not refer to it. In any event, things should be considered in relation to equality." (page 36 of the protocol).

And in response to MK Hauser in this matter:

> "You are also familiar with our interpretation of the Nation Law from the discussions which were conducted at the time by the Constitution Committee, I believe, and it was also presented by us in this manner before the Supreme Court. On this basis, the Supreme Court approved, by a panel of 11 justices, I believe, the constitutionality of this law. As we see it, the Nation law has an important declarative significance. It anchors the national rights of the Jewish people. It should not violate the right to equality of each and every citizen. Namely, there is no conflict in this context, although the petitioners and others have argued that the Nation Law violates equality, in the sense that it violates the rights of each and every citizen. We are of the opinion that this

> is not correct and this is how we interpret things. What I am trying to say is that even if you make this addition, I am not saying that there is a legal impediment. You can write it, and in our opinion it is not legally impossible. We said that in any event, in any circumstances, the Minister of Interior should take different considerations into account while exercising his/her power, including all relevant legislation in this context. Obviously, this can also be relevant, but I am afraid that by writing it, the demographic issue shall be put more clearly on the table." (page 44 of the protocol).

(2) Including the demographic purpose in the purpose clause

163. Due to the eagerness of the MKs who proposed the private bills to explicitly include the demographic purpose in legislation, it was decided to add a purpose clause. It was accordingly stated in Section 1 as follows:

> "The purpose of this law is to establish restrictions on citizenship and residency in Israel of citizens or residents of hostile countries or residents of the Area, alongside exceptional arrangements for granting stay permits or temporary residency in Israel, given the fact that Israel is a Jewish and democratic state and in a manner securing the protection of the interests which are vital for the national security of the state."

164. MK Rotman said with respect to this section:

> "I think we found here an intermediate wording which speaks of the State of Israel as a Jewish and democratic state […] and refers to the need to protect the interests which are vital for the national security of the state, a purpose which can be viewed as a security purpose in the broad sense of the word […] and if anyone would like to see in it other purposes, they would be able to do so in the future". (pages 10-11 of protocol of the meeting dated March 7,2022)

165. The Committee's legal advisor, Adv. Miri Frenkel-Shor, stressed that the purpose clause moved the legislation away from its security purpose shifting it towards its demographic purpose:

> "I would like to say a few words about the purpose clause, a clause which was not before the committee. The addition of the purpose clause contains two phrases which were not before the committee: "given the fact that Israel is a Jewish and democratic state" and "securing the protection of the interests which are vital for the national security of the state"'. Now, we are not saying that the purpose clause cannot be included in the bill but it should be noted that this section takes us to a somewhat

> different direction. Until today the direction of the bill and, in fact, the section hovering over the bill is the security purpose as manifested in section 8 of the law [...] the sections should be tied to the purpose evoked by the purpose clause and we must tie the arrangements in the bill to the purpose clause, because the question shall subsequently be: which purpose does this clause actually serve?" (page 57 of the protocol).

(3) About the alleged security purpose

166. For the purpose of justifying the alleged security purpose, an ISA report was presented. ("Open paraphrase regarding the extension of the Temporary Order - February 2022").

167. The ISA reiterates the position whereby family unification applicants from the territories and citizens of enemy states and conflict areas constitute an "increased and proven risk population" compared to other family unification applicants. It was further argued that the main threat stemmed from possible recruitments to terror organizations for the purpose of committing terror attacks – either as perpetrators or collaborators.

168. The above allegedly stems from their group affiliation and the fact that they share common values and are accessible due to family relations in the territories, alongside "the advantage embedded in holding Israeli documentation which allows freedom of movement within the state of Israel and between Israel and the territories of Judea, Samaria or the Gaza Strip."

169. The ISA added that conducting individual security assessments in advance to all family unification applicants was problematic because the motivation to recruit "increases precisely after the applicant obtains a permit enabling them to enter Israel and move freely therein", and it does not predict a future security risk, either by choice or identification, or due to pressures applied on relatives in the territories".

170. It was also argued that the security reality was still explosive and that in 2021 the high security threat of terror was still posed from the territories, which may increase the willingness of the family unification population to "promote terror activity particularly at times of security escalation."

171. The report included examples of such involvement but all of them, without any exception, do not involve persons who received their status in the framework of family unification, but rather individuals who are referred to as "second generation" members of families created by family unification. Namely, children having one parent from the territories, who are entitled to their status from birth since they were born to an Israeli parent. However, the temporary order has never applied to them, and the new legislation has no effect on them. The data with respect to children - Israeli citizens and residents from birth – were brought for no other reason but to intimidate.

They were born or grew up while the temporary order was in force and were not affected by it. When confronted with the above at the committee meetings, the representatives of the authorities had no alternative but to admit that it had no bearing on the legislation.

Accordingly, for instance, Mr. Nizri, Deputy Attorney General, at the meeting of the committee dated March 3, 2022 said as follows:

> "It should be understood that we are talking here about the first generation. As far as the second generation is concerned, it is less relevant because the law does not apply to them. Those defined as "second generation" receive citizenship by virtue of the fact that they are children of an Israeli parent Israeli ".) (page 43 of the protocol).

The Deputy Head of the ISA, known as A., who also attended the same meeting, said:

> "I do not understand the question about the second generation. I simply do not understand the question. Second generation members receive their rights by virtue of their mother or father, holding an Israeli identification card, regardless of the status of the spouse. Therefore, the story of the second generation is certainly worth discussing. I know that some of you are familiar with the position of the Agency and with what was said about the Negev. It has no relevancy to this discussion, neither to the temporary order nor to this discussion. […] How can this threat be removed? A lot can be said about it, and the Agency has things to say, but not in this discussion." (page 56 of the protocol; see also page 65 of the protocol).

172. ISA data regarding those who received status by virtue of family unification failed to substantiate a security need for the law. According to ISA data, in the period spanning from 2002 until the end of 2021, about 35 individuals who received status by virtue of family unification proceedings were involved in terror related activity. Despite repeated requests of MKs, the ISA did not segment the data. No information was provided about said 35 incidents including the extent of the involvement (perpetrator, involved, collaborator) and the source of the data (convictions, indictments, intelligence information) (see, for instance, page 24 of the protocol of the meeting dated March 6, 2022). To the extent data were provided, they were mixed together with "second generation family members", in a way that made it impossible to differentiate between them.

173. With respect to the sex of the involved persons, A, the Deputy Head of ISA stated that 3 women who underwent family unification proceedings were involved over a period of 20 years. What were they involved with, to what extent and what was the source of the data – he did not say, nor did he clarify

whether the involved persons received status or whether here too "first generation family members" were mixed together with "second generation family members" (page 54 of the protocol of the meeting dated March 3, 2022).

174. With respect to the age of the involved persons, A gave vague and general information, showing that in the last two decades things were not re-examined and the provision in the law remained arbitrary:

> "With respect to the age, it also exists in the temporary order. These ages, the younger ones, below 35 for men and 25 for women, we consider them as attractive ages for hostile terror activity. It does not mean that an older person cannot engage in terror, unfortunately it does not mean that one cannot engage in terror at a younger age, but these are more or less the ages that are more involved in terror and on a more significant level." (page 50 of the protocol).

175. Anyway, the gap between the risk profile – which remained as is for many years – and the criteria which were established for the entry of Palestinian workers to Israel was not explained: in general, married persons over the age of 22 and in needed vocations also unmarried persons over the age of 21. Namely, how can the entry of tens of thousands of young Palestinian workers can be allowed on a daily basis, assuming that marriage mitigates the risk of involvement in terror, while with respect to persons living in Israel on a permanent basis with their families and are at risk of losing much more if, God forbid, they are involved in anything, a higher age limit was established and there is no presumption that marriage reduces the risk.

176. Things also remained unclear with respect to a host of questions relating to the 35 involved persons, although due to the small number of cases there should have been no difficulty to present data: what were their ages? were children involved, how many were involved and what were their ages? what was their status in Israel? for how long did they hold a permit or residency? how many were family members of citizens or permanent residents?

177. In meetings which were held in recent years by the inter-ministerial Foreign Affairs and Defense Committee and the Interior and Environmental Protection Committee which was appointed to recommend to the plenum to extend the temporary order, different data were presented by the ISA, which were segmented in different ways. Accordingly, for instance, while this time the data were presented in groups of three years and spouses of citizens were connected with spouses of permanent residents, towards the July 5, 2021 meeting data were presented for each year since 2015 and the groups were divided. According to these data 48 members of the first generation and 117 members of the second generation were involved (of whom the involvement of spouses of permanent residents was low – 6 cases in twenty years). In said document the involvement level and source of the data were provided

(although those who received status in family unification proceedings were mixed together with their children). Other data were presented in the meeting of the committee dated June 1, 2016, where 17 cases of involved persons, members of the first generation and 87 cases of involved persons, members of the second generation were discussed. In the meeting of the committee dated May 18, 2018, data were presented with respect to 47 cases of involved persons, members of the first generation and 108 cases of involved persons, members of the second generation.

See a copy of the document "Data regarding the involvement of members of families that underwent family unification in terror 2001-2021 dated July 5, 2021 attached and marked **P/39**.

178. The manipulative use of the data arises from the above. 17 cases of involved persons by 2016 turned into 47 in 2018 (although the data in 2021 referred to 7 cases of involved persons in 2016 and 4 in 2017), which turned into 48 in 2021 and now, in 2022, went down to 35. The numbers go up or down without any explanation, segmentation is provided only when it serves a certain interest and also then the applicants and children who are citizens and residents are all mixed together in a misleading manner. The unreliable manner of presentation of the data, the contradictions in the data and the numerous queries which remained unanswered concerning age, gender, status, duration within the process, nature of involvement and sources of information, all show that the members of the Knesset were not provided with a coherent infrastructure to justify the alleged security purpose – not for the sweeping prohibition, not for the risk age, not for the measures taken against persons who were allowed to stay in Israel. Legislation cannot be formulated in this manner, all the more so a proportionate legislation, which has been affecting human rights in such a severe manner for more than twenty years.

(4) The way by which the demographic purpose – and other extraneous purposes – were used to establish the legal arrangements

179. The twenty years that passed did not cause the authorities to re-examine the argument, which was weak to begin with, about the threat posed due to the "documentation" which was issued and the freedom of movement. To date, as a general rule, manual examination of the documentation in the passage between Israel and territories is no longer conducted. The documentation can also be marked in other ways which will facilitate the examination of the documents and protect the rights from being violated. In the absence of any other choice, the same permits can be given while establishing by law that anyone holding them is entitled to all rights enjoyed by a resident. Surely there is no connection between security and the denial of rights which are embedded in a stay permit (the contrary is true – precisely the denial of rights may evoke hatred and frustration). The representatives of the authorities were confronted with these arguments. It is for good reason that they were unable to answer them, and the answers uttered by them were unclear and evasive.

180. Mr. Nizri, Deputy Attorney General, said in the meeting on March 3, 2022:

> "I think that ISA representative should explain more about it. I shall briefly say that the type of the relevant permit held by a certain person, to the extent they hold fuller documentation - and documentation is not intended only for travelling from one country to another but also on how you use at home and in which places. The relevant types of documentation have an effect in the opinion of the security forces, in the opinion of the ISA, on the ability of terror organizations which will exploit, as occurred in the past and as the ISA is of the opinion today and will also explain with examples, if you wish, that terror organizations may exploit it, sometime with cooperation. By the way, not always with conscious cooperation. The relevant type of cooperation, whether it is residency, laissez-passer or these or other permits, also have an impact in this context. This is what I can explain on the general level, and the ISA shall be able to discuss it more broadly." (page 39 of the protocol).

181. And ISA's representative, deputy of the head of the agency, A, said in said meeting:

> "Obviously there is a difference between the permits. A DCO permit enables the state of Israel to check what is going on with that person once annually. The permit is a territories permit and legally if we are required – hopefully not – to change or revoke the permit, it's much more than an A5 visa. In the latter case, as was noted by the members of the committee, it is examined once every two years and it is an Israeli permit also with respect to the checkpoints and the examinations, and its revocation requires more significant work. Therefore there is certainly a difference between the permits," (page 65 of the protocol).

182. The above, with all due respect, is nonsense. Nothing precludes the authorities from summoning people, examining and re-examining them, replacing documentation, denying it, issuing different documentation, marking it and taking any other steps as may be required. These things are routinely done also with respect to individuals holding temporary residency. Furthermore, even if it had any merit, it cannot explain why – for security reasons – all of the rights embedded in a temporary residency are denied and why shouldn't the legislation ensure that they are granted even if only permits are issued.

183. When the discussion regarding the arrangements in the law has commenced things became clearer. Even if there was an agreement between some MKs that the law was required for security reasons, most discussions focused on the dispute concerning those who were already in Israel according to the arrangements set forth in the law – spouses, children and recipients of status for humanitarian reasons – and the rights which they do not receive.

184. The Deputy Attorney General, Raz Nizri, admitted that "the questions will be asked whether after 19-20 years, the harm does not become more severe" (page 33 of the protocol of the meeting dated March 3, 2022).

185. The chairman of the committee, MK Ram Ben Barak, wanted to make things easier for those already living in Israel – spouses and children – and to ensure that they are granted rights (see, for instance, page 4-5 of the protocol of the meeting dated March 1, 2022; pages 10, 87-92 and 98 of the protocol of the meeting dated March 3, 2022; pages 145-152 of the protocol of the meeting dated March 6, 2022).

186. It was clarified time and again that the law could achieve a security purpose while causing less harm to human rights, but the version which is promoted is more abusive since the coalition does not have the required majority to pass the legislation in the second and third readings, and therefore the coalition members wishing to pass the law must rely on the votes of right-wing opposition members. The latter, along with coalition members, demanded that the law harm human rights more severely regardless of the alleged security purpose, and this is reflected in the legislation.

187. Accordingly, for instance, it became evident time and again that even if one accepts that a periodic examination of Palestinian family members and children is required and that permanent status should not be granted to them, there is no way to justify by security excuses why Palestinian families and children are discriminated against compared to other non-Palestinian families and receive only permits – without social rights – rather than temporary residency – which grants social rights (see, for instance, page 145 of the protocol of the meeting dated March 6, 2022).

188. There is also no justification for the denial of social rights to children over the age of 14 (see, for instance, page 87 and henceforth of the protocol of the meeting dated March 3, 2022).

189. It was not clarified how the format of the documentation increases the security risk (while the digital documentation and examination at the entrance is made by technological means), but even if there was any real merit to it, there are, as aforesaid, simple solutions which will realize the alleged security purpose and will not deny social rights: for instance, replacing the documentation format of the temporary residency which is given to spouses and children, in a manner facilitating the identification of its holders, without infringing any of the rights which are granted to residents.

190. This way, for instance, was proposed by the committee's legal advisor, Adv. Miri Frenkel-Shor, in the meeting of the committee dated March 3, 2022). Adv. Shor was of the opinion that arrangements should be established with respect to spouses and children, who according to the law receive only permits without rights, and ascertain that subject to seniority, age and security examination they will be entitled to upgrade their status. For this purpose,

another certificate may be issued. In response to MKs' comments she said that it was not a humanitarian matter, but a matter which should be established as a primary arrangement in view of past years' lessons:

> "I suggest that the committee considers a certain relief. I am talking about section 3 and section 4. Section 3 discusses spouses and section 4 discusses the children. A status upgrade from a DCO permit to A5 shall depend on seniority and age, subject to security examination. In certain cases the status can be upgraded from DCO to A5 without the documentation. Namely, we shall find a solution to the certificate provided that at least the social rights are given. […] I don't think that it is a humanitarian reason. The law was enacted in 2003 and was later amended in 2007, and now we open it for the first time. I think that we should learn from the past. There are cases which present a principle and I think that it would be proper to leave the humanitarian reasons for very specific cases which are really humanitarian. It is relevant to section 3 as well as to section 4." (pages 80-81 of the protocol).

And also:

> "I have proposed the principle to give a solution, in view of what came up in the meeting, to section 4(2), concerning minors who came to Israel after the age of 14. They stay here for many years under a DVO permit. Here too, the formula of seniority, age and security examination should be applied. I think that it can give a solution to minors staying here. If there is a question of documentation, we may need to provide a solution which shall give social rights, and another solution to the documentation issue. According to this principle, we can give a proper solution." (page 87 of the protocol).

191. Another option which came up in the meetings of the committee was to arrange by legislation, that permit holders according to the temporary order shall be regarded as residents according to the National Insurance Law (thereby also applying to them the National Health Insurance Law), secure their right to legal aid, the freedom to engage in any occupation requiring a license and the like (see pages 145-154 of the protocol of the meeting dated March 6, 2022). Thus, the documentation remains as is and the security purpose is not harmed in any way. These are matters which have been repeatedly discussed by the authorities and there is no novelty in them. They were discussed by the committee, received the consent of many members of the committee and no security argument was heard which can justify their rejection. In fact, not only that there are simple legislative solutions which do not derogate from the security purpose, but they even reinforce it by reducing the distress of the spouses and children who suffer from lack of rights as a result of being bound for years to permits, facilitating their integration and the like.

192. The chairman of the committee, MK Ben Barak, said that the refusal to give rights to persons living in Israel is 'absurd' (page 147 of the protocol) and said:

> "Well, I am inclined to put it in the law. Do you have any objection, Ministry of Interior?"

The Ministry of Interior has obviously objected but did not present any security reason thereto, other than that the matter has already been examined in the past and that in some matters there are alternative, inferior arrangements, if any (pages 145-154 of the protocol).

193. These solutions, which were supported by many members of the committee, including its chairman, and were not objected to by the ISA, are not included in the legislation. Why should spouses and children be denied of social rights, and how does it serve a security purpose? Why should a special, discriminatory health insurance arrangement be applied to family members which in fact cannot be enjoyed by fifty percent due to its cost, and why national health insurance and national insurance rights should not be given, and what is the connection between them and security? Why is it justified to discriminate in these and many other aspects Palestinian families and children compared to other non-Palestinian families in status procedures? Why should they suffer employment discrimination? (see, for instance, page 18 of the protocol of the meeting dated March 1, 2022; page 106 of the protocol of the meeting dated March 3, 2022; pages 113-114 of the protocol of the meeting dated March 8, 2022). No answers were given to these matters, certainly not answers resting on security reasons.

194. Furthermore, the chairman of the committee brought to discussion a proposal suggesting to grant permanent residency to spouses over the age of 50 or after ten years – as alternative conditions (which were subsequently proposed as cumulative conditions).

A copy of the proposal on behalf of the chairman of the committee for discussion on March 6, 2022 is attached and marked **P/40**.

195. However, the only thing which was agreed was to enable the grant of temporary residency to spouses over the age of 50 and after ten years of staying. When it was reminded that the procedure which was established by the Ministry of Interior in February 2022, after the expiration of the previous temporary order, provided that subject to ISA's consent, the status will be upgraded after five years and not ten, and that 130 of 1,457 candidate permit holders received temporary residency, the chairman of the committee has also agreed to that. However, MK Rotman stressed: "We have a position as legislators. That's not how it works." and vetoed the proposal (see pages 13-14 of the protocol of the meeting dated March 6, 2022, and see also the

exchange between MK Rotman and MK Ben Barak in page 27, where the first verifies with the latter that the period of time shall not fall below ten years – double the time which was approved by the ISA as satisfactory, security wise).

196. Later the possibility of granting residency after 15 years under permit was discussed, namely – men over 50 and women over 40. MK Rotman agreed to that (see pages 30-33 of the protocol) and MK Ben Barak notified that he had discussed it with the ISA which agreed to this arrangement (see pages 38 and 95 of the protocol). However, later in the meeting MK Ben Barak notified the participants that MK Rotman and the group of opposition members supporting him retracted their consent, and therefore they shall return to the version whereby temporary residency shall be given only to men and women over the age of 50 and after 10 years under permit (page 96 of the protocol).

197. Namely, to please the right-wing parties, and regardless of security, it was agreed that only temporary residency shall be given to spouses over 50 years of age who have been staying in Israel at least ten years under permit (as cumulative conditions). Although the ISA agreed that residency could be given to women over the age of 40 – said position was not accepted. Why? Those who wanted to encumber and harm agreed to that and nothing more.

198. The sweeping definition of "resident of the area" was also discussed, which includes as alternative possibilities registration in the Palestinian population registry or residency in the territories. Both options are actually applied broadly. Registration is interpreted as applying to anyone who was registered, even if they have never lived in the territories and have no connection thereto. Residency is interpreted as also applying to persons who have no status in the territories, or at all, and have sometime lived in the territories for a short time as a child many years ago. The question arose why should the law include among its prohibitions persons who are registered in the Palestinian registry but have no connection to the territories. The discussion of the matter ended as follows: "We put an asterisk here, and we shall see if another version can be made, Let's move on." (pages 76-78 of the protocol of the meeting dated March 3, 2022). The matter has never been discussed again.

199. The fact that the law does not enable to regulate the status of same sex spouses has also been discussed by the committee. There was a consensus among the committee members that this should be amended (see, for instance, pages 83-84 of the protocol of the meeting dated March 3, 2022). Nevertheless, the matter does not appear in the law. Ben Barak regretted it and revealed that it stemmed from behind the scenes demands made by those who agreed to vote for the law:

> "To my great regret – I honestly say my great regret – there are still people in the Knesset of Israel who are not willing to accept the obvious that since a man and a woman were created there is also love between men and love between women. […] To my

great regret the Knesset of Israel in this a respect is ignorant." (page 90 of the protocol of the meeting dated March 7, 2022).

200. In other words: it was decided to consciously accept the discrimination of same sex spouses regardless of the alleged security purpose of the law, only because it was demanded in the framework of the political scheme which was concocted.

201. It was further agreed that the Committee for Humanitarian Affairs according to the law would continue to be limited only to persons having a family member staying legally in Israel, unlike the general authority concerning non-Palestinians – to give status for humanitarian reasons regardless of a "sponsor". Why should only a Palestinian applying for status have a "sponsor" and a Palestinian applying for status who does not have a family member cannot acquire status for humanitarian reasons? It was argued in the meetings that the reason for that is that the law engages only with family unification (see pages 106-109 of the protocol of the meeting dated March 3, 2022). However, the law does not engage only with family unification, certainly not the arrangement concerning status for humanitarian reasons. The law engages with the entry and status of Palestinians in general and for any reason: family, work, medical treatment, for any temporary reason and for humanitarian reasons.

202. It was further agreed, for the purpose of recruiting opposition members to support the law (and certain coalition members), that the number of stay permits or temporary residency status for humanitarian reasons would be limited by quotas, and that until quotas were established, a minimal quota of only 35 permits per year shall be established in the law. The chairman of the committee, MK Ben Barak noted, knowing that it had no justification: "Okay. The court will deal with it" (see page 41 of the protocol of the meeting dated March 7, 2022). In other words, he expressed his opinion that the Knesset enacts an unconstitutional law.

203. It should be noted that the petitioning organizations found out that establishing the quota on the basis of the number of positive decisions given by the Committee for Humanitarian Affairs in 2019 would not result in a quota of 35 permits and visas per year, but rather in a quota of 19. Following a letter sent by them in that regard on March 9, 2022 the maximal quota was changed to only 58 per years (on the basis of the approved applications in 2018) – also a very low number, but higher than in 2019 (see pages 2-4 and 59 of the protocol of the meeting dated March 10, 2022).

204. The reason for the draconian limitation on the number of permits and visas for humanitarian reasons as presented by MK Rotman, is, as aforesaid, to prevent the Minister of Interior from giving temporary residency status, subject to the consent of the ISA, to persons holding a stay permit for a long period of time, as was agreed between her and parties members of the

coalition in July, to secure their support in the extension of the validity of the previous temporary order.

205. Namely, to prevent the grant of status for humanitarian reasons on the basis of a long stay to persons who, according to the security bodies, do not pose any threat and may be granted temporary residency, it was decided to limit to a minimum the number of approved status applications for humanitarian reasons – to battered women, widows, children at risk, infirmed persons, persons with disabilities and more. All of the above, without any connection to security matters, but only because this was the condition which laid by those who agreed to support the law.

206. In this manner and without any connection to the security allegations, the arrangements in the temporary order were established.

(5) About the retroactive arrangement

207. Another issue which emerged in the meetings was the constitutional difficulty in applying the law retroactively to persons who submitted their status or status upgrade applications after the expiration of the previous law in July 2021 and until the adoption of the new law according to the existing legal situation.

208. Adv. Frenkel-Shor, the committee's legal advisor, discussed this issue, but an actual solution to this constitutional difficulty was not given other than that these are the security needs (pages 133-140 of the protocol of the meeting dated March 6, 2022, and see also pages 84-88 of the protocol of the meeting dated March 8, 2022).

(6) Summary of the legislation

209. The legislation enacted by the Knesset includes a purpose clause describing its demographic purpose (section 1), followed by a sweeping prohibition on the grant of status, identical to that which was included in the previous temporary order (section 3).

210. Alongside the sweeping prohibition exceptions were established in the temporary order most of which were copied from the previous temporary order and some of which are different:

(a) grant a stay permit, but not citizenship or residency, to a Palestinian male over 35 years of age and to a Palestinian female over 25 years of age at least, to prevent their separation from an Israeli spouse – and to "freeze" them in said status (section 4);

(b) enable the grant of temporary residency to spouses who received permits if they are over the age of 50 and ten years have passed since they received the permits, and "freeze" them in said status (section5);

(c) permit the stay in Israel as residents of minors up to 14 years of age, and the stay in Israel by permit of Palestinian minors between 14-18 years of age, to prevent their separation from their custodian parents (section 6);

(d) grant a Palestinian or resident of one of the countries listed in the addendum to the law, whose family member stays lawfully in Israel, a stay permit or temporary residency for special humanitarian reasons at the recommendation of a special committee, which shall be able to consult with welfare bodies. The Ministry of Interior was authorized, with the government's approval, to establish a maximal annual quota for permits and visas of this kind, and until it is established the quota shall amount to 58. Spousal relationship or parenthood do not constitute, in and of themselves, a special humanitarian reason, with the exception of Druze spouses residents of the Golan Heights. A special purpose committee should examine applications for reasons of domestic violence or spousal or parental abuse which should be given priority (these applications should be decided within three months from the date all required documents were provided, and not within six months like all other applications)(Section7);

(e) permit the stay in Israel of Palestinians for work purposes, medical purposes or for another temporary purpose (Section 8);

(f) grant status in Israel, and at least a stay permit, to persons identifying with the state and who acted - personally or their family members – to promote its goals, or that the state has a special interest in arranging their status (section 9);

(g) permit the temporary stay in Israel – by a stay permit or by a temporary residency – of persons whose applications were submitted before the effective date in 2002 of government resolution 1813 which served as the basis for the law – and "freeze" them in the status which was given to them. To apply the provisions of the law persons who submitted applications according to the previous temporary order, retroactively, also to persons who submitted applications after the expiration of the previous temporary order and the enactment of this law, and to persons who received permits or visas during this intermediate period (section 15).

(h) Temporary residency granted according to any of these sections shall be valid for two years at a time (section10).

211. These exceptions are still subject to a specific examination, and the legislation further provides that a person may constitute a security threat not only if there is information about risk posed by them, but also by their family members – including their brothers in law and sisters in law – and also if in their place of residency activity which may put at risk the state or its citizens takes place (section 11).

212. It was also established that the Minister of Interior will be able to revoke a permit or a temporary residency status if an act constituting a breach of loyalty was committed (section 12). This addition, to which lengthy discussions were dedicated, was establish without need, but only for the purpose of marking the population which is the subject matter of the law with colors of terror and treachery. To protect public safety and security and to distance anyone putting it at risk, the Minister of Interior is anyway vested with the authority to revoke a permit or temporary residency status and deport from Israel, on the basis of administrative evidence of involvement to a much lesser degree than a criminal offense. A special purpose clause to revoke a permit or temporary residency status due to terror, treason or espionage was not required.

213. In addition, a quarterly reporting obligation to the Knesset was established regarding the number of applications for permits and temporary residency which were submitted according to the law, segmentation of the number of applications which were approved and denied, and with respect to the latter – how many were denied for security reasons. In addition, a quarterly report should be submitted regarding the number of meetings held by the humanitarian committees (section 13).

214. In conclusion: the security purpose of the temporary order was not proven, its demographic purpose was expressly anchored, and the temporary order including its prohibitions and exceptions was reinstated. Spouses, children, women and applicants seeking status for humanitarian reasons continue to be critically harmed as they were harmed in the two preceding decades. The limitations continue to be imposed according to the same age limit – men over 35 years of age and women over 25 years of age, children over 14 years of age. The legislation was aggravated by establishing a miniscule quota for the approval of applications for humanitarian reasons. The novelties introduced by it establish or aggravate existing arrangements: the arrangement whereby temporary residency status is granted for two years is nothing but a manifestation of a practice which has been implemented for years ever since the A petition (see paragraphs 8 and 11 of the judgment), and the addition of the possibility to grant temporary residency status after the age of 50 has already been previously established in a procedure of the Ministry of Interior which was more beneficial than the legislation. That which has been is what will be, and worse than that.

(7) Conclusion

215. As soon as the legislation was approved by the plenum the Minister of Interior, Ayelet Shaked, posted a twit on the social network Twitter, to teach, again, that the law is not premised on security:

> Twit
> Ayelet Shaked

@Ayelet_Shaked
Jewish and democratic state – 1
State of all of its citizens – 0
Twitter for iPhone – March 10, 2022, afternoon 9:32

H. The Legal Framework

(1) Preface

216. To determine that the legislation at hand is not constitutional violations of human rights which are protected by the basic laws should be established. To the extent this is the situation, and since the violation is made by law, it must befit the values of the state of Israel, it should have a proper purpose and the harm caused by it to human rights should be proportionate (see section 8 of the Basic Law: Human Dignity and Liberty and section 4 of the Basic Law: Freedom of Occupation). In our constitutional examination we shall show that the law does not befit the values of the state of Israel, it does not promote proper purposes and the harm caused by it is excessive.

217. Before we examine the constitutionality of the law we wish to make two preliminary comments.

(1)(a) The Basic Law: The Nation does not apply to the case at hand

218. During the legislative debates MKs have argued time and again that the Basic Law: The Nation applied to the case at hand. We have reviewed the Basic Law: The Nation and the Honorable Court's judgment concerning said law and its interpretation (HCJ 5555/18 **Hasson v. Israel Knesset** (July 8, 2001)). No support for these arguments was found in said judgment. The Petitioners in the case at hand are also of the opinion that the Basic Law: The Nation is not constitutional, and join the minority opinion of Justice Karra. However, the judgment was decided by the majority of opinion - of ten Justices: President Hayut, Deputy President (retired) Melcer and Justices Hendel, Vogelman, Amit, Sohlberg, Barak-Erez, Mazuz, Baron and Mintz – which held that the Basic Law: The Nation was a declaratory law; that it did not subject the democratic nature of the state to its Jewish nature; that it did not grant rights on the individual level and accordingly, did not deny rights; that it did not derogate from the constitutional status of equality in Israeli jurisprudence.

219. Indeed, the Basic Law: The Nation forms part of the collection of Israeli constitutional laws, but its impact on the issues at hand is neither greater nor lesser than the impact of other basic laws, such as the Basic Law: State Economy or the Basic Law: State Comptroller. To the extent said laws have any impact on the temporary order with which we are concerned, so does the Basic Law: The Nation.

(1)(b) Violation of human rights – whose rights and in what context?

220. The constitutional analysis in **Adalah** and **Galon** focused on the violation of the human rights of the Israeli citizen and resident in connection with the sweeping prohibition on regulating the status of their family members in Israel. The judgments did not discuss the violation of the constitutional rights of the Palestinian spouses and children, or the violation of their human rights and the human rights of family members who are Israeli citizens or residents after they had been given stay permits or temporary residency status in Israel.

221. This petition is filed two decades after the initiation of the policy and examines the reality of life. Alongside the sweeping prohibition, the temporary order established exceptions, which brought with them more than 12 thousand persons, at least (these are only spouses, since data concerning children who received permits and persons who received status for humanitarian reasons were not given). These people live among us as actual residents in an inferior, unstable status devoid of any rights. They are "frozen" in their condition due to the temporary order. This result affects their human rights as the human rights of their family members.

222. It should be reminded that any person staying in Israel is subject to –

> "[…] the fundamental constitutional principles entrenched in the Basic Law: Human Dignity and Liberty, which are intended to protect their life, body, dignity, property, personal freedom, their freedom of movement to leave Israel, their privacy. The Basic Law: Human Dignity and Liberty focuses on the person. The Basic Law states that the basic rights of the '**person in Israel**' are founded on the recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel (section 1). It entrenches 'human' right to dignity and liberty in view of the values of the State of Israel as a Jewish and democratic state (section 1A). According to the law, 'There shall be no violation of the life, body or dignity of **any person as such**'; 'There shall be no violation of the property of a **person**; and 'All **persons** are entitled to protection of their life, body and dignity (sections 2-4; the emphases were added). Other than section 6(b) which limits the right to enter Israel only to **Israeli citizens** staying abroad, all other sections of the law apply to any '**person**'. The Basic Law therefore applies, in principle, to any person staying in Israel regardless of their civil status, religion, occupation, views and the like". (HCJ 11437/05 **Kav La'Oved v. Ministry of Interior**, IsrSC 64(3) 122, paragraph 36 of the judgment of Justice Procaccia (2011) (hereinafter: **Kav La'Oved**)).

223. The above also applies to persons who received their status in the framework of family unification procedures:

> "[…] The same sweeping approach which is manifested in the state's arguments whereby by virtue of its sovereignty the state has no obligation of any kind towards a person who is a foreigner is no longer acceptable. We routinely deal with matters of foreigners whose basic rights are violated, whether the foreigner wishes to stay within state limits for 'family unification' reasons or seeks asylum for humanitarian reasons or for any other unique reasons. In the current era the recognition of human rights of any person as such is constantly growing and many countries, while discussing immigration limitations, deal with problems involving the rights of those wishing to enter their gates". (AAA 1038/08 **State of Israel v. Ghabitz**, judgment of President Beinisch (August 11, 2009)).

224. And indeed, this honorable court found that that certain laws violate, contrary to the principles of constitutional law, the human rights of persons who are not citizens or permanent residents, and held that they were not valid (see: HCJ 8276/05 **Adalah - The Legal Center for Arab Minority Rights in Israel v. Minister of Defence**, IsrSC 62(1) 1 (2006); HCJ 7146/12 **Adam v. The Knesset**, IsrSC 66(2) 717 (2013); HCJ 7385/13 **Eitan – Israeli Immigration Policy v. Government of Israel** (September 22, 2014); HCJ 8665/14 **Desta v. The Knesset** (August 1, 2015); HCJ 2293/17 **Gersghar v. The Knesset** (April 23, 2020)).

225. Against this backdrop, we shall turn now to the constitutional examination.

(2) The violations of protected human rights

226. The legislation critically violates a host of human rights, injures the fabric of life of thousands of families and individuals and causes them misery and distress. Thus, for almost two decades the rights to **family life, equality, dignity, dignified existence and freedom of occupation** are severely violated. We shall herein discuss the violation of these rights together since they are intertwined.

227. As aforesaid, in **Adalah** and **Galon** the honorable court held by a majority of opinion that the constitutional right of Israeli citizens and residents to regulate the status of their spouses in Israel, derives from their constitutional right to family life, entrenched in the Basic Law: Human Dignity and Liberty. It was further held by a majority opinion in **Adalah** and **Galon** that the right of Israeli citizens and residents to maintain a family unit in Israel with their spouses on the basis of equality to other Israeli spouses constitutes part of their constitutional right to dignity, entrenched in the Basic Law: Human Dignity and Liberty. It was also held, as aforesaid, by a majority

opinion, that the temporary order violates these constitutional rights to family life and equality.

228. With respect to the **right to family life** – in **Adalah** it was the position of eight of the eleven justices of the panel (President Barak and Justices Beinisch, Rivlin, Procaccia, Levy, Joubran, Hayut and Adiel). In **Galon** it was the opinion of seven of the eleven justices of the panel (President Beinisch, Deputy President Rivlin and Justices Levy, Arbel, Joubran, Hayut and Hendel).

229. With respect to the **right to equality** – in **Adalah** it was the opinion of seven of the eleven justices of the panel (President Barak and Justices Beinisch, Rivlin, Procaccia, Levy, Joubran and Hayut). In **Galon** this position was also held by seven of the eleven justices of the panel (President Beinisch, Deputy President Rivlin and Justices Levy, Arbel, Joubran, Hayut and Hendel).

230. And if this was the case back then – it must all the more so be the case today. The sweeping prohibition in the temporary order violates the human rights to family life and equality – it literally tears spouses from one another and children from their parents – by denying status and the possibility to live together to those who have not attained the age established by law, or as a result of a preclusion which does not relate to the person but rather to their relatives.

231. The Honorable Court held by a majority opinion in **Adalah** and **Galon** that the right of the individual to establish their family and their home in their country are human rights of the first degree, embodying deeply and forcefully, the essence of human existence, a person's being, dignity and liberty. The court also noted that the persons who have established families with Palestinians from the territories are mostly Arab citizens and residents and consequently the core of the right to equality is violated.

232. The above have a special meaning since about half of those who are harmed by the temporary order are the permanent residents of East Jerusalem. These are indigenous Palestinians (see AAA 3268/14 **'Al-Haq v. Minister of Interior**, paragraph 19 of the judgment of Justice Vogelman, paragraph 3 of the judgment of Justice Mazuz (March 14, 2017); HCJ 7803/06 **Abu 'Arafa v. Minister of Interior**, paragraphs 25-26 and 50 of the judgment of Justice Vogelman (September 13, 2017); AAA 5038/08 **Khalil v. Minister of Interior**, paragraph 27 of the judgment of the President (retired) Naor (December 19, 2017)). They live in a place which was subjected to the "law, jurisdiction and administration of the state" when East Jerusalem was annexed to Israel in June 1967 (despite the position of the international law with respect thereto. See in that regard, for instance, paragraph 78 of the opinion of the International Court of Justice (ICJ) dated July 9, 2004 – Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion 43 IL M 1009 (2004)). Even today, 55 years after the annexation of the east part of the city and twenty years from the

implementation of the policy which is the subject matter of the petition at hand, most residents of East Jerusalem have ties and connections to the west bank and its residents and their opportunity to establish a family is there.

233. These violations of the right to family life and equality have only intensified over the years. In the judgment of Justice Naor in **Galon** the arrangements which were established in the temporary order were referred to as the "Rules of the Game" (paragraph 3 of the judgment). The temporary order fixated for two decades - and who knows until when - continuing, different, separate and discriminatory "rules of game" for those who have established families with Palestinians from the territories, the vast majority of whom, as aforesaid, are Arab citizens and residents. It is an illegal racial profiling of family members of Arab citizens and residents, and in the words of Justice Hayut in **Galon**:

> "The collective nature of the policy entrenched in the Citizenship Law - which in fact obliterates the unique identity of the individual members of said collective - and the disproportionate harm inflicted on the equality as a result of the arrangements established by the law, may create the appearance of illegal racial profiling which should be stayed away from". (paragraph 4 of the judgment of Justice Hayut).

See also: Barak Medina and Ilan Saban "Human Rights and Risk-Taking: On Democracy, 'Racial Profiling' and the Limitation Clause Tests" ***Mishpatim*** 39 47 (2009).

234. The legislation also violates the right to family life and equality of same-sex spouses, who cannot regulate their status, unless they find a humanitarian reason (spousal relationship, in and of itself, does not constitute a humanitarian reason). It should be emphasized in this regard - even if a decision is made to grant status for humanitarian reasons, the mere referral of same-sex spouses to the Committee for Humanitarian Affairs, as if LGBT relationship is a humanitarian matter, imposing on the spouses the burden of submitting a humanitarian application and postponing the decision in their matter for months and sometimes for years until the Minister's approval is obtained, violate, in and of themselves, the rights to family life and equality (and therefore cannot be regarded as a "validating interpretation" of discriminatory legislation). The discrimination of the LGBT community members - certainly a discrimination arising from the fact that the "Knesset is ignorant" – violates the hard core of the right to equality. (see AAA 343/09 **The Open House in Jerusalem for Pride and Tolerance v. Jerusalem Municipality**, IsrSC 64(2) 1, 51-52 (2010); HCJ 781/15 **Arad-Pinkas v. Committee for the Approval of Agreements for the Carrying of Embryos**, paragraph 15 of the judgment of President Hayut (February 27, 2020)).

235. Additional Palestinians applying for status for humanitarian reasons are harmed - for instance, widows without children, battered women without family, and children staying in Israel alone or who grew up in Israel without a family - and the temporary order prohibits the regulation of their status in the absence of a "sponsor" who is a relative – that they do not have. As their situation deteriorates and they are unable to acquire status which shall protect their rights, their **dignity** is violated. Unless they were Palestinians they would have been entitled to have their application examined. Hence, their right to equality is also violated, particularly in view of the fact that there is no difference between them and other status applicants who are not Palestinians, and there is no pertinent justification to block any possibility of discussing their case and granting them status.

236. However, as aforesaid, the violations of human rights, including the rights to family life and equality, can no longer be examined solely against the sweeping prohibitions in the law. The temporary order includes additional violations of human rights of the families and individuals who were permitted to live in Israel, which also bear on the constitutionality of the law. In **Galon**, Justice Levy stressed in this regard as follows:

> "The ability to "realize the family unit" means that all members of said unit will enjoy the same status in Israel, or at least, the main benefits ancillary to the status. If the law grants rights and benefits to the Israeli family member, by virtue of whose status his/her spouse and children also acquire the right to enter Israel and live therein, it arises from his/her right to family life that such rights and benefits would also be granted to his/her family members whose application to unite with him/her was approved, to the same extent that they are subject to all obligations imposed by law. The President has already written about it as follows: 'The right to family life, in the broad sense, is recognized in Israeli law. It is derived from many statutes, which provide arrangements whose purpose is to preserve, encourage and nurture the family unit. Spouses are given social rights, tax reliefs and housing benefits. They enjoy rights of medical and pension insurance. They have visitation rights in hospitals and prisons. They have privileges and defenses in the laws of evidence. The criminal law protects the family; spouses have rights of inheritance, maintenance and mutual support during the marriage, and rights to divide the property when the marriage ends… Israeli law recognizes the importance of comparing the civil status of the parent with that of their child. The [Israeli spouse] has the right that their child shall grow, acquire education and become an Israeli in Israel" (**Adalah,** pages 286; 289; 305) In this sense, the Citizenship Law which mainly deals with the grant of a **stay permit** in Israel as opposed to status, also violates the protected rights." (paragraph 8 of the judgment of Justice Levy in **Galon**).

237. Twenty years passed from the initiation of the policy which was entrenched in the temporary order and the violations have just intensified, as specified below.

238. First, the rights to family life and equality are violated by shaking the security that each family and each individual who were given a permit needs, due to the temporary status which should be repeatedly renewed for years without the ability to receive a permanent status. It is not a temporary phenomenon. It is routine spanning over two decades which affects the fabric of life of thousands of families.

239. Second, the rights to family life and equality are violated by the division of the family status, giving different status to different family members – spouses, parents and children. It should be reminded that other than spouses with different civil status and different set of rights ancillary thereto in turn, there are families with children under the age of 14 who received residency with all rights arising therefrom, and their siblings, also minor and young, over 14, who were bound to permits without rights, with significant limitations on their future (including, the ability to establish a family with the person they choose, regulate the status of their family, exercise the freedom of occupation, drive and the like).

240. Third, unstable status, accompanied by livelihood hardships, lack of social rights and inaccessibility to the rights which are granted to a person who is *de facto* an Israeli resident also violate the rights to family life and equality. Namely, these families are discriminated against compared to families whose family members are not Palestinians not only in the inability to complete the status regulation procedure and in the civil status given to them. They are discriminated against due to the lack of all the rights which are embedded in a temporary residency status in Israel – national health insurance, social security, the right to welfare services, the right engage in any occupation, legal aid and the like. They are not entitled to all of the above rights although there is no relevant difference between the families having Palestinian family members and families who do not have Palestinian family members relating to their entitlement to these rights. No rights are given to them or certain arrangements are imposed on them (like a costly and discriminatory health insurance of which about half of the families do not enjoy), without any relevant difference, other than the fact that they are Palestinians.

241. The absence of relevant difference between families with Palestinian family members and other families with respect to the scope of rights that said families enjoy, is nothing bur prohibited discrimination. "It is the worst of all evils. Discrimination gnaws endlessly in the relationship between human beings, among themselves." (HCJ 7111/95 **Local Government Center v. The Knesset**, IsrSC 50(3) 485, 503 (1996)). Equal treatment is required also and particularly towards those wishing to acquire status and integrate into

society, because equality "is a fundamental value of any democratic society… the individual integrates into the entire fabric and bears their share in building the society, knowing that others do the same" (HCJ 953/87 **Poraz v. Mayor of Tel Aviv-Yafo**, IsrSC 42(2) 309' 332 (1988)). Discrimination, on the other hand "is a wound creating the sense of deprivation and frustration. It harms the sense of belonging and the positive motivation to take part in social life and contribute to it." (HCJ 104/87 **Nevo v. National Labor Court**, IsrSC 44(4) 749, 760 (1990)). The discrimination against families having Palestinian family members with respect to the entitlement to rights afforded to residents, compared to other families, only because they are Palestinians is a prohibited and illegal discrimination, contrary to the law (see, for instance, HCJ 6698/05 **Ka'adan v. Israel Land Administration**, IsrSC 54(1) 258, 278-279 (2000)).

242. Fourth, as specified above, due to the fact that they are bound to the permits and their inability to obtain temporary residency status, the permit holders cannot receive unemployment insurance, income support benefit, disability insurance, mobility allowance, nursing allowance, old-age allowance, survivors allowance, benefits to orphans due to domestic violence, direct payment of child support and more. Family members and individuals (for instance, children who received a permit when they were 14 years old and were "frozen" in it after they came of age) find themselves at times of need without a social safety net and without means of subsistence, although they are *de facto* Israeli residents. Accordingly, for instance, during a pandemic when it is prohibited to go out and work, if they get sick and become disabled, if they need nursing assistance and the like. The honorable court recognized in its judgments the fact that the right to receive a subsistence allowance by a person having no means constitutes a major part in the realization of the right to dignified existence, part of the right to human dignity entrenched in the Basic Law: Human Dignity and Liberty (see HCJ 366/03 **Commitment to Peace and Social Justice Society v. Minister of Finance**, IsrSC 60(3) 464 (2005); HCJ 10662/04 **Hassan v. National Insurance Institute**, IsrSC 65(1) 782 (2012)). For the realization of these rights the social security were enacted, primarily the National Insurance Law. The persons who are "frozen" in their permits cannot enjoy it, although they are reside in Israel for years, and their right to dignified existence is violated.

243. Fifth, the employment of those who are bound to permits is limited, and therefore their **freedom of occupation** is violated. In general, due to their suspicious status they are at the bottom of the labor market and earn very little regardless of their skills. They encounter difficulties working as self-employed and a host of professions requiring licenses which are granted only to citizens and permanent residents (such as medicine or pharmacology) are closed to them.

244. Section 3 of the Basic Law: Freedom of Occupation states that: "Every citizen or resident of the state is entitled to engage in any occupation,

profession or trade." In the discussions concerning the bill of the Basic Law: Freedom of Occupation MK Amnon Rubinstein noted that the decision to grant the right to "every citizen or resident of the state" was intended to differentiate them from a "person coming here as a tourist" (*Divrei HaKnesset*, January 28, 1992, page 2595). Prof. Ahahron Bark stresses in this regard:

> This approach is premised on the concept that only a person having connection to the state is entitled to employment therein. […] the Basic Law does not define the terms 'citizen' or 'resident' and the meaning of these terms shall be determined according their underlying purpose. Therefore, the term 'citizen' should not be interpreted according to the provisions of the regular legislation dealing with citizenship. Accordingly, for instance, a corporation registered in Israel may be regarded as having an 'Israeli' citizenship. Accordingly, the term 'resident' should not be interpreted according to provisions concerning residency (particularly the Population Registration Law, 5725-1965 and the Entry into Israel Law, 5712-1952). Indeed, it has already been ruled in the past that the term 'resident' has different meanings in different contexts. Therefore, anyone "having an actual connection to the state, a connection which is not short-term or temporary, which can prove that any place within Israel serves as their place of residence" should be recognized as a resident (Itzhak Eliasuf "Basic Law: Freedom of Occupation" ***Mishpat Umimshal*** B 173, 177 (1994))." (Aharon Barak **Interpretation in Law – Constitutional Interpretation** 598 (1994)).

245. The interpretation of the term 'resident' in the Basic Law: Freedom of Occupation has not yet been decided by case law. However, the court made some side-notes with respect thereto. For instance, Justice Procaccia stated as follows:

> "It seems that this provision was meant to apply the Basic Law to anyone having a direct connection to the state, which is not short-term and temporary." (paragraph 37 of the judgment in **Kav LaOved**)

246. We are concerned with individuals who are not tourists and whose stay is not short-term or temporary. Israel has been their home for years and they are its residents. Therefore, their constitutional right to freedom of occupation is violated.

247. Moreover, by harming the ability to make a living in a dignified manner by working, while simultaneously denying a minimal social safety net, the families which are harmed by the law are sentenced to poverty and distress.

248. Another aspect which should be considered is the violation caused by the retroactive provisions in section 15 – according to which any person who submitted their application after the expiration of the previous temporary order and the enactment of the new temporary order, will be treated according to the new one. This means that they will not be able to obtain the status that they were entitled to according to the ordinary provisions of the law which applied when the temporary order was not in force. In this matter the retrospective result is particularly severe since during this period – eight months between the temporary orders – the Respondent acted contrary to the law and refused to apply the ordinary status regulation procedures. Applications which were submitted to embark on status regulation or status upgrade procedures – from permits to temporary residency, or permanent residency or citizenship – were not discussed.

249. In **Khatib** it was held that the Respondent was not entitled to act according to the temporary order which was no longer valid; that the authority should act according to the existing legal condition; and that an anticipated legislation cannot be relied on (**Khatib**, paragraph 14 of the judgment). Moreover – a deliberate delay in processing applications with the aspiration to promote legislation is problematic and undermines the duty of the authority to act within a reasonable time (see HCJ 1119/16 **Orot Amos O.A. 2011 Ltd. v. The Electricity Authority**, paragraphs 7-8 of the judgment (October 17, 2017).

250. Even after the temporary procedure was established following the **Khatib** judgment, the Ministry of Interior procrastinated and out of 1,457 individuals over 50 years of age who were entitled to acquire temporary residency after five years, only some 130 applications were approved. The others are now subject to the provisions of the law and shall be able to receive status only if they have been staying in Israel for more than ten years.

251. The retroactive legislation undermines the judgment and thwarts all of the above. These are severe results. Such retroactive legislation violates human rights. It also "harms basic constitutional conceptions. It harms the principle of the rule of law, the certainty of the law and public trust therein. It harms the basic principles of justice and fairness and public trust in government institutions" (AAA 1613/91 **Arbiv v. State of Israel**, IsrSC 46(2) 765' 777 (1992) (hereinafter: **Arbiv**)).

252. Hence, the law violates a host of fundamental rights.

(3) The law does not befit the values of the state of Israel

253. The law marks all Palestinians whoever and wherever they are as a security threat, without an individual examination. It establishes illegal discrimination between the Arab citizens and residents of the state and its Jewish citizens and residents with respect to their right to family life. It violates a host of fundamental rights – as a result of the prohibition to enter and stay in Israel

and of those who were allowed to enter and stay therein and of their family members. It separates spouses from one another and children from their parents. These devastating results undermine the values of a democratic state:

> "Our democracy is characterized by the fact that it imposes limits on the ability to violate human rights; that it is based on the recognition that surrounding the individual there is a wall protecting his rights, which cannot be breached even by the majority [...] Democracy does not impose a blanket prohibition and thereby separates its citizens from their spouses, nor does it prevent them from having a family life; democracy does not impose a blanket prohibition and thereby giving its citizens the option of living in it without their spouses or leaving the state in order to live a proper family life; democracy does not impose a blanket prohibition and thereby separates parents from their children; democracy does not impose a blanket prohibition and thereby discriminates between its citizens with regard to the realization of their family life. Indeed, democracy concedes a certain amount of additional security in order to achieve an incomparably larger addition of family life and equality. This is how democracy acts in times of peace and serenity. This is how democracy acts in times of war and terror". (paragraph 93 of the judgment of President Barak in **Adalah**).

And also:

> A regime which is based on democratic values cannot allow itself to adopt measures that will give the citizens of the state absolute security. A reality of absolute security does not exist in Israel or in any other country. Therefore an educated and balanced decision is required with regard to the ability of the state to take upon itself certain risks in order to protect human rights". (paragraph 9 of the judgment of Justice Beinisch in **Adalah**).

And also:

> "The provisions of the Citizenship and Entry into Israel Law are contrary to all of the above. They give a decisive weight to the security element, by critically harming the fundamental rights of the highest degree. They create a reality which clearly results in limiting the rights Israelis only because they are Arabs. They legitimize a concept which is extraneous to our basic values – discrimination of minorities only because they are minorities. On the basis of sectorial classification which has everything other than a specific examination of the threat posed by a person, they blur the nature of the individual, any individual, as a person by their own right bearing the responsibility for their own actions. They open the door to other laws which do not befit a democratic approach. They threaten to take us one step closer towards the

concept which "preserves the democracy as a shell without leaving any remnants of its content" (Menachem Hofnong Israel – **State Security versus the Rule of Law** 105 (1991)). They veer from the 'principle approach of Israeli jurisprudence that the constitutional provisions should be upheld even while facing the threat of terror' (my colleague, Deputy President, in the above MiscCrimApp 8823/07 **A**). The Citizenship and Entry into Israel Law […] casts a heavy shadow on the chances of the democracy in Israel to withstand the challenges which it has thus far succeeded to overcome. Anyone who thinks that over time the majority, by virtue of whose decisions this law came into being, will be able to withstand its adverse impact – is mistaken. I am afraid that it will threaten any Israeli whoever and wherever they are, since it has embedded in it the power to undermine the foundation on which we all stand shoulder-to-shoulder. Eventually, this impact, as far and slow as it may be, official as it may seem, is not less harmful than the acts of terror which we wish to protect ourselves from. In the words of my colleague, Justice E. Hayut: 'We must bear in mind the price that we shall pay as a society in the long run if the Citizenship Law and its sweeping prohibitions remains in our book of laws' (HCJ 7052/03 **Adalah**, page 492). […] Only specific arrangements, disregarding a person's profiling on the basis of their ethnic origin, age group, sex or place of residence, arrangements which are based on the recognition that a person is responsible for their own actions, which express a willingness to take the risk associated with recognizing human rights and which draw from our historic experience and tradition as a nation and state, will be able to befit the complex equation captioned a Jewish and Democratic State. And in the words of my colleague, Justice Procaccia: 'A sweeping harm to individuals wishing to realize their fundamental rights, without an individual constitutional balancing conducted on the basis of specific data which are unique to the case, is contrary to constitutional principles. It may severely harm the values of life and culture and impinge on the principles of the democratic regime which is premised on protecting human rights' (HCJ 7444/03 **Daka**, paragraph 18 of her judgment)." (paragraphs 29 and 30 of the judgment of Justice (retired) Levy in **Galon**).

254. This suffices to determine that the law is not constitutional. However, even if did befit the values of the state of Israel, its purposes are inappropriate.

(4) The purposes of the law are inappropriate

255. The law has a declared demographic purpose and an alleged security purpose.

256. While in **Adalah** and **Galon** the court refused to accept the demographic purpose, this time it is "on the table". It was repeatedly declared in so many words, it was manifested in the purpose clause and was woven throughout the arrangements in the law: commencing from giving an inferior status to children and spouses affording no social and other rights without any security justification; through an arrangement which does not upgrade the status of persons posing no threat; limiting the possibility to obtain status for humanitarian reasons only to persons having a "sponsor"; establishing quotas for visas granted on the grounds of humanitarian reasons; and ending with an arrangement refusing to grant status to same sex spouses. Neither one of the above has security justification.

257. A racial (and homophobic) purpose, directed towards the members of a specific group – Arab citizens and residents and their Palestinians family members – is not a proper purpose.

258. In **Adalah** and **Galon** it was held – with the consent of almost all the Justices – that the security purpose was a proper purpose. However, as we have shown in detail above, this time the security purpose has not been proven at all, but was argued as lip service. Moreover, unlike his colleagues, Justice Levy was of the opinion in **Galon** that the security purpose was not proper since it was not sensitive to human rights. What was written after less than eight years have passed since the law was enacted applies more forcefully after more than two decades have passed:

> "To be considered as having a proper purpose, the violating law should show that it does not wish to violate the protected right in such a critical manner, to the point that it is totally indifferent to its weight and the importance of protecting it. A law which does not recognize the importance of the protected right which is violated, is a law whose purpose is improper. It cannot be accepted as part of a social system, one of the underlying principles of which is human rights discourse […] To overcome the sensitivity test to the right it should be therefore shown that the law leaves – to the extent possible – a real margin, even the most basic, for the existence of the right – broader or narrower, now or in the future, in these or other limitations – provided that the reading of the law leads to the conclusion that it does not deny said right" (paragraph 23 of the judgment of Justice (*retired*) Levy).

And also:

> "But the failure of the law to offer specific examination measures, in view of the position of the security bodies that they cannot achieve the maximum degree of security that the law as currently drafted wishes to attain, violates these rights to such an extent that it can no longer be said that it is sensitive to human

rights. The law does indeed establish exceptions to the prohibition to acquire status in Israel. It states that in certain circumstances, Israelis here may unite with their Palestinian spouses, as well as with their children. But these circumstances are so narrow and their applicability is so limited such that in fact they leave no leeway for the principles of the specified rights. A comprehensive examination is not required to realize that most Israeli-Arab spouses wish to marry spouses of the 'excluded age group' according to the Citizenship Law. This is the customary age of marriage, and attesting to that is the assessment of the Respondents themselves that about two thirds of those requiring status by virtue of family unification (about 2,000 on the average each year) do not fall within the exceptions […]. And if another proof is required for the weak power of the additional exception – the humanitarian one – it is also found in Respondents' data […], and in the odd idea concerning the possibility to establish a quota for permits on the of this exception […]. Most marriage applications or applications to unite with children do not overcome the sweeping probation of the law. But also those which fall within any of the exceptions – have no assurance that they will undergo a specific examination. […] Applications which passed the different hurdles of the law and reached thus far, may be subjected to a sweeping disqualification, which has nothing to do with specific information, the above, for instance, only because the Palestinian spouse lives in an area in which activity takes place which may put at risk the security of the state of Israel or its citizens. […] And not only, as I have noted, that about two thirds of the family unification cases do not manage to pass through the gates of the law, but the vast majority of the applications which do manage to enter the realm of the law and successfully pass it – entitle the applicants – according to the language of the law and as admitted by the state – to a stay permit only, which does not grant the same rights afforded to Israelis – either citizens or only residents of Israel. Hence, the law's severe violation of the right to family life. Hence, the law's critical violation of the essence of the right to equality – preventing discrimination on the basis of group affiliation. […] A possible remedy to that could have been found by limiting the validity of the temporary order to a certain period of time.

[…] The law has been valid for eight years together with the severe limitations on the fundamental rights of the individual. […] Yes, as it became evident that not only content wise, but also from the aspect of its duration the Citizenship and Entry into Israel Law does not leave a proper leeway to the violated rights, it cannot be said that it is sensitive to human rights. It cannot be said that its purpose, even its concrete one, is a proper purpose.

This lack of sensitivity to the violated rights is only intensified in view of the conclusion that the law has additional purposes other than its security purpose. In this regard I refer to the arrangements established therein concerning the entry of Palestinian workers to Israel and the status which is granted to Palestinians in view of their affiliation with Israel, namely, particularly against the backdrop of security collaboration on their part. I find it difficult to accept the state's argument, and in this regard I join the conclusions of my colleague, Justice Procaccia, as stated in the previous round of this matter (HCJ 7052/03 **Adalah**, page 505) that the risk posed by temporary Palestinian workers, for instance, whose numbers amount to tens of thousands each year, is lighter and substantially different from that posed by residents of the territories who have become Israeli citizens. The Respondents support their claim about the low attractiveness of Palestinian day laborers to terror organizations, in data regarding the identity of those involved in terror attacks since 2000 (protocol dated March 2, 2020, page 7, lines 32-37). However, I do not find the principled argument convincing since the condition – which was presented by the Respondents as a key condition for terror organizations of accessibility to Israel and the Area alike – applies also to Palestinian day laborers. It is well known, and particularly to the security bodies, that the terror organizations constantly adapt themselves to the constraints imposed by the security measures taken, and past conduct of terror organizations in previous years, does not provide any assurance as to their conduct in the future. I am afraid that there is no way of escaping the conclusion that where the state has an interest in having in its territory workers who meet, as is well known, the needs of employment that market has difficulty supplying, the security consideration is temporarily set aside, or at least loses its status as a major consideration. This may not only make the security purpose suspicious to some, but in my view also puts in doubt the seriousness afforded by the state to the violation of the protected rights of its Arab citizens". (paragraphs 32-34 of the judgment of Justice (retired) Levy in **Galon**).

(5) The law is not proportionate

259. A law which does not befit the values of the state of Israel – is not constitutional. A law befitting the values of the state of Israel whose purposes are improper - is not constitutional. However, even if we assume that the law befits the values of the state of Israel and that its purposes are proper, it does not satisfy the proportionality tests: the rational connection test, the less injurious measure test and the proportionality test in its narrow sense.

(5)(a) The rational connection test

260. We shall not discuss in length to thoroughly examine whether the harm is proportionate in view of the demographic purpose of the law. Reference is made in this regard to the words of the Deputy Attorney General, Raz Nizri, quoted above, who clarified that in this case the law does not satisfy the rational connection test (see paragraphs 160-162 of this petition). No data were presented to justify this purpose and a demographic purpose in legislation referring solely to Palestinians should not be accepted. We shall be satisfied with the above and shall return to this despicable and discriminatory purpose in the following tests.

261. With respect to the security purpose, it was not proven. It emerged that the members of the "second generation" who were at the center of the ISA opinion- were not at all relevant to the law. The involvement of the members of "first generation" is low and was not specified. No details were given with respect to the 35 incidents in which they were involved, the scope of their involvement and the source of the details (convictions, indictments, interrogations, intelligence information). The answers to major questions remained unknown: what were the ages of the involved persons? were children involved, how many children were involved and what were their ages? what was the status of the involved persons in Israel? How long have they been holding a permit or residency status? How many of them are relatives of citizens and how many are relatives of permanent residents? It emerged that only 3 women were involved in something but it was not clarified in what they had been involved, what was the scope of their involvement, what was the source and did said data include "second generation members". The age profile of the risk (men over 35 years of age and women over 25 years of age) was not explained, and how did it reconcile with the risk profile which was established for the entry of tens of thousands of Palestinian workers on a daily basis: married over 22 years of age, and in required jobs also bachelors over 21 years of age, teaching us that marriage reduces the risk of involvement in terror. These vague and lacking data – which compared to data of previous years are also filled with contradictions and question marks – show that no coherent infrastructure was laid to justify the alleged security purpose: not to the sweeping prohibition, not to the age of the risk, not to the measures taken against those who were permitted to stay in Israel.

262. It has not been considered, examined and certainly nor proven whether the measures applied by the law undermine the security purpose by increasing hostility, due to frustration which arises from discrimination and deprivation. As aforesaid, the law does not apply to "second generation members" that were repeatedly presented by the authorities as posing a threat. They were born and raised as citizens in a reality in which the law applied to their parents. What was the impact of the law on how they have experienced their citizenship in Israel? How did it contribute, in turn, to the formulation of those who grew up in a state which discriminates against their parents and families, deprives them of stability and a basket of rights and labels them as potential terrorists?

263. Moreover, there is no way to reconcile the security purpose with a host of violations specified above that have nothing to do with security: status upgrade only over 50 years of age while the ISA agrees to status upgrade of women over 40; status upgrade after ten years under permit although the ISA agreed in the framework of the procedure which was previously established to an upgrade after five years; limiting the grant of status for humanitarian reasons only to persons having a family member in Israel; establishing quotas for status on the grounds of humanitarian reasons; and limiting the acquisition of status by same-sex spouses.

264. Hence, the absence of rational connection between the alleged security purpose bears on the non-constitutionality of two aspects of the law – the sweeping prohibition and the arrangements pertaining to persons who have received status.

265. It also bears on another aspect of the law, namely, the retroactive provisions in section 15 according to which any person who has submitted an application between the expiration of the previous temporary order and the enactment of the new temporary order, shall be treated according to the new temporary order. As aforesaid this legislation violates human rights and fundamental constitutional concepts. According to case law, retroactive legislation may be possible while examining the purpose of the law (**Arbiv**, page 776). Under the circumstances, since the security purpose has not been proven, there is no constitutional justification for a retroactive violation of human rights.

(5)(b) The less injurious means test

266. We shall not be tired of saying that a specific examination is a less injurious measure for a security diagnosis. One may argue that this is not a measure which achieves the purpose in the same way. To this we shall respond, first, that it is done anyway with respect to tens of thousands of workers, and second, that there is no absolute security, as aforesaid.

267. Hence, it so done in the matter of tens of thousands of workers entering Israel and on the basis of the criteria established for them. Apparently, it is possible to enter and stay in Israel day in day out on the basis of an individual examination of members of a much younger age group, to the extent the person is married, and in certain cases even if the person is younger and is not married.

268. And all we said with respect to the other violations – there are certainly alternative less injurious measures.

269. There is no justification for giving just permits and not residency, since the examinations at the check points and crossings are no longer made by way of checking certificates; to the extent that nonetheless other easily identifiable documents are required, residency which includes the complete basket of rights granted to a resident may be given without any difficulty, which shall

be marked by a different marking enabling an easy identification thereof (and such documentation may be given without any preclusion to anyone undergoing a family unification procedure – form any location in the world – to be examined while passing through the check points); an if nonetheless a permit must be given, there is no difficulty to establish by law, that the same rights which are given to a resident shall also be given to permit holders.

270. In **Galon** Justice Rubinstein was of the opinion (and in this matter he was in the minority), that the right to family life did not include the spouse's right to status. However, he added, if he had accepted that families do have this right –

> "I would have difficulty understanding why spouses residents of the Area who can receive stay permits […], cannot receive citizenship – subject to the conditions which apply to any foreign spouse […]. *Prima facie* […], if the spouse who is a resident of the Area was allowed to establish their home in Israel, why should security considerations direct that they are required to do it as a resident rather than as a citizen? And, as was determined by the majority of the justices of the previous panel […] the purpose underlying the law is a security purpose." (paragraph 44 of the judgment of Justice Rubinstein in **Galon**).

271. The same obviously applies to each and every violation described by us above which has nothing to do with security (women can acquire residency at a younger age, women and men can acquire residency after a shorter period of time, status applicants for humanitarian reasons can acquire status whether or not they have a family member and without quotas, same sex spouses can integrate into status procedures and the like).

(5)(c) The proportionality test in its narrow sense

272. The main controversy between the Justices of the panels who heard the **Adalah** and **Galon** petitions pertained to the question of whether the harm to human rights outweighed the security benefit. In **Adalah** six Justices answered in the affirmative. In **Galon** five Justices. On this matter Justice Hayut said in **Adalah** as follows:

> The fear of terror, like any fear, may be a dangerous guide for the legislature when it wishes to contend with those causing it. It may cause democracy to overstep its bounds and to be misled into determining 'broad margins' for security purposes, while improperly and disproportionately violating the human rights of citizens and residents who belong to a minority group in the state […] The Citizenship and Entry into Israel Law which is the subject of our deliberation does not include any individual criteria for examining the security danger presented by a resident of the territories, apart from a general criterion of age. In determining such a blanket prohibition against granting a status

to the residents of the territories, the law draws wide and blind margins that unjustly and disproportionately harm many thousands of members of the Arab minority that live among us and wish to have a family life with residents of the territories. The right of a person to choose the spouse with whom they wishes to establish a family and also their right to have their home in the country where they live are in my opinion human rights of the first degree. They incorporate the essence of human existence and dignity as a human being and their freedom as an individual in the deepest sense […] Security needs, no matter how important, cannot justify blanket collective prohibitions that are deaf to the individual. Democracy in its essence involves taking risks […] I am of the opinion that an examination of the Citizenship and Entry into Israel Law in accordance with constitutional criteria leads to the conclusion that the prohibitions prescribed in the law do not satisfy the constitutional test since they harm the Israeli Arab minority excessively. In the complex reality in which we live, it is not possible to ignore the fact that the Palestinian residents of the territories have for many years been potential spouses for the Arab citizens of Israel. It should also not be ignored that according to past experience and according to figures presented by the state as set out above, the scope of the harm involved in the blanket prohibition in the Citizenship and Entry into Israel Law is not balanced and does not stand in a proper proportion to the extent of the risk presented to the Israeli public if the residents of the territories receive, after an individual check, a status or a permit to stay in Israel within the framework of family unification [...] The conflict between the basic rights in the case before us touches the most sensitive nerves of Israeli society as a democratic society. But no matter how much we wish to protect the democratic values of the state, we must not say 'security at any price.' We must consider the price that we will pay as a society in the long term if the Citizenship and Entry into Israel Law with its blanket prohibitions will continue to exist in our book of laws." (paragraphs 4-6 of the judgment of Justice Hayut in **Adalah**).

273. Obviously, this position also stands today. It should be added that the aspect of time was added to the above test, As noted by Justice Arbel in **Galon**:

> "The fact that fundamental rights are violated by a temporary order due to the need of the hour, can serve as an indication of the proportionality of the violation. The temporariness of the violation, arising from the fact that the legislation is made in the context of a temporary order can affect the assessment of the magnitude, depth and scope of the violation of a fundamental right. When opposite the additional benefit arising from the law or the decision of the administrative authority stands the

> additional harm caused as a result thereof to the fundamental right, and it emerges that the harm is temporary in nature, it shall constitute a substantial consideration in the framework of the proportionality test in its narrow sense. […] A review of the changes which were made in the law in the years which passed since its enactment raises, at least, the concern that instead of mitigating the severe harm embodied in the law, they were intended to substantiate it. […]All of the above cast a shadow on the argument that the law and the need thereof are examined periodically. Today, more than eight years after the enactment of the law, it seems that **the temporary arrangement became *de facto* a permanent arrangement**. […] Over the years the law has been repeatedly extended and in fact it is no longer a temporary arrangement. […] The fact that the rights to family life and equality are continuously violated by exploiting the relative flexibility embedded in the legislative means of a temporary order for the purpose of establishing such a sweeping provision, avoiding the enactment of an 'ordinary' law which will be subject to deliberation and scrutiny like any other law, while the changes to the law are immaterial, constitutes under the circumstances a strong indication of the disproportionality of the law". (paragraphs 25-27 of the judgment of Justice Arbel in **Galon**).

274. This was the case after eight years and it is undoubtedly the case now, after the elapse of twenty years, when the harm is so wide and applies to cases to which the sweeping prohibition applies as well as to persons living among us for two decades as residents devoid of any rights.

275. In conclusion, for all of the above reasons the honorable court is requested to order that the law should be repealed.

The honorable court is requested to issue an *order nisi*, and after hearing Respondents' position, make it absolute.

April 25, 2022

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