The Jerusalem District Court **Adm.Pet. 8350/08**
Sitting as the Court for Administrative Affairs

Re:

1. **_____ 'Attoun, ID No. _____**
2. **_____ 'Attoun, stateless**
3. **_____ 'Attoun, stateless**
4. **HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger - registered non profit organization**

Represented by attorneys Yotam Ben Hillel (lic. no. 35418) and/or Yossi Wolfson (lic. no. 26174) and/or Hava Matras-Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566) and/or Abir Joubran (lic. no. 44346) and/or Ido Blum (lic. no. 44538) and/or Yadin Elam (lic. no, 39475) and/or Alon Margalit (lic. no. 35932)
Of HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger
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The Petitioners

- Versus -

1. **Minister of the Interior**
2. **Director of the Population Administration**
3. **Director of the East Jerusalem office of the Population Administration**

Represented by the Jerusalem District Attorneys
7 Mahal Street, Jerusalem , 91010
Tel: 02-5419555; Fax: 02-5419581

The Respondents

Petition for an *Order Nisi*

A petition for an *Order Nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause why they will not reverse their decision to refuse petitioner 1's application to register her sons, petitioners 2 and 3, in the Israeli Population Registry, and grant them the status of Israeli permanent residents.

Introduction

1. A resident of Israel has been living for many years at his parents' home in the center of the Sur Bahir village. After 1967, in accordance with a decision by the Government of Israel, the village became an inseparable part of Jerusalem. As the years passed an increasing number of Jewish neighborhoods were built around the village, which gnawed away at the village lands and which did not allow natural expansion. The center of the village has become crowded and squashed. When that very same person wanted to leave his parents' home and build a home for himself and for his family he encountered a serious problem – there was no territory upon which he could build.

2. The resident's family had land in the south eastern area of the village. This in fact was the only area of the village that could be developed. All other directions were blocked. In 1985 the resident together with his family moved to their new home, which was therefore built in the south eastern neighborhood of the village. The problem was that the house was located about 250 meters outside the municipality's jurisdictional boundary.

3. It should be noted that the line that bordered the municipal jurisdictional territory did not have any significance during that period. Like many other permanent residents in his situation the man continued to maintain a daily routine in the Sur Bahir village and in the rest of the parts of Jerusalem, without any interference. There he made his living, it was there that his children are being educated; it was there that he did his shopping, etc., etc. Even on the ground there was no tangible expression of the location of the municipal jurisdictional border. No fence was built alongside the border, and no other identifying mark was erected, which could indicate that the line passes through this or that point of the village lands.

4. All this would soon change with the decision to erect the security barrier around Jerusalem. The route of the barrier in that area was meant to be built close to the jurisdictional border, and it was expected to sever the residents of the south eastern neighborhood from the rest of the parts of the Sur Bahir village and from the entire city of Jerusalem. The neighborhood residents embarked on a legal struggle, which produced successful results. The State agreed to change the route of the barrier so that the neighborhood would remain on the "Jerusalemite" side of the barrier. The agreement flowed from a recognition that the severing of the residents of the south eastern neighborhood from the village and from Jerusalem – both of which constitute the center of the lives of the neighborhood residents, for all intents and purposes – would bring about intolerable harm to their lives and to their rights.

5. However the struggle by the neighborhood residents is not over. Even the National Insurance Institute of Israel has applied to deny their status as residents and to thus expropriate their social rights. This decree was also challenged by the neighborhood residents in the form of a legal struggle, which also ended successfully. The National Insurance Institute of Israel has recognized the fact that the neighborhood residents are part and parcel of the homogenous village, and the separation barrier that passes nearby the

neighborhood creates an impassable barrier between them and the territories. The National Insurance Institute of Israel has therefore recognized that the center of life of the neighborhood residents is and remains in Israel and the denial of their rights is arbitrary and will severely harm their lives.

6. In the meanwhile the very same resident sired children, all of whom, aside from two, were registered as Israeli residents. When he applied to also register these two children he was told that his application had recently been refused, because of the fact that his house was outside the jurisdictional municipal boundary. There is no need to note that like the other neighborhood residents, the center of life of that person and of his family was entirely in Jerusalem. There is also no need to note that the children themselves also maintain their daily routine in the village and in Jerusalem. The village plays host to their school, and the village is also the place where their friends and relatives live.

   Nonetheless, the Ministry of the Interior has determined that the center of life of the family is not located in Jerusalem, and as a result thereof it has refused to register them in the population registry. Thus these children are left without any status in the world and are deprived of all rights.

7. This therefore is the bone of contention of this petition. Is the fact that the family home is located about 250 meters outside the municipal boundary sufficient to establish that the center of the lives of the family members is located outside Jerusalem? Is it possible to say this even when there is a clearly defined and impassable barrier between the family home and the rest of the West Bank? Is it possible to say this even when the entire lives of the family members are conducted within Jerusalem itself? Is the "center of life" of a person confined exclusively to the place where he puts down his head at the end of the day, or does this term have meaning that is derived from the overall circumstances of his life?

8. Moreover, this petition also deals with the purpose of **Regulation 12 of the Entry into Israel Regulations,** in terms of which the children of Israeli residents, who are born in Israel (as in the present case), are registered. The court shall be requested to determine whether the requirement that states that a child and his parent must maintain the center of life in Israel in order that they be able to register the child in Israel should be interpreted using a very narrow and technical construction, which is based solely upon this or that geographic location of the home, or perhaps one should consider, within the framework of determining the center of life of the child and his parent, the purpose of the regulation – the prevention of a chasm between the status of the resident and the status of the child, the preservation of the integrity of the family unit and the preservation of the child's welfare? How could such a narrow interpretation of the term "center of life" fall in line with the obligations of the state to act for the welfare of children of its residents? How could an interpretation such as this fall in line with the legally binding obligations, of the resident himself, to grant his children his basic needs?

   These questions shall be dealt with at length in the petition.

The parties to the petition

9. Petitioner 1 (hereinafter: the "**petitioner"**) is a resident of the State of Israel. The petitioner has 11 children. Seven children were born to him from his first wife, an Israeli resident, and all of them were registered in Israel. Four more children were born to the petitioner from his second wife, the holder of a West Bank identity document, and they are:

_____, born in Jerusalem on 9 February, 1993, was registered soon after her birth as a permanent resident in Israel;

_____, born in Jerusalem on 26 June, 1994, was registered soon after her birth as a permanent resident in Israel;

_____, petitioner 2, born in Jerusalem on 8 April, 1996, does not hold status in any place;

_____, petitioner 3, petitioner 2's twin brother, born in Jerusalem on 8 April, 1996, does not hold status in any place.

10. The whole family lives on a land, which is about 250 meters outside the municipal boundary of Jerusalem, but which is located on the western side of the separation barrier (the "Jerusalemite" side of the barrier). As shall be detailed below, the center of the family's life is located entirely within Jerusalem.

11. With regard to petitioners 2 and 3 the application to register them in the Israeli Population registry was dismissed by the respondents, who claimed that the petitioners live outside the boundaries of Israel. An appeal, which was filed by the petitioners against the decision was also dismissed.

12. Petitioner 4 is a registered non profit organization, whose stated aim is to assist people who have fallen victim to the abuse or discrimination by the State authorities, and this includes protecting their rights in court, whether in its own name as a public petitioner or as the representative of persons whose rights have been harmed.

13. Respondent 1 is the minister authorized under the Entry into Israel Law, 5712-1952 to handle all issues that flow from this Law, including an application to receive Israeli status, and also including applications for family unification and for registering children.

14. Respondent 2 is the director of the Israeli population administration. Pursuant to the Entry into Israel Regulations, 5734-1974, respondent 1 delegated to respondents 2 and 3 his powers with respect to the handling and approval of applications for family unifications and for resolving the status of the children, which are filed by permanent residents of the State who live in eastern Jerusalem. Likewise, respondent 2 participates in the procedures for determining policy with respect to applications for receiving Israeli status by virtue of the Entry into Israel Law and the regulations that were issued by virtue thereof.

15. Respondent 3 (hereinafter: the "**respondent**") directs the Eastern Jerusalem district office of the population administration. Pursuant to the Entry into Israel Regulations, 5734-1974, respondent 1 delegated to respondents 2 and 3 his powers with respect to the handling and approval of applications for family unification and for resolving the status of the children, which are filed by permanent residents of the State who live in eastern Jerusalem.

The case of petitioners 1-3

General

16. The petitioner, born in 1954, has lived all his life in Sur Bahir, together with his family. In 1967 the petitioner received the status of permanent resident. Up until 1985 the petitioner lived in his parents' home, which is partially located in the village that is within the jurisdictional boundary of Jerusalem. After he got married and set up a family, the petitioner moved with his family in 1985 to live in their present home, which he had built on land that the petitioner received as an inheritance from his father.

17. The family home is also located on property of the Sur Bahir village; however it is located about 250 meters outside the municipal boundary of Jerusalem. This home is part of the south eastern neighborhood of the village (Wadi Humus), upon which we shall elaborate later. However, already at this stage we shall note that at the time the petitioner built his home there was no significance whatsoever to the fact that the home was located beyond the municipal jurisdictional boundary (and it shall be emphasized: we are dealing with a mere few hundred meters from the jurisdictional boundary). The home was built on Sur Bahir village property, and the entire south eastern neighborhood constitutes an integral part of the village. The center of the lives of the residents of that very neighborhood was and remains, for all intents and purposes, the Sur Bahir village – and greater Jerusalem. The border that marks the municipal jurisdictional boundary was therefore in those days a virtual border which had no tangible significance whatsoever.

18. This situation changed with the construction of the separation barrier. The barrier in this area sought to sever the southern neighborhood from the rest of the sections of the village and to leave it on the eastern part of the barrier. In the wake of a petition to the HCJ the route of the barrier was changed so that the neighborhood, including the petitioners' home remained on the western side of the barrier. This was done because of the State's recognition of the severe harm that was foreseen for the residents as a result of the construction of the barrier according to the original route. We shall also expand upon this issue later on.

    An aerial photograph of the petitioners' home, in which the borders marking the municipal jurisdictional boundary as well as the present route of the barrier appear, is attached marked **p/1.**

19. The village of Sur Bahir and the city of Jerusalem constitute the center of the petitioners' lives and of their family for all intents and purposes. As stated, the family home is located on village property. The petitioners have received

electricity from within Jerusalem and are even connected to the Bezek Company's telephone line. The petitioner's children, including petitioners 2 and 3 were born in hospitals in Jerusalem The children study at the local schools in the village center, which are run by the Jerusalem municipality. The petitioner, over the course of the years, worked within Israel, in construction work, and paid taxes to the State of Israel. The petitioners have relatives who live both in the south eastern neighborhood and in the main district of the village, which is located in the Jerusalem area. The petitioners and their relatives often and frequently visit each other, and also participate in each other's family events. The petitioners also do all their shopping in the village as well as in central Jerusalem. Moreover, the petitioner's other children are recognized by the National Insurance Institute of Israel and receive health services within Jerusalem.

The respondent's handling of the application to register the children

20. The twins _____ and _____ (petitioners 2 and 3) were born on 8 April, 1996 in the Augusta Victoria hospital in Jerusalem. The petitioner and his wife, _____ did not have enough money to pay for the expenses of the birth, and therefore left the hospital without them issuing a "birth certificate" for petitioners 2 and 3. In the absence of this certificate the petitioner was unable to file an application to register petitioners 2 and 3 in the Israeli population registry. Only on 1 June, 2000 was the petitioner and his wife able to pay the hospital, and in turn the latter issued a "birth certificate" for petitioners 2 and 3.

    The "birth certificate" for petitioners 2 and 3 is attached and marked **p/2** and **p/3** respectively.

21. On 22 June, 2000 the petitioners filed an application with the office of the respondent to register petitioners 2 and 3 in the Israeli population registry. The petitioners attached documents to the application, which showed that they were maintaining the center of their lives in Jerusalem as well as their birth certificates.

    The receipt confirming the filing of the application is attached and marked **p/4.**

22. Ever since the day of filing the application the petitioner would, once every few months, approach the office of the respondent in order to clarify the fate of his application. Every time he did so he was told that the application was being handled and a reply had not yet been received. At the beginning of 2003 the petitioner's wife, _____ arrived at the office of the respondent. At the office she was informed by the clerk (to the best of her memory – it was a certain Mr. 'Issa Abu Ghosh) that it would not be possible to handle her application, and he tore the receipt confirming the filing of the application in front of her eyes. It was clear to the petitioners that the handling of their case had to be done by hiring the services of an attorney, however money to pay for legal representation was not at hand, and the case had to be abandoned without any further handling for an additional two years.

23. On 31 July, 2005 the petitioners once again visited the office of the respondent. At the office they were told that in order to continue handling their application to register their children, they had to produce documents which attested to the fact that the center of their lives was in Israel.

The document that was given to the petitioners at the office is attached and marked **p/5**. (It should be noted that in the document written by the office clerk the petitioners were also applying to register the girls, _____ and _____, in addition to petitioners 2 and 3. Clearly this was a mistake, since the latter two were registered, immediately after their births, as permanent residents.).

24. Over the course of the month of August 2005, the petitioners produced, via the mail, the required documents for the respondent. Later on the petitioners made attempts to clarify the fate of their application. These attempts came to naught.

25. On 14 February, 2007 the petitioners once more approached the office of the respondent with an application to register petitioners 2 and 3 in Israel. Over the course of the month of April 2007 the petitioners received a further demand to produce documents that attested to the center of their lives being in Israel. A number of weeks later, the petitioners produced the required documents, by mail.

26. On 23 July, 2007 the petitioner's application to register petitioners 2 and 3 was dismissed. The text of the decision says the following:

> **From an examination of the information, including evidentiary material in our possession and from the documents that you filed in support of your application it apparently emerges that you do not consistently and permanently conduct the center of your life in Israel. Indeed the center of your life throughout the years has been in Wadi Humus which is located outside the boundary of the State of Israel.**

The respondent's decision is attached and marked **p/6.**

27. On 15 August, 2007 the petitioners filed an appeal against the decision. In the wake of the filing of the appeal, at the end of September 2007 the petitioners received a letter from the respondent with a demand to produce further documentation, including a certificate from the "Survey of Israel" that their house is located within the Jerusalem municipal jurisdictional boundary.

The respondent's letter, bearing the date 23 September, 2007 is attached and marked **p/7.**

28. The petitioners produced this documentation when they again visited the office of the respondent on 27 February, 2008. It should be noted, that in light of the high cost of obtaining a certificate from the Survey of Israel the petitioners did not produce this certificate, but instead produced a document

from the Mukhtar of the Sur Bahir village stating that the petitioners' home was located in the Wadi Humus area (the south eastern neighborhood of the village). It should be noted that the petitioners do not dispute the fact that their home is located outside the jurisdictional boundary of Jerusalem. Nonetheless, as stated, the house is located very nearby the border of the jurisdictional boundary, as one may see from the aerial photograph that is attached to the petition (appendix **p/1** above).

29. At the beginning of March 2008, the petitioners received a letter from the respondent dated 13 February, 2008. In the letter the respondent sets down the following:

> **I am honored to inform you that in light of an examination that was carried out it appears that you reside in an area that is located outside the boundary, moreover the judgment that was delivered by the National Insurance Institute of Israel on 4 May (**the reference is to the NII 10177/05 judgment that was delivered on 11 April 2005, in a case that shall be elaborated upon below – Y.B.) **approving the residency of those who were living in that place for the purpose of granting rights owed to them applied exclusively to benefits from the National Insurance Institute of Israel. This was because they were living in an area that was within the security barrier but the area itself is located outside the boundary of the State of Israel and therefore the application is denied. For your information.**

The respondent's letter is attached and marked **p/8.**

30. Therefore the reason for denying the petitioners' application is based on the one and only factual claim: the location of the home in which the petitioners live. The respondent has not determined that the center of the lives of the petitioners is not in Jerusalem, but bases the decision solely on the location of the home. It is true that according to the procedure followed by the respondent, the criterion of 'center of life' constitutes a condition for the approval of an application to register the children of an Israeli resident in the population registry. Nonetheless, as shall be elaborated upon below, the place of residence serves as only one of the parameters for determining the center of life of a person, but this is certainly not the only parameter. As stated, from every other perspective the city of Jerusalem constitutes the center of the lives of the petitioner and of his family.

And it bears emphasizing: the State does not deny this. On this understanding the State changed the route of the separation barrier in the district of the Sur Bahir village, so that the petitioners' home would be located on the western side of the barrier. It was on this basis that the State recognized the petitioner and his family members as Israeli residents in terms of the National Insurance Law. And it was on this basis that the respondent herself registered the

brothers and sisters of petitioners 2 and 3 in the population registry as Israeli residents.

31. In conclusion of this point, there is no factual dispute at all between the respondent and the petitioners. The question that has been placed at the center of this petition is a legal one: may one refuse an application to register children of a resident who lives with him, solely because of the fact that their home is located a few hundred meters outside the municipal boundary of Jerusalem. And even if this is so, the fact is that the village in which they live and the city of Jerusalem, to which the village belongs, constitutes the center of their lives for all intents and purposes.

The present petition has been filed for the purpose of addressing this question.

The Legal framework

The registration of children of an Israeli resident

32. Children who are born in Israel (petitioners 2 and 3 in the present case) are governed by **Regulation 12 of the Entry into Israel Regulations, 5734-1974** (hereinafter: "**regulation 12**") which establishes that:

> A child who was born in Israel, and to whom section 4 of the Law of Return, 5710-1950 does not apply, his Israeli status shall be that of his parents; if his parents do not share one status then the child shall receive the status of his father or guardian unless the second parent objects to this in writing; should the second parent object, the child shall receive the status of one of his parents, as shall be determined by the Minister.

33. Case rulings have established that the purpose underlying regulation 12 is to prevent the creation of a disconnection or chasm between the status of a parent who has the status of an Israeli permanent resident and the status of his child who was born in Israel. Placed at the very core of regulation 12 are the values of the integrity of the family unit and the preservation of the child's welfare (see for example: HCJ 979/99 **Carlo (minor) et el v. Minister of the Interior**, *Takdin Elyon* 99(3), 108; Adm.Pet. (Jerusalem) 700/06 **Rabiha D`ana et al v. Director of the East Jerusalem Office of the Population Administration**, *Takdin Mehozi* 2008(1), 5851).

34. The latest ruling of the HCJ and of this honorable court placed regulation 12 alongside the provisions of other Laws which pertain to the children of citizens and drew a comparison between their status and the status of their parents. The rulings established that at least with regard to the children who were born in Israel to parents who have an Israeli status, there cannot be a situation where the children's status will not be equal to the status of their parents:

> **Israeli law recognizes the importance of equalizing the civilian status of a parent to that of his child.**

> Thus, **section 4 of the Citizenship Law** determines that a child of an Israeli citizen will also be an Israeli citizen, whether he is born in Israel (4(a)(1)), or whether he is born abroad (4(a)(2)). Similarly **Regulation 12 of the Entry into Israel Regulations, 5734-1974** determines that a "child who was born in Israel, and to whom section 4 of the Law of Return, 5710-1950 does not apply, his Israeli status shall be that of his parents". (Emphasis added: Y.B.)
>
> **(**Chief Justice A. Barak in HCJ 7052/03 **Adalah et al v. Minister of the Interior**, *Takdin Elyon* 2006(2), 1754 (hereinafter: the "**Adalah judgment**") section 28 of the judgment)).
>
> This was also the position of Justice M. Heshin in the same judgment, in paragraph 22 of his judgment:
>
> It is appropriate to emphasize that the provisions of section 3a of the Law are exclusively concerned with minor residents of the Area who were not born in Israel and who are applying to join their guardian parent who lives in Israel. **A minor who was born in Israel to a citizen or to an Israeli resident is entitled to receive the status of his parent as per the provisions of section 4(a)(1) of the Citizenship Law, 5712-1952 and Regulation 12 of the Entry into Israel Regulations 5734-1974** (Emphasis added: Y.B.)

35. In the judgment in Adm.Pet.1158/04 **Nabhan v. The District Office of the Population Administration** Justice Okun held that under regulation 12, someone who was born in Israel to an Israeli resident parent, who entered Israel legally, is entitled to acquire the status of both his parents or of one of his parents. He notes that:

> We are also forced to reach this conclusion from another comparison that is drawn in Regulation 12. The regulation seeks to apply to someone who was born in Israel but "to whom section 4 of the Law of Return, 5710-1950 does not apply"…Any Jew who immigrated to Israel before the introduction of this Law and any Jew who was born in Israel after the Law came into force, comes under the law which applies to someone who immigrated in accordance with the Law… however the Law grants rights not just to the Jewish immigrant but it also determines that the "rights of the immigrant under this Law and under any other statute" are also granted to "a child and grandchild of a Jew, to the spouse of a Jew and to the spouse of child or a grandchild of a Jew". **The very mention of section 4 of the Law of Return, 5710-1950, in Regulation 12**

> **proves that the regulation has sought to regulate the status of those who are not immigrants but who are Israeli residents. There is no place to create a superfluous chasm between the arrangement that applies to immigrants or to Jews, and the arrangement that applies to other residents. If the Law of Return comprehensively broadened the fixed arrangement, there is no room to prevent, within the wording of regulation 12, the application of this regulation in a similar manner to the children of Israeli residents.** (Emphasis added- Y.B.).

36. It thus emerges from the above selection of citations that the rulings of the Supreme Court and the Court for Administrative Affairs have viewed regulation 12 as **the last link in the chain that completes the provisions of the Citizenship Law, 5712-1952, and the Law of Return 5710-1950.** Together these provisions serve as a quasi safety jacket for a parent – who is a citizen or resident – and for his child who was born in Israel, which ensures that the principle of equal status between them shall be honored.

37. The respondent read into Regulation 12, a condition, in terms of which a child may only be registered as an Israeli resident in the Population Registry if the parent resident and his child maintain the center of their life in Israel. Pursuant to the respondent's practice in this case, the child of an Israeli resident, who was born within the boundaries of Israel, and who has not yet been registered in any other place – will receive upon his registration the status of a permanent resident. This, as stated, if it has been proven that he maintains the center of his life in Israel. It should be noted that this practice of the respondent was accepted in the wake of a petition by petitioner 4 in Adm.Pet. 727/06 **Nufal et al v. Minister of the Interior et al**[1]

    The respondent's procedure "handling of applications with regard to granting Israeli status to a minor where only one of the parents is registered as a permanent resident in Israel" is attached and marked **p/9.**

38. Therefore, pursuant to regulation 12 the respondent must register petitioners 2 and 3, the children of the petitioner, as residents of Israel. This they must do just like they registered their siblings. We shall now turn to an examination into the additional condition – the existence of a center of life in Israel.

The Petitioner's center of Life in Israel

General

39. Using the term "center of life" to describe the link between a person and a specific place is found in a number of Laws. So for example, **section 1 of the Income Tax Ordinance** establishes (after the 2002 amendment) that a "resident of Israel" or "resident" …with regard to an individual – someone

[1] This petition is still pending, and petitioner 4 has raised many reservations with regard to this practice. Nonetheless it is a practice which the respondent continues to follow until this day.

whose center of life is Israel. Alongside this general definition the Amendment enumerates the following auxiliary tests to determine a place as a center of life:

> For the purpose of establishing a place as a center of life of an individual, account will be taken of the overall familial, economic and social links, which include among others:
>
> (a) The location of his permanent home;
>
> (b) His place of residence and that of his family members;
>
> (c) The place of his regular or permanent occupation or the place of his permanent employment;
>
> (d) The place of his active and essential financial interests;
>
> (e) The place of his organizational activities, in unions or in various other institutions.

Later on there is a refutable presumption, in terms of which someone who has lived for a minimal amount of days in Israel, over a defined period of time, shall be considered as having the center of their life in Israel.

40. Another example is the **Implementation of the Disengagement Plan Law 5765-2005.** Also this law makes use of the term "center of life", for the purpose of establishing entitlement to compensation under the Law, and also here, like in the Income Tax ordinance, there are a number of auxiliary tests to establish center of life. Thus it is stated in section 2(b) of the law:

> For the sake of establishing the place of the center of life of the claimant for the purposes of this law, account shall be taken of the overall familial, economic and social links, including, among others:
>
> 1. His place of residence and that of his family members;
>
> 2. His membership in a cooperative settlement union or in other cooperative unions of an evacuated settlement.

41. In the amendment that was made in July 2005 to the **Jurisdiction of the Rabbinical Ecclesiastical Courts in Israel (Marriages and Divorces), 5713-1953** there is also a reference to the concept "center of life". The amendment adds the following definition to the term "place of residence" of a person (see section 4a(6) of the Law): "The place in which the center of life or regular place of residence is located".

42. Court rulings also make reference to the issue of establishing a person's center of life. In Appl.Cttee (Jerusalem) 138/05 **Gabriel Sluk v. The Entitlement Committee under Implementation of the Disengagement Plan Law**,

Takdin Shalom 2006(3), 15698 Judge M. Sobol in paragraph 10 of his judgment held:

> **The feature that more than anything else characterizes the "center of life" test is its flexibility and ability to tailor itself to the specific set of facts that are placed for discussion, in a way that as close as possible realizes the purpose of the legal arrangement under discussion.** This feature was not selected by mere chance. The legislator "deliberately chose this flexible concept in order to enable the judges to fill in the content pursuant to the circumstances" (A.H Shaki "Religious and International Authority and Selecting the Law – for the purposes of the Legal Capacity and Guardianship Law" *Hapraklit* [The Advocate] 20 (1964) 259, 260). This content "cannot be mechanically established or predetermined by virtue of any fiction" (A.H. Shaki "The Rules of Private International Law in the Inheritance Law" *Iyuney Mishpat* [Legal Studies] 3 (1973) 51, 56). The advantage of the center of life is the fact that it is "without doubt an objective, original and successful criterion, which gives the court discretion to determine the "domicile of a person and as a consequence thereof his "lex domicilii" in accordance with the **majority of links** of that very person to one of the States, according to which it is possible to discover the real center of life of that person, and through this to apply the law which is truly his personal law" (M. Shaua, *Personal Law in Israel* (volume one, expanded fourth edition - 2001) 66 and 410). (Emphasis added – Y.B.).

And further on, it is held in paragraph 11:

> The center of life is a normative concept**.** Therefore clarifying the place of the center of life is not merely a factual clarification. The clarification blends the facts together with the law. The test is implemented through two integrated auxiliary tests: the **objective** test and the **subjective** test (CrimA 3025/00 above, at 123, FCrH 8612/00, above, 459; CA 4127/95 above, 321-322; HCJ 6627/98, above, 323). **The objective test investigates the physical connections of the person to a specific place: his place of residence; the place of residence of his family; the place in which he derives his income, the place most of his capital is located; the place of his communal life; the place his children are educated; and other physical data in this vain that is given tangible expression on the ground.** The place to which a person is connected through the majority of his

> links shall be the objective center of his life. **The subjective test is concerned with the mental links that connect a person to the place: an intention to move from a place of residence or to return there in the future; the reason for being in a specific place or to be absent from it; the feeling of belonging to the place; and so on, and so forth. (**Emphases added – Y.B.).

43. Rulings from the Labor Court have also held that the question of center of life is a question, whose answer is dependent upon the overall circumstances. In one of the cases it was held:

> There are special circumstances that flow from the special situation that is related to the results of the Six Day War. **As a result a situation was created from the Administration of Rule and Justice Order (No. 1), 5767-1967 where a specific house became part of Israeli territory and another house, located a short distance away from it, was considered outside the State. Passage from one area to the next is not passage from one state to the other state. Someone who comes from the other area to the first area does not need an entry visa, neither as a tourist nor as a temporary resident. There may be situations where the living quarters are in one territory and the source of livelihood – work or occupation – is in the second area. There may also be a situation where for family reasons they often move from house to house. In these scenarios it is not possible to arrive at any result since residency changes from day to day. The only answer to situations like these is overall evidence in an effort to seek a solution to the question, to which "territory" is there a primary link and to which area is the link temporary, secondary, or transient.** (LC 45/04-73 **Sanukah v. The National Insurance Institute of Israel** *PDA* 17(1), 79, section 11 of the judgment). (Emphasis not in the original – Y.B.)

44. The difficulty of determining the center of life of a person in a case in which his house is located in one place, and the center of his life, from many other aspects, is located somewhere else was discussed by the honorable (then) Justice D. Beinisch in the context of determining the center of life of a person for the purpose of determining his domicile under section 135 of the Inheritance Law:

> On more than one occasion the court has had to deliberate upon the question of what the domicile is of a person who divides his daily routine between two different States, a determination that has become more

> and more difficult in the circumstances that prevail in the modern world where mobility is very easy. A person may live in one place and conduct his business affairs in another place, while his family lives in a certain State, and he has business and other public interests in another State, in which he spends a significant portion of the year and where he invests much of his time and energy. There are some who divide their time and interests over the various periods of the year in different States. All these make it difficult to clearly identify the center of life of a person. **In our case the problem in determining "center of life" of a person makes it much more difficult when it involves places which are very close to each other, and which from a geophysical perspective presents no difficulty for maintaining a daily routine in both places at once, and nonetheless in each of these paces a different legal system prevails, but the legislator viewed the life of a person as moving around one center for the purposes of dividing his inheritance, and therefore we are forced accept this position and to resolve the law according to the "majority of links" that connect the deceased to that place.** (CA 4631/90 **Joul v. Joul** *Piskei Din* 49(5), 656, 658-659). (Emphasis not in original – Y.B.).

45. When we come to determine where the center of life of a person is located, we may also rely on tests established by court rulings with respect to the question of determining "effective citizenship" (for example in questions relating to extradition laws. See in this regard: CrimA 6182/98 **Shmuel Shinbein v. The Attorney General,** *Piskei Din* 53(1), 625). So, for example the Supreme Court has determined:

> In a case where a person has dual citizenship, the prevailing opinion is that we go after the "effective", active practical and conspicuous citizenship" (CA 86/63 **Al-Safadi v. Baruch Binyamin**, *Piskei Din* 17(3) 1419, 1426).

46. The International Court of Justice in the Hague has also dealt with this question in the Nottebohm case and it noted various parameters which should be taken into account when determining what the effective citizenship of a person:

> International arbitrators have decided in the same way numerous cases of dual nationality, where the question arose with regard to the exercise of protection. They have given their preference to the real and effective nationality, that which accorded with the facts that based on stronger factual ties between the person concerned and one of the States whose nationality is

> involved. **Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children etc**. (**Liechtenstein v. Guatemala**, 1955 *I.C.J. Rep*. 4, 22).

47. As with "effective citizenship", when one comes to determine the center of life of a person, one must examine where the majority of his links lead us. As detailed above, his place of residence serves as one of the important parameters for establishing the center of life, however it is not the only one (see also in this regard Appl. Cttee 138/05 above, at paragraph 12 of the judgment). One must also examine where the rest of the family lives, where their assets are located, where he works for his livelihood, where his close community is located, where his children are educated, and the like. Also with the subjective aspect, one must test the mental links connecting a person and a place: his intention to stay in that place in the future, the reason for him being at the specific place, a feeling of belonging to the place, and so on.

48. As aforementioned at times the indecision relating to the determination of the center of life flows from the fact that the person's home is located in a certain place, whereas the center of his life in every other aspect is located, geographically very close to his home, but in a place where another judicial system prevails. As shall be detailed below, our case also involves a similar situation. Nonetheless, the petitioners shall argue that in the case that forms the subject of this petition, determining the petitioners' center of life is simple. This is because the State has recognized that despite the fact that the petitioners' home is located only 250 meters outside the jurisdictional boundary of the city of Jerusalem, the neighborhood in which the home is located constitutes an inseparable part of the Sur Bahir village and the city of Jerusalem. Out of this recognition the State agreed to move the route of the separation barrier so that the petitioners' home and other homes in that neighborhood would be included on the "Jerusalemite" side of the barrier. And out of this recognition, and since the barrier has created an impassable obstacle between that neighborhood and the rest of the parts of the West Bank, the state agreed that it would not harm the essential rights of the neighborhood residents (in this context it involves the rights under the National Insurance Law).

The meaning of the term "center of life" with reference to regulation 12

49. The term "center of life", as with other terms has interchangeable meanings in the various Laws. (See for example in this regard the different meaning of the term "resident" in the various laws: CA 657/76 **The Authorized Body for the Purposes of the Nazi Persecutions Disabled Persons Law 5717-1957 v. Hasdai**, *Piskei Din* 32(1) 778, CrimA 3025/00 **Haroush v. the State of Israel**, *Piskei Din* 54(5) 111). Above we have noted a number of Laws which contain various auxiliary tests according to which one must determine the

center of life of a person. Every law and its emphases are pursuant to the underlying purpose of the legislation.

50. As stated the underlying purpose of regulation 12 is to prevent the creation of a chasm between the status of a parent and that of his child who was born in Israel. This is for the purpose of protecting the values of the integrity of the family unit and the preservation of the child's welfare. Indeed, regulation 12 does not stipulate that the center of life be a condition for receiving Israeli status. Nonetheless as has been noted above, the respondent added to regulation 12 the condition that states that one may only register a child of an Israeli resident in the Population Registry if the parent resident and his child maintain the center of their life in Israel.

51. Pursuant thereto, one must provide the term "center of life" in this context with an interpretation that is commensurate with the underlying purpose of regulation 12. One must interpret the term "center of life" in the maters of the petitioners in such a way that it shall prevent a chasm between the status of the *pater familias*, who is an Israeli resident, and the status of his children. One must find a solution that preserves the integrity of the family unit of the petitioners and one which is in harmony with the welfare of the children.

Implementation with regard to residents of the Sur Bahir Village

52. In 1967, after the war, Israel annexed to the boundary of Jerusalem, territory that belonged to the West Bank and included it within the boundaries of the city of Jerusalem. The annexed territory included the Old City, the surrounding neighborhoods, as well as 28 Palestinian villages, which were also annexed to the municipal area. Residents of the annexed territory were then given the status of Israeli permanent residents.

53. This also occurred in the case of the Sur Bahir village, which therefore became, after 1967, one of the neighborhoods of Jerusalem.

54. The problem was that the new jurisdictional border of the city was drafted in haste, and without paying necessary attention to the real borders of each and every neighborhood of those neighborhoods that surrounded Jerusalem. This likewise occurred with regard to the Sur Bahir village. The jurisdictional border that was constituted in 1967 did not include all the territory of the Sur Bahir village, and in practice divided the village into two: the greater part of the village lands were annexed after 1967 to the municipal boundary of the city, whereas the rest of the village lands (mainly the south.-eastern portion thereof) remained outside the borders of the city.

55. Nonetheless, over the course of all those years we were dealing with a "virtual border". This was the case since in practice no tangible expression whatsoever was given on the ground to the location of the jurisdictional municipal boundary. No fence was erected alongside the border, and no other landmark was placed that would indicate that the border traversed this or that point on the Sur Bahir village property. This means that even after 1967 the Sur Bahir village remained united, it was not divided at any stage, and the residents continued to own and work on their properties, even those who found

themselves outside the municipal border. Thus it was exactly the same as it had been in the past.

56. It should be noted, the developments to the area that have been ongoing ever since 1967 has had a decisive impact on the special situation of the Sur Bahir village, up until the present day. Over the course of the years the State has built neighborhoods that are designed for Jewish settlement. Many of the lands, upon which these neighborhoods were built, were expropriated from the Sur Bahir village. Thus, the village has been locked-in between various neighborhoods, which have prevented development in the various directions. From its north the village is blocked off by the neighborhoods of east Talpiyot, and from its west, the village is blocked off by the Ramat Rachel kibbutz. From its south west, the village is blocked off by the new settlement of Har Homah.

57. As a result of these changes the village's expansion has been prevented in virtually all directions, as detailed above. Because of the severe lack of available land for building, there has been a severe shortage in housing. The only direction in which the village has been able to expand, in order to somewhat ease this distress, was the south easterly direction. And indeed, over the years the village's south eastern neighborhood has been built up, some of the land is very near the municipal border while other lands are just to the other side of the municipal border. It should be noted that even those houses that were built on the other side of the border – which as stated, was merely virtual until very recently – are at most at a distance of a mere few hundred meters away from the jurisdictional boundary.

58. Therefore for most of the years a situation has been created where most of the Sur Bahir village has been situated within the municipal boundary of Jerusalem, and a small portion thereof (as a rough estimation – less than 10% of the lands) is situated outside the boundary. And it should be emphasized: even the south eastern neighborhood was built on property historically belonging to the village, and which, in this area, extends to close by the Ubeidyiah village, which is situated north east of Bethlehem. Nonetheless, and as detailed above, until recently, there was no distinction between the two "parts" of the village, which are joined together in continuous construction.

59. The fact that some of the houses in the south eastern neighborhood were built outside the municipal boundary of the city did not have any impact on the daily lives of the neighborhood residents. The center of life of those residents – whose whole desire was to leave the crowded center of the village to a more spacious area – was and remains in the Sur Bahir village and greater Jerusalem. This was true in regard to all the elements that make up a person's "center of life": place of work, place of receiving miscellaneous services (health, postal, various municipal services), place of study of children, place of worship, place of residence of relatives and friends etc.

Construction of Separation Barrier in the Sur Bahir Area

60. On 2 September, 2003 the Government of Israel decided to build the Separation Barrier in the Jerusalem Area ("Enveloping Jerusalem"). With

regard to the Sur Bahir village area the barrier route was planned to closely follow the municipal jurisdictional boundary of Jerusalem, but slightly to the east of it. The planned barrier route was meant to leave 1,600 dunam of land from the south eastern neighborhood, where close to one thousand people lived – on the eastern side of the barrier. As a result, these people would in the future be severed from their village, their family, the city of Jerusalem; their places of work, the schools that are located in the village, and so on.

61. In order to try and prevent such a harsh result, the south eastern neighborhood residents of the village commenced legal proceedings, which ended in a petition which was filed with the HCJ in October 2003 (HCJ 9156/03 **Da'ud Jabur and 32 others v. Seam Area Administration et al**). In the wake of the filing of the petition the State agreed to move the route in that area a few hundred meters to the south east, so that most of the houses of that neighborhood would be included on the "Israeli" side of the barrier. This agreement received the validity of a court judgment on 30 December, 2003.

The mutually agreed upon notice that was filed with the HCJ is attached and marked **p/10.**

62. It should be noted that this agreement by the State flowed first and foremost from a recognition of the severe harm to the life of those residents that would be caused had the barrier been built according to the planned route. This emerges from a document that was transmitted to the petitioners in HCJ 940/04 **Abu Tir and 10 others v. The Army Commander in the Judea and Samaria Area et al** [2]. In that document the assistant to the legal adviser of the West Bank notes in paragraph 32(a):

> Harm to the residents of the Sur Bahir Village - under the current planned route of the barrier in the area in question, seven hundred and fifty of the residents of Sur Behir will soon find themselves separated from the village. **This involves Israeli residents. The foreseeable harm is especially great since we are dealing with one solid organic community, where the residents who are expected to live on the eastern side of the barrier will be separated from their family members and from their communal institutions, which serve them.** (Emphasis added - Y.B.)

The document is attached and marked **p/11.**

63. As stated, as a result of the filing of the petition in this case (HCJ 9156/03) and in light of the fact that the State recognized the anticipated severe harm to the south eastern neighborhood residents – the route of the separation barrier was moved so that it included the residents of that neighborhood, including the petitioners in the present petition.

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[2] This involved a petition that was filed by other residents of the eastern neighborhood of Zur Behar, who even after the route was moved remained on the eastern side of the barrier. The petition was dismissed.

64. However the troubles for the residents of the south eastern neighborhood did not end there. Over the course of 2004 the National Insurance Institute of Israel (hereinafter: the "**NII**") began to send notices to the south eastern residents, in which they informed them of the revocation of their status as residents under the National Insurance Law. Likewise, these residents began receiving notices from the Medical Insurance Funds, in which they are members, of the cancellation of their medical insurance. Notices of this kind were also received by the petitioner and his family members, who were insured by the NII. In response, these residents – including the petitioner and his family members – filed a claim with the Jerusalem District Labor Court (NI 10177/05 **The Sur Bahir Village Committee on the National Insurance Issue and 52 others v. The National Insurance Institute of Israel et al.** The petitioner and his family members were claimants 35-43 in that suit). In the framework of the suit, the residents demanded that the court deliver a declarative judgment, stating that they form part of the Israeli residents under the National Insurance Law. This, in light of the fact that the center of their life was, and remains in Israel.

65. In the wake of the filing of the claim a judgment was handed down on 11 April, 2005 which determined:

> In light of the mutual agreement, and the notice, **and paying specific attention to the fact that we are dealing with a single homogenous village,** and in accordance with the guideline of the attorney general given to the defendant, so long as the legal and political situation remain in force as it is today, and so long as the separation barrier exits in its planned framework, the defendant shall be considered as one through whom all that is stated below must be fulfilled, as someone to whom the National Insurance Law and the Health Insurance Law apply both in regard to the rights and in regard to the obligations that are imposed and that apply to the following:
>
> A. One who is a holder of a permanent residence permit according to the Entry into Israel law, 5712-1952.
>
> B. **One who is a resident of the Sur Bahir Village; including the territory of the village that is between the separation barrier and the municipal boundary of Jerusalem, and he lives in the village permanently and not merely temporarily.**
>
> In light of the aforesaid, the notices that were sent to the claimants are hereby null and void. (Emphasis added – Y. B.)

The judgment is attached and marked **p/12**

66. Therefore, also within the framework of this proceeding the State recognized, that in the present situation one must view the residents of the south eastern neighborhood of Sur Bahir as residents of Israel for the purpose of the National Insurance Law and the Health Insurance Law. In light of the fact that this involves a part of the singular homogenous village, and in light of the fact that the separation barrier embraces the neighborhood within the Jerusalem boundary and creates an impassable barrier between it and the territories, the center of life of the neighborhood residents is in Israel. Revocation of the rights of the neighborhood residents, on the basis of the virtual municipal border, that has no resemblance to reality, is completely arbitrary, and will severely harm the lives of the neighborhood residents and their rights.

67. These principles apply equally to our case. National insurance rights, as in the case of registering children, are determined according to the center of life test. The principles that have been determined for social rights also apply to our case, the south eastern neighborhood constitutes an inseparable part of the Sur Bahir village, the center of life of its residents is situated in Jerusalem and therefore – one may not harm the rights of neighborhood residents that are owed to them under the law.

The Practical Application with regards to the Petitioners' Family

68. The petitioners, like all the other residents of the south eastern neighborhood are residents of the Sur Bahir village, which has been included in the territory of Jerusalem ever since 1967. The Sur Bahir village and the city of Jerusalem constitute the center of life of the petitioners and of their families for all intents and purposes. Their home is situated on village property. The petitioners receive electricity from within Jerusalem, and are connected to the Bezek company telephone line. The petitioner's children, including petitioners 2 and 3 were born in hospitals in Jerusalem. The children study at the local schools that are in the center of the village, and which are affiliated with the Jerusalem municipality. The petitioner over the course of the years worked within Israel in construction work and paid taxes to the State of Israel. The petitioners have relatives who live in the south eastern neighborhood as well as in the main portion of the village, which is situated on Jerusalem territory. The petitioners and the relatives visit one another regularly and frequently, and participate in family events. The city of Jerusalem with its markets and its trade areas constitute the center of the business life of the residents of the south eastern neighborhood, and this includes the petitioners.

69. The petitioners are also connected to Jerusalem from the subjective perspective. The petitioners have no intention whatsoever to leave their home, in which they have lived for the last twenty three years. Also with respect to petitioners 2 and 3: their close family lives in the village. It is here that they began making their first social links. The village is the only living environment with which they are familiar; it is a mirror of their childhood, in the full sense of the word. Most significantly, there is no other place of residence to which they feel any sense of belonging whatsoever.

70. The legislative acts that were noted above provide us with the parameters which we must use when coming to determine what a person's center of life is

(his permanent place of residence, his place of general interests, his workplace, the place of his children's education, etc.). Indeed the petitioners have proved beyond all doubt – even according to these parameters – that the center of their lives is in Jerusalem (see detailed account above). As stated, the "center of life" is a term that attests to the reality of life in all it wholeness, and the question of residence is merely one component in this reality. The petitioners shall claim, that in the present case, where the petitioners live a mere few hundred meters outside the municipal boundary, and considering the special situation that has been created on the ground as a result of the erection of the separation barrier, one should only ascribe to the exact location of the petitioners' home marginal weight. We shall elaborate upon this.

71. As stated, the State recognized the fact that the south eastern neighborhood constitutes an inseparable part of Sur Bahir. In light of this, the State included this neighborhood on the western side of the barrier, and also in light of this the State reversed its decision to revoke the status of the residents of the neighborhood as residents under the National Insurance Law. Therefore, the fact that the petitioners live outside the municipal boundary (and it should be reemphasized: we are dealing with approximately a mere 250 meters beyond the boundary) is only of secondary importance in this context. Ten times more important is the recognition that the center of life of the neighborhood residents – and that includes the petitioners – is located, form every other perspective, in Jerusalem. One must also ascribe significance to the fact that the jurisdictional border, up until the erection of the barrier, was exclusively a virtual one. Those resident who went to over to live on village lands that were located close to the border, but on its eastern side, did not have any basis for assuming that their home would be situated "outside Jerusalem", and certainly they did not imagine that in living there they were putting at risk their civil rights, and those of their children.

Take note: until very recently even the respondent himself was not of the opinion that the location of petitioners' place of residence would harm their rights, and indeed on this understanding it registered the petitioner's other children in the Israeli population registry.

72. Above all the petitioners will argue that in determining the center of life of the petitioners, for the purpose of registering petitioners 2 and 3 in the Israeli population registry, one must accord primary consideration to the purpose of **regulation 12 of the Entry into Israel regulations.** One must interpret the term "center of life" in the case of the petitioners in such a way that would prevent a chasm between the status of the petitioner, who is an Israeli citizen, and the status of his children. The registration of the children in the population registry must be done in order to preserve the integrity of the family unit of the petitioners, and also falls in line with the obligations of the State to act for the welfare of the children of its residents. This matter will still be elaborated upon later on.

73. The respondent's refusal to register petitioners 2 and 3 in the population registry means that the children will be forced to continue living with their father, while they are confined to the few dunam between the separation barrier and the virtual municipal border. Alternatively, and in order to realize

their family rights – the petitioner will be forced to leave the village and go to the territories.

74. The respondent's decision also frustrates an additional purpose of regulation 12 – to enable the petitioner, a resident of Israel, to provide his children with their basic needs, as he is obligated under the Law. The parent's obligation towards his children and the prohibition against abandoning them are rights that are well enshrined in Israeli legislation. So for example **section 15 of the Legal Capacity and Guardianship Law, 5722-1962**, entitled parental functions, determines :

> The guardianship of parents includes the obligation and right to be concerned for the needs of the minor, including his education, his training for work and for his profession and work, as well as the preservation of his assets, their management and their development; and closely related to this is the authority to maintain custody over the minor and to establish his place of residence, and the authority to represent him.

Thus, also **section 323 of the Penal law, 5737-1977** establishes**:**

> A parent or anyone else who is responsible for the child of the household is obligated to provide his means of sustenance, to be concerned with his health and to prevent any abuse of him, any wound on his body or any other harm to his peace and to his health, and he shall be considered as if he had caused the consequences that were visited upon the minor's life or upon his health because he did not fulfill the aforesaid obligation.

And see also **paragraph 373 of the Law**

75. Therefore the respondent's decision establishing that the center of life of the petitioners is located outside Israel, not only does not conform with the purpose of regulation 12, but also completely undermines it. The respondent's decision harms the integrity of the petitioners' family unit, is at odds with the welfare of the petitioner's children (so that, for example, it deprives them of social rights, of health insurance, of basic freedom of movement), does not allow the petitioner to enjoy his rights as a parent and as head of the family and also harms the possibility of him providing his children with their basic rights, as the petitioner is so obligated to do under Israeli law.

This decision is therefore unreasonable and thus it should be adjudged as null and void.

The violation of a right to a family life and a disregard of the children's welfare

76. The petitioner, a resident of the State of Israel has a right to live safely and securely with his children in Israel, with the latter's legal status regulated. The

State has an obligation to prevent any harm to the petitioner, in his capacity as resident of Israel and as father of his children. The State's responsibility however does not end here. It must actively protect its subjects from any harm to their abilities to provide their children with the protections which they require.

77. The right to a family life is a basic constitutional right in Israel, which is included in the right to human dignity. This position has of late gained the overwhelming support of the Supreme Court justices in the **Adalah** judgment: "the right to a family life is not confined to the right to marry and bear children. The right to a family life also means the right to a joint family life" (dicta of Chief Justice Barak in paragraph 27 of the judgment).

78. The Supreme Court's ruling placed constitutional limits on the State's interference with the family unit and with the autonomy of the parents in making decisions with regard to their children.

> The rights of parents to maintain their children and to raise them, with all which that entails, is a natural and primal constitutional right, from the perspective of an expression to the natural bond between parents and their children (CA 577/83 **The Attorney General v. John Doe** *Piskei Din* 38(1) 461). This right is given expression in the privacy and autonomy of the family: Parents are autonomous in making decisions with everything to do with their children – education, way of life, place of residence etc., and the society's and the State's interference in these decisions is an exceptional circumstance for which there must be a reason to justify (see CA 577/83 above, at 468, 485). This approach has its roots in the recognition that the family is the "most basic and earliest social unit in the history of man, that was, is, and shall be the basis for serving and ensuring the existence of a human society" (Justice Alon (as he then was) in CA 488/77 **John Doe et al v. the State Attorney General** *Piskei Din* 32(3) 421, 434).
>
> CA 2266/93 **John Doe v. Anonymous** *Piskei Din* 49(1), 221, 237-238.

79. International law also determines that one must broadly protect the right to a family life. So for example, Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, *Covenants* 1037, which was ratified by Israel on 3 October, 1991, establishes that:

> The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children…

See also: article 16(3) of the Universal Declaration of Human Rights, which was passed in the General Assembly of the United Nations on 10 December, 1948; Article 17(1) of the International Covenant on Civilian and Political Rights, *Covenants* 1040, entered into force with regard to Israel on 3 January, 1992.

80. The right to a family life also includes the right to be a raised in the State together with one's parents. However Israeli law did not satisfy itself with a common place of residence, and adopted the principle that states that a child needs to have the status of his guardian parent who is a resident of the State. In the **Adalah** case the (then) Chief Justice A. Barak, in paragraph 28 of the judgment held:

> The right to a family life is also the right of the Israeli parent whose minor children will be raised with him in Israel and the right of an Israeli child to grow up in Israel together with his parents. Israeli law has recognized the importance of equalizing the civil status of the parent to that of his child. Thus, section 4 of the Citizenship Law establishes that a child of an Israeli citizen will also be an Israeli citizen, whether he was born in Israel (4(a)(1)) or whether they were born outside of it (4(a)(2)). Similarly, regulation 12 of the Entry into Israel Regulations, 5734-1974, establishes that a "child who was born in Israel, and to whom section 4 of the Law of Return, 5710-1950 does not apply, his Israeli status shall be that of his parents"…thus for example, it has been ruled that "As a rule our legal theory recognizes and respects the value of the integrity of the family unit and the interest of maintaining the welfare of the child, and therefore one must avoid creating a chasm between the status of a minor child and the status of his parent who has custody over him or who is entitled to have custody over him" (Justice D. Beinisch in HCJ 979/99 **Carlo (minor) et al v. Minister of the Interior** (unreported paragraph 2 of the judgment of Justice D. Beinisch))

81. Therefore the safeguarding of the principle of equalizing the status of the child with the status of his parent who is a resident of the State comes to serve the broader principle, recognized in Israeli and international law – the principle of the welfare of the child. According to this principle, in all activities relating to the child, whether in the hands of the courts, administrative authorities or legislative bodies, the child's welfare is the most important consideration. As long as the child is a minor and as long as the parent functions appropriately, his welfare requires us to allow him to be raised within a supportive family unit.

82. In Israeli law the welfare of the child is a basic and enrooted principle. Thus, for example in CA 2266/93 **John Doe v. John Doe**, *Piskei Din* 49(1) 221,

Justice Shamgar ruled that the Sate had to intervene in order to protect the child from harm to his rights.

83. In international law this principle has also enjoyed the status of a supreme principle. Among others, it has been given expression in the content of the Convention on the Rights of the Child (31 GA, 221). The Covenant which the State of Israel ratified on 4 August, 1991 lays down a whole series of provisions that prescribes the protection of the family unit of the child. (See: the preamble to the Convention and articles 3(1) and 9(1) to the Convention).

84. The refusal to register the child as an Israeli resident, where the parent is an Israeli resident whose center of life is in Israel, means that the child is being placed at the risk of being separated from his parents, a possible harm to his development and an interference with the family unit which is against his welfare. Alternatively the child, without having much choice, is likely to be left, with his parent in Israel, but without a stable and clear status, for as long as the difficulties of a stateless life have not subdued the family.

85. In his refusal to approve the petitioner's application to register his children, petitioners 2 and 3, the respondent is ignoring these basic principles, and the possible ramification of their violation. The welfare of the child requires their registration in the population registry. Lack of certification in Israel exposes the children to delays at the hands of the security forces, in the street and at checkpoints. In addition, the fact that the children are not registered harms their social rights, since the national Insurance Institute of Israel conditions the possibility of receiving stipends from it on their registration in the population registry. One may also not ignore the mental aspect that accompanies this case. The respondent's refusal to register petitioners 2 and 3 causes tension, instability, and insecurity to the family life, components that are of vital importance to the standard development of the children. In addition, petitioners 2 and 3 are being discriminated against with relation to their elder siblings, which the respondent did register in the populating registry. Also this discrimination, on the surface has no reason for it and it only adds to the tension and instability within the family.

Summary

86. The respondent's decision cannot be allowed to stand. The decision, which is entirely based on the location of the petitioners' family home, without taking into account all the other circumstances of their life, cannot be considered reasonable. This, especially in light of the circumstances which were created after the erection of the separation barrier. It was these circumstances which brought the State itself to recognize the fact that the neighborhood where the petitioners live is an integral part of the Sur Bahir village.

87. The respondent's decision cannot be considered reasonable, also in light of the legislative purpose of regulation 12. The purpose of this regulation is precisely to avoid results that flow from the respondent's decision – leaving the children of a resident without any status and at risk of separation from his whole family, harm to the social rights of the children, and real harm to the welfare of the children.

For all these reasons the honorable court is requested to issue an *order nisi* as requested at the beginning of this petition, and after receiving the respondent's response, make it absolute. Likewise the court is requested to order the Respondent to pay the petitioners' costs and attorney fees.

Jerusalem, 5 May, 2008

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Yotam Ben Hillel, Adv.

[T.S. 53836 .]

Counsel for the petitioners