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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 10650/03

In the matter of:

1. **_____ Abu Gwella**
2. **A minor girl**
3. **A minor boy**
4. **A minor boy**
5. **A minor boy**
   Petitioners 1-5 are all from Kafr Aqeb, East Jerusalem
6. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Sulzberger (Reg. Assoc.)**

all represented by attorneys Adi Landau (Lic. No. 29189) and/or Yossi Wolfson (Lic. No. 26174) and/or Manal Hazzan (Lic. No. 28878) and/or Leena Abu-Mukh-Zuabi (Lic. No. 33775) and/or Shirin Batshon (Lic. No. 32737) and/or Hava Matras-Ivron (Lic. No. 35174)
of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Sulzberger
4 Abu Obeideh Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

The State of Israel – Ministry of the Interior:

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

all represented by the State Attorney's Office
29 Salah a-Din Street, Jerusalem
Tel. 02-6466590; Fax. 02-6466655

The Respondents

Petition for Order Nisi and Application For Temporary Injunction

A petition is hereby filed for an Order Nisi, directed to the Respondents and ordering them to show cause:

A. Why the Nationality and Entry into Israel Law (Temporary Order), 5762 – 2003 (hereinafter – the Law or the Nationality and Entry into Israel Law) is not nullified as

regards its application to minor children of permanent residents of Israel, in that it is unconstitutional and in that it was enacted in a manner that contravenes the Notation of Information Regarding the Effect of Legislation on Rights of the Child Law, 5762 – 2002; in the alternative, why it is not determined that the Law does not apply in the matter of arranging the status of children of residents of Israel.

B. Why they do not announce that every child, one of whose parents is a permanent resident of Israel and who lives in Israel permanently with the said parent, is entitled to permanent-resident status in Israel.

C. Why the new policy – according to which the status of residents' children who were born outside is Israel is arranged through the "family unification" procedure, a process that is spread out over a period of five and one-quarter years from the day the request is approved – is not revoked.

D. Why they do not refrain – until decision is reached on the constitutionality of the Law – from applying retroactively Government Decision 1813 and the Nationality and Entry into Israel Law to requests to arrange the status of children that were submitted before the Law took effect and prior to publication of their new policy.

E. Why they do not refrain from applying retroactively the new policy regarding arrangement of the status of children to requests that were submitted before the policy was announced to the public.

F. Why it is not determined that every new policy that is instituted regarding the arrangement of the status of children, if the policy changes the child's situation for the worse, will be implemented only after a transition period that commences following publication of the details of the new policy.

G. Why the subject of the arrangement of the status of children of permanent residents of the state, who are born outside of Israel, is not set forth in regulations or procedures stating that children who live with a parent who is a resident of Israel will be given the status of that parent, in an efficient, simple, and expeditious procedure, unrelated to the place of birth.

H. Why they do not set clear criteria and application procedures for arranging the status in Israel of children of residents residing in Israel.

I. Why they do not announce these procedures and criteria to the general public, in Arabic, and in a manner that is accessible to every person.

J. Why they do not approve the request of Petitioner 1 to arrange the status of her four minor children, who were born in Ramallah, as permanent residents of Israel in Israel's Population Registry.

K. Why they do not retract their notification that the children of Petitioner 1 cannot receive a status in Israel because their request must be made as part of the family unification procedure, a procedure that was frozen in light of the government's decision of 12 May 2002.

Application for temporary injunction

The Honorable Court is requested to issue a temporary order enjoining the Respondents from expelling Petitioners 2-5 from Israel until all the proceedings on this petition are completed.

Petitioners 2, 3, 4, and 5, the children, minors who study at schools in Jerusalem, are the children of Petitioner 1, a permanent resident of the State of Israel. Because they lack a lawful status in Israel, the minor Petitioners are subject to delays and are in danger of being deported from their city, Jerusalem.

The temporary injunction is needed to remove these dangers facing the Petitioners, until their substantive rights can be clarified.

It should be mentioned that, in Adm. Pet. 952/03, *Abu Gwella et al. v. Minister of the Interior et al*., the Honorable Court for Administrative Matters in Jerusalem issued a temporary injunction prohibiting the deportation of Petitioners 2-5.

On 5 November 2003, the Petitioners filed an application to dismiss the said petition, following the decision of the Court for Administrative Matters to stay the proceedings on the petition. The application is still pending.

Preface

1. Petitioner 1, a resident of Israel, has seven children. Three of her daughters are residents of Israel, having received that status after the Ministry of the Interior was convinced that the center of the family's life was in Jerusalem. Her other children, Petitioners 2-5, are deemed to be staying illegally in Israel. The Ministry of the Interior did not determine that they are not entitled to resident status: had the Ministry considered their matter, there surely would not have been reason to make a distinction between them and their sisters. However, the Ministry refuses to consider their matter; refuses to exercise discretion on the merits of the request, and is now relying, as regarding this matter, on the provisions of the Nationality and Entry into Israel Law that it initiated.

2. This petition is directed against the Respondents' policy, in which the Respondents tied their own hands and refuse to exercise discretion regarding requests that children whom they classify as "residents of the region" be given a status in Israel. This policy began with the interpretation that the Respondents gave to Government Decision 1813, of 12 May 2002 (hereinafter: the decision or the government's decision). Subsequently, this policy was enshrined in the Nationality and Entry into Israel Law.

3. The Petitioners will argue that the Law should be nullified, at least to the extent that it applies to children. The Law infringes human rights that are enshrined in the Basic Law: Human Dignity and Liberty. The infringement is for a prohibited purpose and is not consistent with the values of Israel as a democratic state. In the alternative, the Petitioners will argue that the infringement is greater than necessary.

4. In addition, the Petitioners will argue that the Law should be nullified, to the extent that it applies to children, because of the improper manner in which it was adopted, which contravened the provisions of the Notation of Information Regarding the Effect of Legislation on Rights of the Child Law, 5762 – 2002.

5. A backdrop to the petition is the Respondents' policy regarding the status of children one of whose parents is a resident of Israel. Since its inception, this policy has been deceptive and erratic, changing frequently without notification and without public announcement. Petitioner 6 learned about the innovations and changes in the policy only incidentally in the course of handling individual cases – when it encountered the procedures by chance. The Law is nothing more than the latest expression of the Respondents' treatment of the issue. Nullifying the Law is not sufficient: the Respondents must be required to conduct a reasonable and suitable policy that is properly published.

6. The refusal of the Respondents to grant a status in Israel to Petitioners 2-5 and to other children in their situation causes grave and immediate effect on their lives. The Respondents are forcing the separation of children and their parents, or, in the alternative, sentencing the children to live in the country without any status and identity.

7. Because she is not recorded in her mother's identity card, the 14-year-old child, Petitioner 2, has already encountered problems at checkpoints set up in East Jerusalem. When she accompanies her mother shopping outside the neighborhood or on a family visit, more than once soldiers delayed her for a prolonged period of time, demanded that she return home, and even threatened that she would be deported to the West Bank. She does not take part in school activities outside the neighborhood. Recently, Petitioner 3, who is 13 years old, was returned to his home and forbidden to go with others in his class on a class trip, because he was unable to show a birth certificate to the soldiers at the checkpoint.[1]

Why the petition to the High Court of Justice was filed

8. The petition filed to this Honorable Court deals with a subject that dictates the fate of many children and, as result, of their parents who are residents of Israel. Also, part of the relief requested in the petition is the nullification of part of the Nationality and Entry into Israel Law; thus, it is appropriate for the High Court of Justice to hear the matter.

9. Furthermore, as will be described at length below, following the government's decision, the Petitioners (in the present petition) filed a similar petition to the Court for Administrative Matters in Jerusalem – Adm. Pet. 952/03, *Abu Gwella et al. v. Minister of the Interior et al*. Following the decision of the Honorable Court for Administrative Matters to stay the proceedings on the petition, the Petitioners requested that it be dismissed. The Petitioners should mention that the said court issued a brief decision on the stay of proceedings on the petition, without stating the reasons for the decision.

The facts

The factual background on which the Petitioners base their contentions is as follows:

[1] A birth certificate is a mark of identity, showing that the child received a status in Israel and is registered in the identity card of his resident parent. Children whose status is not arranged are not entitled to a birth certificate, and the parents are given a Notice of Birth (which is also the case when the child is born in Israel).

The parties to the petition

10. Petitioner 1 (hereinafter – Petitioner 1), who was born in Jerusalem and is a resident of the State of Israel, lives in East Jerusalem. She is the mother of seven children, ranging in age from 14 years to 15 months. The registration of the three youngest children – daughters four years old, three years old, and 15 months old – was approved by Respondent 3, whereas Respondent 3 refused to register in the Population Registry her four elder children – aged 14, 13, 12, and 8 – without considering the matter substantively, because they were born outside of Israel.

11. Petitioners 2-5 are the four minor children of Petitioner 1. They live with their parents in East Jerusalem, but have West Bank identity numbers. Their mother's request to register them in Israel's Population Registry was refused.

12. Petitioner 6, a registered nonprofit society, assists persons who fall victim to the abuse and oppression of state authorities. Its activities include the protection of their rights in court proceedings, whether in its name as a public petitioner or as a representative of persons whose rights have been violated.

13. Respondent 1 is the minister empowered by the Entry into Israel Law, 5712 – 1952, to handle all matters related to that law. Among these matters are requests to receive a status in Israel, including requests to register children.

14. Respondent 2 is the director of the Population Administration in Israel. In accordance with the Entry into Israel Regulations, 5734 – 1974, Respondent 1 delegated to Respondents 2 and 3 his powers related to the handling and approval of requests to arrange the status of children submitted by permanent residents of the state who live in East Jerusalem. Also, Respondent 2 is involved in determining the policy regarding requests to receive a status in Israel pursuant to the Entry into Israel Law and the regulations enacted pursuant thereto.

15. Respondent 3 directs the East Jerusalem district office of the Population Administration. In accordance with the Entry into Israel Regulations, 5734 – 1974, Respondent 1 delegated to Respondents 2 and 3 his powers related to the handling and approval of requests to arrange the status of children submitted by permanent residents of the state who live in East Jerusalem.

The matter involving Petitioners 1-5

16. The Petitioner married a resident of Ramallah in 1988. After marrying, she lived in her spouse's parents' home in the Qalandiya refugee camp, then in rented apartments in the camp, and later in her parents' home in Abu Tor [in East Jerusalem]. In 1997, the

Petitioner's parents moved to a larger house, in the Silwan neighborhood [in East Jerusalem], and the Petitioner and her family moved in with them. The Petitioner and her family were allotted a separate dwelling housing unit, with a separate kitchen and bathroom, in the house in Silwan.

17. In 2000, the Petitioner and her family moved to a rented apartment in Kafr Aqeb [in East Jerusalem]. After moving there, the Petitioner and her spouse found work in the neighborhood: she as a caregiver for an elderly person and he as a maintenance worker in the al-Muatadi Obstetrics Hospital.

18. As the years passed, the Petitioner and her husband had seven children: the four eldest children were born between 1989 and 1995 in Ramallah, and the three youngest children were born in 1999, 2000, and 2002 in Jerusalem.

19. In 2000, the Petitioner submitted a request for child registration at the office of Respondent 2 for each of her children (except the infant daughter, who had not yet been born, and was later added to the request) and a request for family unification on behalf of her husband. Attached to the requests were documents indicating that the center of the family's life was in Jerusalem. In February 2001, the Petitioner's request for family unification with her husband was denied. In May 2001, the appeal of the refusal to grant family unification was denied, and, in August 2001, the request to register the children was rejected. The two requests were denied for the reason that "center of life was not proven".

    The letters of refusal from Respondent 3 are attached hereto and marked **P/1, A-C** respectively. The Petitioners refer the Honorable Court to the heading of Appendix **P/1 C** and its contents, *in which Respondent 3 relates to the request for "registration of children" and not the request for family unification.*

20. The Petitioner again appealed Respondent 3's rejection of the application for family unification that she submitted. The clerk at the office instructed the Petitioner to write a letter indicating that she appeals the decision and to attach updated proofs indicating that Jerusalem is the center of her life. She did so. Because the Petitioner submitted the documents to the office, she does not have a copy of the appeal. The Petitioner has not received a response to her appeal from the office of Respondent 3.

21. It should be mentioned that the application for family unification and the request to register the children were not submitted before 2000 because of a dispute with the Petitioner's husband's family over requesting an Israeli identity card for him. Because of this dispute, the Petitioner and her children lived for a certain period in the Petitioner's parents' home in Abu Tor, while her husband, the father of the children,

lived in the Qalandiya refugee camp. Also, the Petitioner at times went to Ramallah, and there were times when her husband tried to live with her in Jerusalem, but because of family pressure, the couple did not have a permanent residence until 1997. In any event, the dispute was resolved and, in 1997, the Petitioner and her family moved to live permanently and continuously in East Jerusalem.

22. In the course of proceedings in the District Labor Court regarding the National Insurance Institute's recognition of the Petitioner's residence in Jerusalem, the Petitioner's counsel at the time, attorney Abu Ahmad, agreed to a compromise with the National Insurance institute, whereby the Petitioner and her children would be recognized as residents of the State of Israel from June 2000, the time that the family signed a lease on their apartment in Kafr Aqeb. The consent agreement between the Petitioner and the National Insurance Institute was given the effect of a court judgment. The Labor Court ordered the National Insurance Institute to pay court costs in the matter.

    The consent judgment, of 25 February 2002, in the matter of the residency of the Petitioner and her children is attached hereto and marked **P/2**.

23. On 30 July 2002, Petitioner 6 sent to Respondent 3 a request to register the Petitioner's children in the Population Registry. Attached to the request were extensive proofs indicating that the family's center of life was in Jerusalem.

    A copy of the request is attached hereto and marked **P/3**.

24. On 11 August 2002, Ms. Natzra, on behalf of Respondent 3, informed Petitioner 6 by letter that the request to register the Petitioner's four eldest children would be considered in the context of family unification, while the matter of the registration of the two small daughters was being processed.

    The letter on behalf of Respondent 3 is attached hereto and marked **P/4**.

<u>Exhaustion of remedies</u>

25. On 4 August 2002, Ms. Filmus, on behalf of Petitioner 6, sent a letter to the office of Respondent 3 requesting review of the decision to hear separately the request of the children born in Israel from the request of the children who were born in el-Bireh, and to review the recent decision on the application for family unification. Ms. Filmus attached a letter that she had sent to Respondent 3 on another occasion, in which she requested that Respondent 3 explain the meaning of his new requirements.

The letter of Petitioner 6 of 14 August 2002 and the letter of Petitioner 6 on this matter, which was sent regarding another request and was attached to the said letter, are attached hereto and marked **P/5, A-B**, respectively.

26. In a letter dated 3 September 2002, Ms. Amadi, a deputy of Respondent 3, stated that decision had been made to approve the registration of the Petitioner's two small daughters. Ms. Amadi further stated, as follows:

> ***Note*: Regarding the four children who were born in el-Bireh and are registered in the region, the matter of their registration requires a family unification procedure, *therefore,* their registration will be discussed in the context of an application for family unification; at this stage and in light of the government's decision of 12 May 2002, we do not accept applications of this kind.** (emphases in original).

The letter of Ms. Amadi is attached hereto and marked **P/6**.

Ms. Amadi ignored Petitioner 6's request for an explanation why the name of the registration of children procedure was changed. Despite the similarity to the family unification procedure, until then it had been recognized as a different procedure and was called by a different name (Request for Child Registration).

27. On 29 September 2002, Ms. Filmus, on behalf of Petitioner 6, sent another letter to Respondent 3 to learn the legal basis for the decision not to register four of the Petitioner's children. She also asked if and where procedures were published whereby children would not be registered in the Israeli Population Registry following the freeze in the family unification procedure.

The letter of Petitioner 6 is attached hereto and marked **P/7**.

28. To date, no response has been received regarding any of the said inquiries of Petitioner 6 or any other reply whatsoever.

<u>The proceeding before the Court for Administrative Matters</u>

29. When Petitioner 6 received no positive response to its requests, a petition was filed, on 2 December 2002, in the Court for Administrative Matters in Jerusalem – Adm. Pet. 952/02, *Abu Gwella et al. v. the State of Israel – Ministry of the Interior* (hereinafter – the first petition or the petition). The petition revolved about the following: the Respondents' interpretation of the government's decision – which, the Respondents' held, does not allow arrangement of the status of minor children of permanent residents if the children are born in the Territories, or are born outside of Israel and are

of Palestinian descent; the Respondents' failure to announce its interpretation to the public; and application of the government's decision retroactively from the date that it was adopted.

The Petitioners also requested in the first petition that the arrangement of the status of children born outside of Israel be set forth in statute or regulations, and that criteria and procedures be instituted to regulate the matter.

Also, the Petitioners requested that the Respondent arrange the status of Petitioner 1's four children, Petitioners 2-5 (in the present petition and in the first petition), and that a temporary injunction be issued prohibiting the deportation of the children from Israel until final decision was reached on the petition.

The first petition is attached to the present petition, marked **P/8**. The attachments to the petition are attached to the present petition and marked according to their place in the present petition.

30. On 4 December 2002, the Honorable Court for Administrative Matters gave a decision prohibiting the deportation of Petitioners 2-5, the minor children of Petitioner 1, until otherwise decided in the matter of the petition, and that the Respondents file within 30 days their response to the petition's substantive contentions.

    The decision is attached hereto, marked **P/9**.

31. On 6 February 2003, the Respondents filed a preliminary response to the petition.[2] In their response, the Respondents contended that aliens have no vested right to permanent residency in Israel – in this case, the children of the permanent residents within the situation described. The Respondents denied that their policy on arranging the status of children changed, and dismissed the relevance of the evidence that Petitioner 6 provided in the petition regarding their policy over the years. However, the Respondents did not attach any proof to refute the Petitioners' contentions. They are of the opinion that the matter is one of family unification, for which reason the government's decision applies. They argue that the government's decision was intended for a proper purpose – concern for the security of the state and its citizens (see, for example, Sections 49-50 of the response).\

    The Respondents' response is attached hereto, marked **P/10**.

32. On 10 February 2003, the court gave a decision in which it suggested to the parties to wait for the decision in the High Court of Justice on the petitions filed against the

[2] The court approved requests made by the Respondents to extend the time for filing of the response.

government's decision. The court requested the parties to respond to the suggestion within seven days.

The court's decision is attached hereto, marked **P/11**.

33. On 18 February 2003, the Petitioners filed their response to the court's suggestions, stating that they opposed the suggestion. The Petitioners informed the court that the petitions pending in the High Court of Justice (being heard in HCJ 4608/02) were irrelevant to the matters raised in the petition before the Court for Administrative Matters. The Petitioner explained that the petitions in the High Court attack the decision to freeze the procedure for obtaining Israeli nationality, while the Petitioners do not attack the government's decision in their said petition; rather, they attack its application to minor children of residents of East Jerusalem, although no mention of it is made in the government's decision. The petitions deal with citizens of the state, and their children are automatically citizens, so the subject of "registering children" could not arise in the context of those petitions.

    The response of the Petitioners is attached hereto, marked **P/12**.

34. On 10 March 2003, the Respondents filed their response, in which they accepted the court's decision to postpone the hearing on the petition until this court reached its decision on the petitions attacking Government Decision 1813. In their response, the Respondents repeated the position they took in the preliminary response, emphasizing that:

    > **The main rationale underlying the freeze is clearly a security rationale that relates to the present and looks to the future, and the fact that the petitioners or others making application are minors does not negate this rationale…**

    The Respondents' response is attached hereto, marked **P/13**.

35. On 11 March 2003, the Honorable Court decided to wait until the decision was given in HCJ 4608/02.

    The court's decision is attached hereto, marked **P/14**.

36. On 8 September 2003, another decision in the first petition, given without reasons, was issued by the Honorable Judge Shidlovski-Or, as follows:

    > **I order the cessation of proceedings on the petition.**
    >
    > **If any of the parties wishes to make application, it may do so in the context of this petition.**

The said decision is attached hereto, marked **P/15**.

37. The above decision shows that that the handling on the petition has ended. Therefore, on 5 November 2003, the Petitioners requested the Court for Administrative Matters to dismiss the petition officially and to submit a new petition on this subject, one that would conform to the new legal situation that was created following enactment of the Nationality and Entry into Israel Law. The Petitioners sought to file their amended petition to the High Court of Justice. The Court for Administrative Matters has not yet made its decision on the application.

The Petitioners' application is attached hereto, marked **P/16**.

Contacts with the Respondents following filing of the petition

38. In a letter of 3 December 2002, Petitioner 6 again requested Respondent 3 that, in light of the problems that had arisen, clear procedures should be announced regarding the way to register in the Population Registry children only one of whose parents is a resident, and that every new relevant requirement be made public.

Petitioner 6's letter is attached hereto, marked **P/17**.

39. On 18 September 2003, following the entry into effect of the Nationality and Entry into Israel Law, Petitioner 6 sent a letter to Respondent 3 requesting that he process the application of Petitioner 1 to arrange the status of her four children, Petitioners 2-5. In its letter, Petitioner 6 mentioned that the request was being made in light of the Nationality and Entry into Israel Law, which changed the legal situation that had prevailed until the time of the government's decision, in a way that enabled arrangement of the status of children up to age 12. Petitioner 1 requested that the Respondent also handle the request of Petitioner 2, who was over 12 years old, taking into account her age at the time the request was submitted.

Petitioner 6's letter is attached hereto, marked **P/18**.

40. On 20 October 2003, Petitioner 6 sent a letter of reminder to Respondent 3.

Petitioner 6's letter is attached hereto, marked **P/19**.

41. In response to a number of inquiries by Petitioner 6 regarding the other requests, Respondent 3 stated that a request for family unification could be submitted. He did not provide any additional explanation about the significance of the new procedure and its cost, and completely ignored the contents of Petitioner 1's inquiries, in which she requested that the Respondent treat the submitted requests according to the

previous policy, without requiring the parents to act in accordance with the new policy, which had not yet been announced to the public.

Samples from the correspondence between Petitioner 6 and Respondent 3 are attached hereto, marked **P/20**.

42. It was subsequently learned that the Respondent had decided that the "family unification" procedure for children would last for 5¼ years. However, in that all the relevant procedures are not available, it is unclear pursuant to which permits or visas children under 12 years old could stay in Israel during the process. Children over the age of 12, which is the situation of Petitioners 2-5, would not be allowed to stay lawfully in Israel.

43. Petitioner 3 has not responded to the letters of Petitioner 6 that deal with Petitioners 2-5, the children of Petitioner 1.

The capriciousness of the Respondents

44. Examination of the changes that took place in the Respondents' policy regarding arranging the status of children one of whose parents is a permanent resident sheds further light on the nature of the Respondents' decision that is the subject of the present petition:

Legislation

45. There is no comprehensive legislation setting forth the procedures and criteria for determining the status of children one of whose parents is a resident of Israel.

A single provision is found in Section 12 of the Entry into Israel Regulations, 5734 – 1974, which applies directly only to children born in Israel.

> **A child born in Israel, as to whom Section 4 of the Law of Return, 5710 – 1950, does not apply, shall have the same status in Israel as his parents. Where the parents do not have the same status, the child shall receive the status of his father or his guardian, unless the other parent objects thereto in writing; where the other parent objects, the child shall receive the status of one of his parents, as the Minister shall decide.**

There exists, therefore, a legislative vacuum regarding children of residents of Israel who were born outside of Israel: regarding their status, there are no clear rules. The

only legislative arrangement is the general power of the Minister of the Interior pursuant to Section 9(b) of the Entry into Israel Law, 5712 – 1952, to grant permits for permanent residency at his discretion and subject to the provisions of administrative law.

Over the years, however, in the case of children of residents of East Jerusalem, the Respondents made no distinction between children born in Israel and children born elsewhere, and applied the same policy and procedures in both instances.

The legal framework

Indeed, from a legal perspective, it is proper to make an analogy from the provisions relating to children born in Israel, to the discretion in the identical case from every relevant aspect of children born outside of Israel.

This issue was discussed by the Honorable Court in HCJ 979/99*, Karlo et al. v. Minister of the Interior et al., Takdin Elyon* 99 (3) 108 (hereinafter: Karlo), which involved the status of a child born in Israel to Romanian nationals who were visiting Israel as tourists. The Petitioner's parents divorced, and he lived with his mother in Romania. Some time later, he requested a status in Israel based on his father's residency, which he obtained following his marriage to an Israeli citizen. In this case, the Petitioner had no ties with his father, and the latter did not even consent to be a party to the petition. The Honorable Justice Beinish discussed the importance of the "developments that had taken place in the course of the family's life" in determining the status of the child, whereby the place of birth was not decisive, or even a substantial circumstance in determining status:

> **According to the interpretation proposed by the Petitioners, a child born in Israel will receive a status there in conformity to the status that one of his parents was entitled to, regardless of the developments that took place in the life of the child, such as – his leaving Israel or not living with the parent who obtained a status in Israel. This interpretation places the emphasis on the birth having taken place in Israel, and derives therefrom substantial rights that continue over time. It is inconsistent with the conception that the legislature does not view the birth in Israel as a basis for obtaining the right to reside permanently in the country.**

Later in the judgment, the Honorable Justice Beinish discussed the rationale for granting the child the same status as the parent. Her comments apply in the matter before us, albeit under different circumstances:

> **[...] As a rule, our legal system recognizes and respects the value of the integrity of the family unit and the interest of safeguarding the child's welfare; therefore, it is necessary to prevent the creation of a disparity between the status of a minor and the status of the custodial parent or of the person entitled to custody.** (*Ibid.,* page 109)

In HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) (hereinafter: Harari), the Respondents were instructed to establish, based on the said rationale, criteria for applying their authority to grant a status in Israel, *inter alia*, to a person to whom Section 12 did not apply because he was not born in Israel.

Section C of the document issued by the Ministry of the Interior following *Harari*, a document entitled Criteria for Granting a Visa for Permanent Residence in Israel, states:

> **A minor child accompanying a parent who received the right to permanent residence in Israel or is an Israeli citizen, if this parent has lawful custody of the child for a period of at least two years just prior to coming with him to Israel.**

It is clear from the wording of the section that it does not relate to children residing in East Jerusalem, because it mentions a parent who obtained residency upon coming to Israel, such as the case in the petitions cited above.

The document issued by the Ministry of the Interior that sets forth the criteria is attached hereto, marked **P/21**.

It is important to note that, unlike the facts in *Karlo* and *Harari*, in the present case, the resident parent was not given permanent residency pursuant to marriage; rather, the parents were originally permanent residents of the state. Furthermore, permanent residents of the State of Israel are not immigrants or foreign nationals who came to the country. Their families have lived in Jerusalem for generations.

The Respondents exploited the legislative vacuum regarding the children of residents of East Jerusalem to implement a capricious and tortuous policy that was never set forth in clear, written rules provided to the public.

The Respondents' policy from the late 1980s to 1996

46. The Respondents never published its procedures for registering residents' children who were born outside of Israel, and for years did not even respond to Petitioner 6's requests for a copy of the relevant procedures. Thus, it was necessary to rely on the experience of Petitioner 6 and other organizations involved in the subject of registering children, and on occasional conversations with and letters received from the Respondents to learn the Respondents' policy.

47. Until 1989, children (whether born in Israel or elsewhere) received the status of the parents. When only one of the parents was a resident of Israel, the children received their father's status. This policy was reviewed in HCJ 48/89, *Issa v. District Office Administration et al., Piskei Din* 43 (4) 573. The Court required the Respondents to exercise discretion in cases in which the mother was a resident of Israel and the father was not. The criteria adopted by the Respondents was that, when the center of life of the children was in Israel, he would receive a status in Israel even if his father was not a resident of Israel. In practice, the Respondents continued their policy of registering children born to Jerusalem-resident males married to residents of the Occupied Territories, and refused, as a rule, to register children born to Jerusalem-resident females married to residents of the Occupied Territories, regardless of where the child was born.

48. Furthermore, when an Israeli resident married to a person from the Occupied Territories gave birth in Israel, the hospitals sent notice of the birth to the Population Administration in the Occupied Territories so that the newborn could be registered there. The Palestinian identity number that the child received (without the mother's knowledge) in these cases was a convenient basis on which the Respondents relied to refuse to register the "Palestinian baby" in Israel.

49. Registration of the children (whether born in Israel or elsewhere), when executed, was a simple and brief procedure. There was a clear distinction between this procedure and that of the Request for Family Unification for the spouse.

50. In these matters, the Respondent did not differentiate between children born in Israel and children born elsewhere.

51. In 1994, the Respondents changed their discriminatory policy, which allowed only male residents of Israel to submit requests for family unification for their spouses, and held that the requests would be granted if their center of life was in Israel, and further

provided there was no security or criminal grounds for rejection.[3] Following this decision, and for some time thereafter, the Respondents ceased handling requests to register children. Requests to register children were made in the context of the request for family unification submitted on behalf of the spouse. In this matter, too, it was irrelevant where the child was born.

See Section 5 of the letter of 28 November 1995 from Ms. Kerstein, executive director of Petitioner 6, to the then Minister of the Interior. The letter is attached hereto, marked **P/22**.

<u>The Respondents' policy from 1996</u>

52. In 1996, the Respondents recognized the mistake in incorporating requests to register children in requests for family unification, and clarified that the request for family unification on behalf of the spouse would be determined separately from requests to register children. In her letter of 18 March 1996, Attorney Bakshi mentioned that, from then on, persons wanting to register their children would do so in a procedure separate from the request for family unification for the spouse, by completing a form for child registration. Attorney Bakshi did not differentiate between children born abroad and children born in Israel.

    The letter of Attorney Bakshi and the child registration request form, the form still used to register a child, are attached hereto, marked **P/23 A-B**, respectively.

53. Also, the form used by the Respondents to approve requests to register children never differentiated between children born in Israel and such children born elsewhere. The only difference between a child born in Israel (and the status given him at birth or upon the "determination" of the Minister in accordance with Section 12 of the Entry into Israel Regulations) and a child born outside of Israel (as to whom Section 12 did not apply, so the child received a residency permit) was that a fee was demanded in the case in which the child was born abroad. The demand for payment was written on the form approving the request, after the request was considered and approved. It should be mentioned that the Respondents began to demand a fee only at the end of the 1990s.[4]

    The approval issued by Respondent 3 to the request for registration of children born in the Occupied Territories, of 1997, in which no fee is demanded, is attached to the

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[3] The policy changed following HCJ 2797/93, *Garbit v. Minister of the Interior* (unpublished).

[4] The Petitioners do not know the precise date. They learned about the fee in the course of their activity, from responses to specific requests sent by the Respondents and not from a notice or official procedure.

petition, marked **P/24 A**. The approval of the Respondent to a "Child Registration" request, of 2000, in which a fee is demanded for the children born in the Occupied Territories, is attached hereto, marked **P/24 B**.

54. Over the years, the Respondent refused to grant the requests of Petitioner 6 to receive the official directives regarding the procedure for registering children, and the manner in which the registration was to be handled. Respondent 3 and his staff were only willing to explain the procedures to Petitioner 6 verbally, as regards a specific period.

    A number of examples of Petitioner 1's requests to obtain the procedures and criteria used by the Respondent in registering a child in the Population Registry are attached hereto, marked **P/25, A-D**.

    As in the case of requests made by Petitioner 6 to obtain a copy of the written procedures, these requests, too, were not granted.

The Respondents' policy from 1998 to 2001

55. In 1998, Petitioner 6 noticed a growing tendency of the Respondents to grant the children of female residents married to alien residents temporary-resident status for only one year, rather than grant them a status, as had been done previously, of permanent resident. *The temporary status was granted to children in these cases even if they were born in Israel.*

    The letters of Petitioner 6 to the Respondents are attached hereto, marked **P/26 A-B** respectively.

56. Petitioner 6 corresponded with the Respondents in the matter until, on 13 May 1999, Ms. Sharon, then in charge of registration and passports in the Respondents' office, informed Petitioner 6 that:

    > **Children are entitled to be registered in the Population Registry in Israel, even if the father does not have a status in Israel, provided that, *following* a check of *center of life*, it is found that the wife resides in Israel, and that the child will live with her, in which case the newborn receives the status of the mother…** (emphasis in original)

    In her letter, Ms. Sharon did not differentiate between children born in Israel and children born outside the country; rather, she emphasized that the relevant factor in registering a child in the Population Registry is that the child's center of life is with the parent who is a resident of Israel.

The correspondence between Petitioner 6 and the Respondents is attached hereto, marked **P/27, A-E**.

57. Even after receiving this information, a pre-High Court petition submitted to the State Attorney's Office was necessary to change the status of children who were not registered with a permanent status. Following the pre-High Court petition, the Respondents allowed the registration of children, *whether born inside or outside of Israel,* as permanent, rather than temporary, residents.

    The pre-High Court petition that Petitioner 6 submitted to the State Attorney's Office is attached hereto, marked **P/28**.

58. Following the above-mentioned action, the Respondents undertook to publish a notice in their office stating that a child whose mother proves center of life in Israel (regardless of where the child was born), and yet received a temporary status, could amend the registration. Nevertheless, it was still not possible to assess the effect of registering many children as temporary, rather than permanent, residents. It is unclear how many children were registered with a temporary status and did not go to Petitioner 6's office, or the Respondents' office shortly, following the directive, and thus remained with a temporary status, until it "expired" at the end of the twelve-month period, when they found themselves, unknowingly, with no status. These children will likely not become aware of the fact that they are not residents only when they turn 16 and go to the Respondent's office to obtain an identity card.

<u>The Respondents' policy in 2001</u>

59. Before 2001, the office of Respondent 3 processed requests to register residents' children born outside of Israel in the same manner as requests to register children born in the country. In mid-2001, Petitioner 6 *again* found that the Ministry of the Interior was granting a status to children where only one of their parents held temporary-resident status; this time, the child received a status for two years. The undersigned immediately wrote to Respondent 3, the director of the East Jerusalem office, and to Ms. Sharon, who had handled the subject the year before. The two of them promised that they would provide an orderly response on the subject.

    The said letter of the undersigned is attached hereto, marked **P/29**.

60. Following a number of telephone requests to Respondent 3, the undersigned was finally informed verbally that a new policy had been instituted. Because the new policy could not be applied to children born in Israel, in that Section 12 of the Entry into Israel Regulations prohibited it, Respondent 3 ultimately stated, in a telephone

conversation, that the new policy applied only to children one of whose parents is a resident and who was born outside of Israel, to whom Section 12 did not apply. According to the directive, these children would be given temporary-resident status for two years.

61. The form letter issued by the Respondents that approves the registration of these children mentions that the children will be registered as temporary residents for two years, but does not mention any directive on how the child's status will become permanent at the end of the two-year period. Therefore, residents whose children were registered as temporary residents do not know what will happen when the status expires, or how to convert the status to permanent residency.

A sample letter of approval of request to register children, including the addendum that children born abroad will receive temporary-resident status for two years subject to payment of the fee, is attached hereto, marked **P/30**.

62. This time, too, Petitioner 6 learned of the Respondent's change in policy during the ordinary course of assisting families in registering their children in the Population Registry. In this instance as well, Petitioner 6's written requests to obtain a copy of the relevant procedure failed. Petitioner 6 does not know what will happen after the two-year temporary residency of these children ends, and will likely learn the answer only from its monitoring of the subsequent actions taken by the Respondents regarding these children.

The Respondents' policy in 2002

63. In the beginning of 2002, the Ministry of the Interior was on strike, and shortly afterwards, in March, the Passover break began. On 31 March 2002, following the suicide bombing at the Matza Restaurant, in Haifa, the then Minister of the Interior, Mr. Eli Yishai, declared a total freeze on the handling of requests submitted by Israelis on behalf of spouses of Palestinian origin. On 12 May 2002, the Minister of the Interior's decision freezing family unification was embodied in Government Decision 1813.

64. Following the adoption of the government's decision, Petitioner 6 revealed, during the course of its activity, that Respondent 3 was refusing to arrange the status of children born outside of Israel. At first, the Respondent rejected a request to register children born abroad in a brief refusal, without explanation. It was only upon further inquiry by Petitioner 6 that Respondent 3 explained that, in his opinion, the government's decision regarding the freeze on the family unification process also included requests to arrange the status of children.

Examples of the correspondence on the subject between Petitioner 6 and Respondent 3 and the Legal Department of the Respondents are attached as Appendix P/20, above.

65. However, although the wording of the government's decision does not mention that it applies to residents' minor children, the Respondents did not inform the public of their decision. The Respondents operate a Website that is supposed to publish the procedures instituted pursuant to their powers and functions. The Website, too, contained no information on how to arrange the status of children in the situation of the children who are the subject of this petition, or about the government's decision on this subject.

<u>The Respondents' policy in 2003</u>

66. As in other years, this year, too, changes in the Respondents' policy on arranging the status of children were detected.

67. The most significant change, about which we shall expand below, is the adoption into law of the government's decision also as regards arranging the status of residents' children.

An exception that did not appear in the government's decision was added to the statute, whereby the minister or the regional commander may grant a permit to reside in Israel to prevent the separation of a child under age 12 from his resident parent.

The statute's language is clear: a child over age 12 is not entitled, by law, to have discretion exercised on whether to grant him a status in Israel, the country in which he lives together with his parent, a permanent resident of the state.

68. As regards children under 12 who were born outside of Israel, who may be granted a status pursuant to the statute, it appears that the Respondents changed the procedures for considering the request. They decided to institute a *graduated test period of 5 /4 years* that commences upon initial approval of the request. The arrangement is prolonged, expensive, and exhausting, and has been used only for requests for residency status on behalf of the spouse, which has always been referred to as a "request for family unification," to distinguish them from a "request for child registration." Furthermore, it is clear that the Respondents will not grant permanent-resident status to children over 12 years old; thus, at best, only children up to age six can benefit from the arrangement.

The Respondents' new policy was never published, and no public announcement was made. Petitioner 6 learned of it in the course of its handling of the petition currently

pending in the Court for Administrative Matters in Jerusalem (Adm. Pet. 402/03, *Judeh et al. v. Minister of the Interior et al.*)

The response of the Ministry of the Interior in Adm. Pet. 402/03 is attached hereto, marked **P/31**. In the said case, the Respondents stated in court that it would be necessary to renew the visa of the minor Petitioner annually, and that renewal is subject to proof being submitted showing that his "center of life" is in Israel. The Petitioner received an A/5 visa, because he is a Jordanian national and had stayed in Israel pursuant to visitors' permits for the period of 27 months that the Entry into Israel Law allows.

<u>Distinguishing "family unification" from "child registration"</u>

69. Thus, over all the years, the Respondents distinguished between two different procedures:

    A. The procedure to grant residency status to an adult, in most cases the spouse of an Israeli resident. This process was called "family unification," which had its own procedures for application, criteria, the graduated-test arrangement, and the like.

    B. The procedure to arrange a status for a resident's child. Whether the child was born in Israel (and Section 12 applies) or abroad, the process was called "child registration," and had its own procedures for application, criteria, and forms; only recently was an arrangement instituted for children born abroad, whereby they received temporary residency for the two-year period prior to receiving the permanent-residency status. As regards the division of work at the Respondents, special clerks handled child registration, and these clerks did not handle requests for family unification.

70. The distinction between these two tracks results from an obvious, substantive difference:

    In registering a child, the primary protected interest is the best interest of the child and the right and duty of the custodial parent to maintain custody of his child, be responsible for him, and determine his place of residence (see HCJ 979/99). In requests for family unification on behalf of the spouse, the primary interest is the integrity of the family.

    The protected interest also dictates the relevant criteria. While the family unification procedure gives importance to the question of the sincerity and existence of the marriage, in child registration, this question does not arise. The biological connection

between the parent and the child automatically creates the rights and duties (except in cases where custody is removed by law).

The question of whether a security or criminal basis for rejection of the request also does not arise as regards children, and such a check is not part of the standard procedures for registering children.

The separate tracks for family unification and registration of children are reflected in the many documents attached to this petition. We also refer to the Respondents' criteria for approving a family unification request that were published at the time. These criteria include the granting of residency to a child who lives with a person who was granted residency (of any kind). The minor children of an *Israeli resident* are not included in the criteria for approval of a request for family unification – for the simple reason that granting them the status has always been conceived as another, separate procedure.

The criteria are attached hereto as Appendix **P/21** above.

Government Decision 1813

71. On 29 March 2003, immediately following the suicide bombing at the Matza Restaurant, the Ministry of the Interior froze the handling of requests for family unification. According to the Minister, his decision resulted from the fact that Tubasi, who blew himself up in the Matza Restaurant, had obtained a status in Israel through family unification. Examination of the facts indicates that this was not the case: Tubasi was a citizen from birth, having been born to an Israeli national. Therefore, the freeze declared by the Respondent, which was embodied in the government's decision and later in statute, does not ostensibly prevent the repetition of a similar incident, an objective that became the banner cause in the Respondents' propaganda campaign.

72. However, in a "private" public relations action that Respondents 1 and 2 took with government ministers just before they voted on the government's decision, the said Respondents offered completely different arguments on the need for the government's decision. The reason set forth in the computerized presentation that Respondents' 2 and 3 diligently presented was the demographic and economic cost that the Jewish people would sustain if the Arab population multiplied.

73. In graphics filled with threatening arrows, the Population Administration proves how "aliens of Arab nationality" are multiplying and gaining strength, giving birth to many children (10-12 per couple), "their growth potential" is enormous, their offspring marry and receive a lawful status in Israel, and it continues on and on. The generation

breakdown on grandchildren and great-grandchildren was described in diagrams that were self-explanatory – and a numerical calculation was presented at the end.

In addition to racist headings such as “friend brings friend” (page 13 of the presentation), the representation shows “where” the budget goes, and the “consideration” that the Jewish people receive in exchange, and “how much does the children’s allotment *alone* cost us?” (emphasis in original). The office of the Population Administration calculates the total at NIS 3.3 billion over ten years! (at page 16 of the presentation)

Prominent are the precise computations that the Respondents presented regarding the money wasted by the National Insurance Institute on an Arab population that is large and getting larger, while lacking security and other data that were requested.

Indeed, the presentation portrays a frightful situation. The fear results from the imagination, the associations, and from racism. More frightening is the fact that the Population Administration of the Ministry of the Interior is capable of issuing such a gross, racist brochure. Yet, not one of the cabinet ministers disparaged it.

The presentation of the Minister of the Interior and of the director of the Population Administration is attached, marked **P/32**.

74. After the presentation was made, the cabinet voted in favor of the government’s decision.

An article from *Ha’aretz,* of 13 May 2002, on the process in which the government’s decision was made, is attached hereto, marked **P/33**.

75. Thus, on 12 May 2002, Government Decision 1813, freezing the procedure for family unification between Israeli citizens and residents and spouses of Palestinian origin, was adopted. Study of the government’s decision indicates that it deals only with family unification for spouses, and not with the status of children of Israeli residents whose center of life is in Israel:

A. According to public statements by the authorities, the purpose of the government’s decision is to consider the family unification procedure with the intention of making the naturalization process more difficult, for reasons related, as stated, to security. Sections 3-4 of the government’s decision, and announcements in the media, set forth the way in which the Respondents consider changing the procedure, in part by setting quotas, making it more expensive, and by limiting the possibility of naturalization and of taking part

in the procedure where the person has a security or criminal past. None of these conditions affect children.

B. Also, the language of the government's decision does not support the Respondents' interpretation. The government's decision expressly mentions that it affects "the alien spouse" and persons who are in "the graduated procedure" – a procedure that is only related to family unification of the couple. The decision also prevents entry of "spouses from fictitious or polygamous and also *children of the invited spouse from previous marriages*" [emphasis added]. This clause, too, indicates that it is directed towards invitees who are adult spouses, and not the permanent resident's minor children who live with the resident.

C. The security rationale underlying the government's decision renders meaningless the Respondents' contention that the decision includes the arrangement of the status of children. Surely, the Respondents do not contend that Petitioner 1' s children, aged 14, 13, 12, and 8, endanger state security.

The government's decision of 12 May 2002 is attached hereto, marked **P/34**.

<u>The legislative procedure in enacting the Nationality and Entry into Israel Law</u>

<u>Proposed bill</u>

76. Even an extremely careful reading of the bill's explanatory notes gives no hint that the Respondents intend to apply the bill to children of permanent residents.

For example, the explanatory notes to Section 2, which is the primary section that gives the Minister of the Interior authority to exercise his discretion in granting a status in Israel, the matter of permanent residents is mentioned as follows:

> **... Permits for permanent residence in Israel are also currently given, for purposes of family unification, *to residents of the region where their spouses are permanent residents of Israel*. These permits are given under the general power of the Minister of the Interior, pursuant to section 2 of the Entry into Israel Law, 5712 – 1952 … to grant a visa and permit for permanent residency in Israel.**
> (emphasis added)

And the explanatory notes state further :

> **It should be mentioned that granting of nationality pursuant to the Nationality Law, or giving a permit for permanent residency in Israel pursuant to the Entry into Israel Law, to a foreign resident within the context of family unification is a *graduated procedure* incorporated in the procedures of the Ministry of the Interior.** (*Ibid*., Section 2, emphasis added)

Later, there is a description of the graduated procedure that begins with a permit to stay in Israel, which is followed by temporary residency – a procedure that was customary in the context of a request for family unification of spouses and not in requests to register children. The proposal also stated that, in the customary procedure, an annual check was made of the existence of the unified family unit, and the lack of a criminal or security reason to prevent the granting of a status in Israel; these checks, too, are irrelevant in the case of residents' children. Later in the explanatory notes, the drafters describe the security rationale for the statue – the use of permits to stay in Israel and blue [Israeli] identity cards to harm state security.

The proposed bill, including the explanatory notes, is attached hereto, marked **P/35**.

Debate in the Knesset plenum

77. On 17 June 2003 and 18 June 2003, the Knesset's plenum debated the proposed bill on first reading. The Ministry of the Interior, who presented the bill to the members, said that the bill was justified for security reasons alone. According to the minister, it would be better if such a law were not added to the statute books, but the security situation required its enactment. During the debate, no mention was made regarding the refusal to grant a status to minor children of permanent residents. At the conclusion of the debate, the Knesset passed the bill on first reading.

The minutes of the debate in the plenum on 17 June 2003 appear on the Knesset's Website: www.knesset.gov.il/Tql/mark01/h0200452.html#TOL

The minutes of the debate in the plenum on 18 June 2003 appear on the Knesset's Website: www.knesset.gov.il/Tql/mark01/h0200469.html#TOL

First hearing in the Knesset's Internal Affairs and Environment Committee

78. On 14 July 2003, the Committee convened to discuss the proposed bill. Attorney Salomon, of the Legal Department of the Interior Ministry, presented the bill. He completely disregarded the bill's affect on children of residents of East Jerusalem –

meaning they were left with no status, while establishing the *lack of* authority to exercise discretion on the subject of their status in the bill. Therefore, this subject was first raised before the Committee by the undersigned. The Committee's chair, Dr. Yuri Shtern, stated that he did not think that this subject was involved in this piece of legislation.

Page 7 of the minutes is attached, marked **P/36**.

None of the initiators of the bill who were present in the room – such as Deputy Attorney General Attorney Mazuz, Attorney Salomon, of the Interior Ministry's Legal Department, and Mr. Guedj, director of the Population Administration, who were aware of the bill's implication on permanent residents and on implementation of the freeze policy on children from the time of the government's decision, more that one year prior to the hearing, said anything to correct the mistaken understanding of the Committee's chair, or thought it proper to mention the subject, or related to the comments of the undersigned, or informed the Committee's members about the bill's repercussions on residents' children.

The complete minutes of the Committee's hearing appear on the Knesset's Website: www.knesset.gov.il/protocols/data/html/pnim/2003-07014-01.html

79. In a letter of 27 July 2003 to government officials, the legal advisor of the Knesset Committee, Attorney Miriam Frankel-Shor, requested their position on a number of problematic issues raised by the proposed bill, among them the harsh consequences on children, in general, and in the described situation, in particular. Attorney Frankel-Shor pointed out to the Members of Knesset that the legislation's procedures were inconsistent with the Notation of Information Regarding the Effect of Legislation on Rights of the Child Law, 5762-2002.

    The letter from Attorney Frankel-Shor is attached hereto, marked **P/37**.

80. To the best of Petitioners' knowledge, the government officials did not respond in writing to the said letter of the Committee's legal advisor. As will be shown below, the officials also did not present their position on the issues raised during the hearing in the Committee that took place two days later.

<u>Second hearing in the Internal Affairs and Environment Committee</u>

81. On 29 July 2003, the Committee held another hearing on the proposed bill. The Committee's legal advisor objected to the bill, but did not provide a written opinion because of insufficient time and the desire to enact the law before the Knesset's recess. On this point, MK Micha'el Melchior said:

> **[...] The legal advisor also said that she did not have time to clarify the extremely serious constitutional issues involved in this law. Due to the lack of time, she was unable to do this… The law contains things that are so serious, that the Committee's legal advisor says that she cannot support them because she did not have time to investigate them, and that there are legal issues of great weight, which apparently do not comply with international conventions to which Israel is party, and would not successfully undergo review by the state's High Court of Justice.** (Page 3 of the minutes)

The legal advisor, Attorney Miriam Frankel-Shor, responded, *inter alia*:

> **Regarding the legal opinion, which should have been provided to the Committee. In a proper legislative procedure, my opinion should be given on issues as to which it is requested… It would have been proper that, on such a serious subject, one that is so complex and so complicated, I give an opinion. But, what can be done. The subject is complicated, it is complex, and needs time. In the time provided, in my opinion, it was impossible to provide a reasoned, orderly opinion, to go over the mass of material and all their effects.** (*Ibid*., page 6),

82. It should be mentioned that, on the morning of the said hearing, the legal advisor placed on the table of the Committee an amended bill, which contained alternative provisions on the issues that she considered problematic in the government's bill. Regarding the harm to children, the legal advisor proposed changing Section 1 of the bill, the definitions section, as follows: before the end, where it stated "and excluding a resident of an Israeli community in the region," to add "excluding a child and excluding a resident…" By suggesting this change, the legal advisor sought to ensure that the law did not apply to children. Also, the legal advisor suggested that the definition of child be the same as its definition in the Notation of Information Regarding the Effect of Legislation on Rights of the Child Law, 5762 – 2002.

    A draft of the proposed bill that the Committee's legal advisor placed on the table of the Knesset is attached hereto, marked **P/38**.

83. MK Melchior further contended, as chair of the Committee on the Rights of the Child, as follows:

> **[...] I checked again now with the legal advisors, of the Justice Ministry, the Interior Ministry, and others. There are consequences here that have not been completely examined. For example, what exactly are the consequences for children, such as children of residents of East Jerusalem.**
>
> **We are talking about tens of thousands of children. The issue has not been clarified. The matters have not been presented to the Committee.** (*Ibid.,* page 2)

> **[...] As chair of the committee on welfare of the child, I demand compliance with the Knesset's statute, that we clarify the matters relating to children in this law.** (*Ibid.,* page 3)

In response, the Committee's chair, MK Yuri Shtern, stated:

> **I do not agree with that.** (*Ibid.*)

MK Melchior replied:

> **First, the questions relate to residents of the State of Israel, and permanent residents of East Jerusalem. I want to receive data on the consequences, on how many children will be affected. What are the consequences if children were born to residents of Judea, Samaria, and Gaza, and the children were born there – such as the hundreds of cases presented to me during these weeks. What will be the effects on the children to which this statue relates.**
>
> **What I want to hear from the government representatives here is how many children will be separated from their parents as a result of this statute. What are the social, psychological, and other implications for these children and for their future.** (*Ibid.,* page 6).

The Committee's chair also had relevant questions for the government representatives:

> **[...] What happens with the children of residents of East Jerusalem? … What happens when one or both of the parents are not citizens, but are residents, and the child is**

> **living in the territory of the Palestinian Authority or is born in the PA, and the law takes effect.** (*Ibid.,* page 7)

The undersigned also spoke to these questions:

> **This is a temporary order. Regarding children from East Jerusalem, even before, the procedure used in arranging their status was a long, complicated procedure, the major element being center of life… Why should a temporary order enacted for security reasons totally eliminate discretion in arranging the status of such children, of infants and minor children.** (*Ibid.,* page 7)

MK Tibi sought clarifications:

> **What are the medical repercussions of the examination that you made – I am certain that you made, it can't be that you presented such a bill to the Committee without checking also the psychological effects, maybe also psychiatric effects, but also the medical ones, relating to separation of a parent or both parents and their children.** (*Ibid.,* pages 7-8)

Following numerous questions, requests for figures, and a written opinion on the bill's effects on children, the Committee's chair requested the government's representatives to respond to the questions.

In the words of Attorney Salomon:

> **Where the situation is split, i.e., one parent is a permanent resident of Israel and the other a permanent resident of the Palestinian Authority, the question will arise: what is the residency of the child? That is, where older children, or children who have been registered in the registry in the region, are involved – the provisions of the law will apply to them on this point, and they will not be allowed to receive a status in Israel….** (*Ibid.,* page 17)

To the question of MK Bronfman on what happens if children are living with their parents in Israel, and the parents divorce, Attorney Salomon responded:

> **What is this, that they divorce? Where are they located? Are they living with the parent in the region?**

> **If he is in the region, he will remain in the region.**
>
> **I said that, according to the proposed bill, such a child will not be entitled to a status in Israel. The decision between persons staying illegally in Israel and the policy of deporting each one, is a separate question, and I am not dealing with that at the moment**
>
> **[...]**
>
> **That is, in this regard, he [the child] must live with his parent in the region.** (*Ibid.,* pages 17-18)

In response to MK al-Sana's statement that the consequence will be that the child is deported, the Deputy Attorney General, Attorney Meni Mazuz, stated:

> **Why will he be deported if he is not an Israeli resident. Why call this "deportation"?** (*Ibid.,* page 18)

The position of the drafters of the bill is apparent also from the exchange between Attorney Mazuz and MK Melchior, as follows:

MK Melchior:

> **According to what you say, there is a mother living in East Jerusalem. East Jerusalem is part of the state. I have a number of very serious cases, there were several children born here, several children were born in Judea and Samaria. The children born in Judea and Samaria will not receive – according to this bill – cannot live here. To say that they can live here and not be deported, that is contrary to the bill. Furthermore, they have no status, they cannot receive health care [be a member of a health fund] here, they cannot receive anything.** (*Ibid.,* page 18)

Attorney Mazuz

> **In the case you are discussing, is there also a father?**
>
> **Where is he living?** (*Ibid.,* page 18)

MK Melchior:

> **The mother is a permanent resident of Jerusalem, and the father lives in Jenin. The children were born there and live here.** (*Ibid.,* page 19)

Attorney Mazuz

> **They were born in Jenin. So, although the mother holds an Israeli identity card, she lives in Jenin.** (*Ibid.,* page 19)

MK Melchior:

> **During the period when the child was born, she lived in Jenin. For five years now, she has lived in Israel with the father.**
>
> **The children are here.** (*Ibid.,* page 19)

The chair, MK Yuri Shtern:

> **Then the law does not change their status.** (*Ibid.,* page 19)

Attorney Mazuz:

> **Forget about the law. They were living here illegally for five years, and did not request a status in Israel?** (*Ibid.,* page 19)

MK Melchior:

> **They made a request, but sometimes it is hard to get to the Interior Ministry office in East Jerusalem. I don't know if you have ever been there. I was, and I saw what takes place there. I think that our minister can tell you a bit about what happens there. It is almost impossible. I want to know from you how many cases there are like this. You checked all the implications for the children, then tell us how many cases there are.** (*Ibid.,* page 19)

Attorney Mazuz:

> **How can we know, if a request has not been submitted?** (*Ibid.,* page 19)

The shameful dialogue continued, until it ended when Interior Minister Avraham Poraz addressed MK Melchior:

> **Are you also worried about the foreign workers? You want me to give a status in Israel to all the children of foreign workers?** (*Ibid.,* page 20)

84. None of the questions asked by Knesset Members and representatives of organizations on the bill's effects on children were answered, and no figures were provided.

At the end of June, the Committee's chair announced that the vote in the Committee would take place the following day.

As a result of the many references to the minutes of the hearing, they are attached hereto, marked P/39.

The Committee's vote

85. On 30 July 2003, the Committee convened to vote on the sections of the bill and on certain amendments to it. Members wanted to raise objections, but the chair decided that there would not be any discussion on the objections. In his words:

> **The majority here are coalition members, and the coalition intends to pass this bill as it is, without the objections.**
> (Minutes of the hearing, page 3)

86. Attorney Anna Schneider, the Knesset's legal advisor, and Attorney Frankel-Shor, the Committee's legal advisor, contended that the procedure is to hear the objections in the Committee at the time of the vote on the bill, and that it should be done that way. However, the legal advisor stated that, in certain cases, reading of the objections is moved to the plenum, and that the chair has discretion in this matter. Attorney Schneider noted that it is significant whether the objections are substantive or technical; in the former case, use of the Knesset's normal procedure increases in importance, and the objections should be debated prior to voting on the bill in committee.

87. Notwithstanding these opinions, the chair decided not to consider the objections. The only concession the chair was willing to make in response to the vociferous opposition to his decision was to grant each of the members with objections to state the objection to the bill's sections. In protest, representatives of the opposition left the committee room.

88. In that the objections – like the proposal to amend the bill that the Committee's legal advisor had laid on the table of the Knesset the day before – were not read, the Committee members were not presented the alternative suggested in these proposals, which was to add a sentence to the definitions section of the bill, stating that the law does not apply to children.

89. As a result, the government proposed its own amendment, an addition to Section 3 – an unclear concluding clause stating that a permit to stay in Israel or a permit to reside in Israel can be given to avoid the separation of a child under age 12 from his parent lawfully residing in Israel. This amendment was added following the hearing in the

Committee, and was brought before the Committee in a closed meeting, only open to Members of Knesset, and the meeting was held solely to take the vote, without debate. Therefore, the amendment's actual meaning is not clear, and it is impossible to understand why the age 12 was set, why discretion cannot be exercised in cases of children over that age.

90. Members of the coalition voted on the bill, including three amendments, among them the said amendment to Section 3.

91. The proposed bill was approved by the coalition members only, and was forwarded for second and third reading.

92. MK Tibi requested a revision in the bill, but his request was rejected by majority vote.

The references brought in the petition are recorded on pages 3, 14, and 15 of the minutes of the Committee's hearing, attached hereto, marked **P/40**.

The complete minutes of the Committee's hearing appear on the Knesset's Website: www.knesset.gov.il/protocols/data/rtf/pnim/2003-07-30-03.rtf

The debate in the Knesset plenum – Second and third reading

93. On 31 July 2003, the Knesset plenum debated the bill on second and third reading. MK Roman Bronfman, a member of the Internal Affairs and Environment Committee, objected to the procedure in the Committee:

> **In the end, the proposals of Attorney Frankel-Shor were not discussed in the Committee, nor were they presented to the Committee's members so that we could compare one alternative to another alternative and to a third alternative. That was the reason that I went to the Speaker of the Knesset, I have not done that very often in my seven years as a Member of Knesset; this was the first time that I requested the Speaker to stop an improper legislative procedure. (Minutes of the debate in the plenum, page 9)**

Azmi Bishara raised a similar objection:

> **Unfortunately, the Internal Affairs Committee approved yesterday the proposed bill for second and third readings although the Committee's members did not receive answers and data that they requested from the government ministries' representatives, and although the Committee's**

> **legal advisor was not allowed to present a detailed legal opinion to the Committee's members, although a meaningful hearing on the members' objections was not allowed, and although the government did not provide information on the human rights violations, as required by Section 3 of the Notation of Information Regarding the Effect of Legislation on Rights of the Child Law, 5762 – 2002, despite the bill's extremely grave effects on children's rights […]** (*Ibid.,* page 22)

94. Following the debate, the Knesset passed the bill on third reading.

Pages 9 and 22 of the said minutes are attached hereto, marked **P/41**.

Minutes of the debate in the plenum appear in their entirety on the Knesset's Website: www.knesset.gov.il/plenum/data/toc47921553

The statute

95. Section 1 of the Law, which is the definitions section, states:

> **"resident of the region" – including a person who lives in the region but is not registered in the region's Population Registry, and excluding a resident of an Israeli community in the region.**

The Respondents' position, as reflected in practice (in that written procedures do not exist), including their position regarding Petitioners 1-5, is that a child who is born in the region, even if the center of the child's life is in Jerusalem, is considered a "resident of the region" for the purposes of the Law.

96. Section 2 of the Law states:

> **During the period in which this Law shall be in effect, notwithstanding the provisions of any law, including Section 7 of the Nationality Law, the Minister of the Interior shall not grant a resident of the region nationality pursuant to the Nationality Law and shall not give a resident of the region a permit to reside in Israeli pursuant to the Entry into Israel Law, and the regional commander shall not give such resident a permit to stay in Israel pursuant to the defence legislation in the region.**

This section is the heart of the Law – it revokes the authority of the Minister of the Interior, given by the Entry into Israel Law and the Nationality Law, to exercise discretion in granting permits to reside in Israel to residents of the West Bank and Gaza, and the authority of the military commander in these territories to exercise discretion in granting permits to stay in Israel. The effect of the section is to cancel the procedure for family unification of citizens and residents with their spouses who reside in the Occupied Territories.

97. Section 3(1) of the Law relates to the protection given children:

> **The Minister of the Interior or the regional commander, as the case may be, may give a resident of the region a permit to reside in Israel or a permit to stay in Israel, for purposes of work or medical treatment, for a fixed period of time, and also for other temporary purpose – for a cumulative period that shall not exceed three months, as well as a permit to reside in Israel and a permit to stay in Israel for the purpose of preventing the separation of a child under the age of 12 years old from his parent who is staying in Israel legally.**

The end of the section sets forth an exception to Section 2. The scope of the exception is not clear, and is not important in the matter of this petition. Two things can be said with certainty about the exception:

A. It enables the Respondents to exercise discretion in granting residence to residents' children who are under the age of 12.

B. It does not enable the Respondents to exercise discretion in granting residency to residents' children who are over the age of 12 – although the question of the time as to which the provision applies requires interpretation. In other words, will the Law apply retroactively to requests that were submitted before the Law took effect?

<u>The legal argument</u>

98. As we have seen, the guiding principle in registering the children of permanent residents is Section 12 of the Entry into Israel Regulations: a child both of whose parents are residents, a child whose father is a resident, and a child whose guardian is a resident are entitled to a status pursuant to the Regulations. A child whose mother is

a resident will be granted residency status pursuant to the Regulations if the Minister of the Interior exercises his discretion and so decides. Over the years, center of life has been the only criterion that was taken into account in deciding whether to exercise that discretion.

The same criteria were also traditionally used regarding children born outside of Israel, almost without differentiation.

99. As we have seen, the Law restricts the discretion of the Respondent regarding the granting of permits to reside in Israel. The Law does not apply, therefore, to a status granted pursuant to Section 12 of the Regulations (even if determining the status entails exercise of discretion). However, Section 12, whose principles apply to every child, expressly mentions only "a child born in Israel."

100. Based on a literal understanding, the granting of a status to children born outside of Israel falls, for this reason, within the general authority that the Entry into Israel Law gives to the Minister of the Interior to grant permits to reside in Israel. *This authority – the exercise of discretion – is revoked by the Law.*

101. The Petitioners will argue below that the Law grossly infringes their fundamental rights, which are protected constitutional rights, and does not comply with the limitations clause of the Basic Law: Human Dignity and Liberty.

The Petitioners will argue, in this context, that the Law is intended to advance forbidden objectives and is racist.

In addition, the Petitioners will argue that tying the hands of the Respondent by not letting him exercise discretion in particular cases is prohibited and excessive, regardless of any proper purpose that it seeks to achieve. This revocation of discretion contravenes fundamental concepts of law, which require that persons be treated on an individual basis and reject arbitrary acts and collective harm.

Restricting discretion also reflects a decision to employ a more harmful means, for every proper purpose can also be achieved by employing a less drastic means – the exercise of discretion.

The harm that the Law causes children and families, and the violation of the principle of equality and of human dignity are extremely grave, while the purpose is, at best, vague and hypothetical. Thus, the Law also fails to meet the test of proportionality in the narrow meaning of the term.

102. In addition, the Law is improper to the degree that it relates to children, because the legislative process deviated greatly from the rules set forth in the Notation of

Information Regarding the Effects of Legislation on Rights of the Child Law, 5762 – 2002.

103. In light of the above, the Petitioners will argue that the Law should be nullified to the degree that it affects children. In the alternative, the Law may be construed such that it does not prevent the granting of a status to minor children of residents of Israel. Section 12 of the Entry into Israel Regulations may be construed to apply also to children born outside of Israel.

104. Finally, the Petitioners will argue that the Respondents must immediately cancel their new policy, which, rather than use the "child registration" procedure that had been used until now, applies in the case of minor children, only until the age of 12, a "family unification" procedure that is spread out over 5¼ years and is subject to a procedure that is not suitable for the handling of child-related requests. The Respondent must handle requests to grant a resident status to children in a fair, expeditious, simple, and efficient manner, in accordance with procedures that are properly announced, and according to reasonable criteria that take into account the best interest of the child (in line with those described above).

Infringement of fundamental human rights

105. Every child in the world is entitled to be registered as a person recognized by the authorities.

> **The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.** (Article 7(1) of the Convention on the Rights of the Child)

See, also, Article 8 of the Convention, and Articles 6 and 15 of the Universal Declaration of Human Rights, Articles 16 and 24 of the Covenant on Civil and Political Rights, which took effect as regards Israel on 3 January 1992.

106. The right to an identity and a nationality is recognized, therefore, as a fundamental right in international law that has been adopted by the State of Israel.

The right to family life and the right of children to be protected by society

107. Petitioner 1, a resident of the State of Israel, has the right to live in safety with her children in Israel, with the children having a legal status. This right results from Petitioner 1's right, as a permanent resident of the State of Israel, and also as a result of her fundamental right as a mother, that her state will not prevent her from

protecting her children and providing for them to the best of her ability. The state has the clear and natural duty not only to prevent such violation, but to take actions necessary to safeguard a person from impediments to his ability to provide the necessary protection to his or her children.

108. The Respondents ignore the principle of the best interest of the child, which is a fundamental principle in exercising administrative and judicial discretion regarding minors. As long the person is a minor, and as long as his or her parent functions in a proper manner, the best interest of the child dictates that he be raised in the supportive family unit. The refusal to register the child as a resident of Israel, when the parent is a resident of Israel and resides in Israel, forces the child to be separated from his parents, impedes his development, and interferes in the family unit in a manner that is not in the child's best interest. In the alternative, the child will be left with his parent in Israel, but without a stable and clear status, until such time that the difficulties inherent in living without a status overcome the family.

109. Lacking a status, Petitioner 1's children do not, in many ways, exist. As time passes, and with the frequent changes in the Respondents' procedures, it is unclear if registration of the children will be allowed, or how complicated the procedure will be (even now, significant resources are required, such as great sums of money for the filing fee and attorney's fees, which result from the need to provide affidavits, and the failure to publish the procedures entailed in registering a child).

110. As time passes from the day the child is born to the day of registration, the demands placed on the parents to register the child become more complex and more expensive. Many residents are unable to meet the Respondents' changing demands, a fact that results in persons, first as children and later as adults, living in Israel without documentation and without rights. It is unnecessary to expand on the grave consequences for the child, but it is important to mention that such a situation also harms the state in that the Population Registry does not reflect the state's actual population.

111. In Israeli law, the best interest of the child is a fundamental and firmly established principle. On the importance of the family unit and the constitutional limitations on state interference in family matters, see the comments of the Honorable President Shamgar in Civ. App. 2266/93, *Doe v Doe, Piskei Din* 49 (1) 221, 235-236:

> **The right of parents to custody of their children and to raise them, with all that entails, is a natural and primary, constitutional right, expressing the natural connection**

> **between parents and their children (Civ. App. 577/83, *Attorney General v. Doe, Piskei Din* 38 (1) 461). This right is expressed in the privacy and autonomy of the family: the parents are autonomous in making decisions regarding their children – education, lifestyle, place of residence, and so on – and interference by society and the state in these decisions is an exception that requires justification (see Civ. App. 577/83, *supra,* at pages 468, 485). This approach is grounded in the recognition that the family is "the most basic and ancient societal unit in human history, which was, is, and will be the foundation that serves and ensures the existence of human society".** (Justice (as his title was at the time) Elon in Civ. App. 488/77, *John Doe et al. v. Attorney General, Piskei Din* 32 (3) 421, 434)

The right of minor children to live with their parents is recognized as an elementary and constitutional right by the Supreme Court. See the comments of Justice Goldberg in HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15, 20, facing letter B.

112. The Convention on the Rights of the Child, which the State of Israel, along with almost all the other countries in the world, ratified, contains a number of provisions that demand protection of the child's family unit:

For example, in the preamble to the Convention:

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

Article 3(1) of the Convention states:

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

Article 7 states:

> **1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as afar as possible, the right to know and be cared for by his or her parents.**
>
> **2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.**

Article 9(1) of the Convention states:

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

Article 10(1) states:

> **… application by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be deal with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that that submission of such a request shall entail no adverse consequences for the applicants and for the members of their family..**

See, also, Articles 1,3(2), 4 and 5 of the Convention.

113. The Convention on the Rights of the Child is gaining increasing recognition as a supplemental source of children's rights and as a guide for construing "the best interest of the child" as a paramount consideration in our law. See Civ. App. 3077/90,

Jane Doe v. John Doe, Piskei Din 39 (2) 578, 593 (the Honorable Justice Heshin); Civ. App. 2266/93, *Doe, a Minor et al. v. Doe*, Piskei Din 39 (1) 221, 232-233, 249, 251-252 (the Honorable President Shamgar); Reh. Civ. 7015/94, *Attorney General v. Jane Doe*, Piskei Din 50 (1) 48, 66 (the Honorable Justice Dorner). It would be proper for the Respondents to exercise their authority in accordance with the best interest of the child as construed by the Convention.

114. Articles 24(1) and 24(2) of the International Covenant on Civil and Political Rights state:

> **1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property, or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.**
>
> **2. Every child shall be registered immediately after birth and shall have a name.**

See, further, for example, Articles 17 (on the right to privacy and dignity), Article 23(1) (on the importance of the family unit), and Article 26 (on the right to equality).

115. On 7 August 2003, the UN Human Rights Committee issued a detailed report on Israel pursuant to Article 40 of the International Covenant on Civil and Political Rights, The Committee takes the position that the Law contravenes sections of the Covenant and should be revoked:

> **The State party should revoke the Nationality and Entry into Israel Law (Temporary Order) of 331 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. The State party should reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the final report.** (at Paragraph 21)

The Committee's report is attached hereto, marked **P/42**.

<u>Parent's duties to his children</u>

116. The duty of a parent to his children and the prohibition on neglecting them are firmly established in Israeli Law. For example, Section 15 of the Capacity and Guardianship Law, 5722 – 1962, whose heading is "functions of parents," states:

> **The guardianship of the parent shall include the duty and the right to take care of the needs of the minor, including his education, studies, vocational and occupational training and work, and to preserve, manage and develop his property; it shall also include the right to the custody of the minor and to determine his place of residence and the authority to act on his behalf.**

Section 323 of the Penal Law, 5737 – 1977, states:

> **It is the duty of a parent or person who has responsibility for a minor, being a member of his household, to provide the necessaries of life for such minor, to care for his health and to prevent him being abused or from suffering physical injury or other harm to his well-being and health, and is held to have caused any consequences which result to the life or health of the minor by reason of not fulfilling the said duty.**

See, further, Section 373 of the Penal Law.

117. The Law prevents the parent from acting in accordance with these duties. Thus, the Law forces the parents into being lawbreakers.. Even worse, the Law thwarts the primary societal entity to protect the person, life, and dignity of children.

The harm is especially grave in that, along with enactment of the Law, the state restricts the entry of Israelis into Palestinian population centers in the Gaza Strip and the West Bank.

<u>The right to equality</u>

118. In revoking the discretion of the Minister of the Interior to arrange the status of residents' children born in the Occupied Territories, the Respondents unlawfully discriminate and do not provide equal treatment to Israeli residents of Arab descent married to aliens in comparison with other residents of Israel, who live in Israel and outside its municipal borders. In this context, it should be emphasized that the status of these persons is not acquired as a result of their arrival and settlement in Israel by free choice (such as pilgrims, Black Hebrews, and the like). Rather, Israel made them

residents in 1967. In this regard, their actual status and the lack of another actual status entitle them to the same civil rights given to citizens.[5]

119. When Israeli law was applied to East Jerusalem, the principle of equality and the principle of human dignity and liberty applied to them as well. In enacting a law that removes their authority to arrange the status of children in the Israeli Population Registry, the Respondents must give proper weight to the right of East Jerusalem residents to be treated equally with other residents of the state, and to provide them as much as possible with the same right to give a status to their children as that given to other residents of the state, such as those who are not married to aliens, whose children are born outside of Israel. The same is true regarding other fundamental human rights in Israel.

120. The right to equality, which the Law infringes, is enshrined in the constitutional right to dignity:

> **Human dignity means a normative system of principles, liberties, and values, at the center of which lies the recognition that a person is a free being, one who develops his body and spirit at his will. The sanctity of life and individual liberty lie at the center of human dignity. The foundation of human dignity is the autonomy of human will, and the individual's freedom of choice and freedom of action. At the base of human dignity is the recognition of the person's humanity, and his value as a human being, regardless of any benefit that the individual provides to others. Human dignity is the liberty of a person to fashion his life and develop his personality as he wishes. Human dignity is founded on the recognition of the physical and spiritual integrity of the individual, in his humanity, his value as a human being…** ***Human dignity is based on the conception that all persons are equal*****…** (emphasis added)

[5] The Entry into Israel Law distinguishes between residents and citizens in a limited number of issues: the right to vote in Knesset elections; the status being dependent on the actual place of residence, such that the status "terminates" if the resident does not maintain his center of life in Israel for a period of seven years; the difference in travel documents; and also the procedure in which children are granted a status. To date, there has not been any doubt about the ability to grant such status. The new law seeks to remove any doubt that a status is not to be granted.

Aharon Barak, *Legal Interpretation – Constitutional Interpretation* (1992) 319.

121. The principle of equality forbids the Respondents to discriminate – for reasons of national origin and status – against the children who are the subject of this petition in comparison with other children of residents of Israel. The lack of primary and secondary legislation prior to the enactment of the Nationality and Entry into Israel Law regarding the right of the children to receive a status, the fact that the procedure is complicated, complex, and expensive, and is changed frequently – all these constitute unlawful discrimination.

<u>The rights infringed are constitutional rights</u>

122. The right to family life entails and is integrated in fundamental human rights to dignity, liberty, and privacy. Harm to the integrity of a person's family unit – "this primary unit of human society" (the Honorable Justice Heshin in Civ. App. 238/53, *Cohen and Busalik v. Attorney General, Piskei Din* 8, 53) violates the individual's dignity.

123. The right to exist as a human being in the world is inseparable from the person's rights to dignity and liberty, which are enshrined in the Basic Law: Human Dignity and Liberty. An integral part of the right to human dignity includes the right of a minor to live with his parents as a unified family, and the right of the parent to live with his child:

> **In an era in which "human dignity" is a protected constitutional right, effect should be given to the aspiration of a person to fulfill his personal being. And for this reason, respect should be given to his desire to belong to the family unit that he considers himself part of** (Civ. App. 7155/96, *John Doe v. Attorney General, Piskei Din* 51 (1) 160, 175).

124. The harm to the family unit also constitutes arbitrary interference in an individual's most intimate affairs, thus violating not only his dignity and liberty, but his privacy as well.

125. As we have seen, harm to children and the separation of children from their parents are liable to have severe psychological and health effects on the children. Thus, the Law also affects the right of the children to bodily integrity, in the sense of the right that the state and the parents will protect them and ensure their proper psychological and physical development in the critical childhood years.

The rights are infringed to achieve an illegitimate purpose

126. The freeze on the registration of children is part of a policy whose declared purpose is purportedly the need to be cautious in allowing the entry of aliens to Israel because of the security threat they pose. This line of reasoning also formed the basis of the National and Entry into Israel Law. Clearly, this reason is not available to the Respondents when minor children of residents are involved, when neither the children nor their parents are said to be security risks. In its sweeping decision, the Respondent does not explain whether the registration of the child creates any threat whatsoever; rather, the Respondent simply refrains from registering children, without limiting his decision in the matter.

127. The only explanation that the Petitioner 1 can think of is the desire of the Respondents to maintain the demographic balance of a Jewish majority. This desire is evident from the many press reports and public statements, which Respondents 1 and 2 did not seek to conceal, as well as from the presentation that was given to the cabinet just prior to the vote on Government Decision 1813.

It is inconceivable that demographic and financial considerations will affect the basic right of the Petitioners and many other residents in their situation to arrange their children's status.

In light of the contents of the presentation, it can no longer be denied that financial considerations and demographic considerations, as well as outright racism, were at least part of the purpose underlying the Law.

This purpose is not a proper purpose, and such purpose is not consistent with the values of the State of Israel.

128. In *Lugasi,* Justice Shamgar described conduct by a government authority that is not done in good faith:

> **… when the authority giving the reason, which is a disguise or an external cover for another, hidden intention, knows that the comments it makes differs from what it is thinking. We see before us a typical example of the lack of honesty, or deceit.** (judgment in Lugasi, supra, page 459)

In our case, the extraneous, cynical purpose forming the basis of the Respondents' decision is evident on its face, and it appears that they make no attempt is to conceal it.

The infringement of rights is excessive – selection of the means causing greater harm: the duty to exercise discretion when deciding to register children

129. As we have seen, the arrangement that preceded the government's decision and the Law was not a procedure that automatically granted a status in Israel to children of Israeli residents. Whether the child was born in Israel or outside the country, residency was granted at the discretion of the Minister of the Interior and in accordance with the "procedure for child registration" that was described above.

130. For the sake of argument, let us assume that there are purposes that can justify a filtering process relating to granting children permanent-resident status in Israel (for example, in the spirit of the judgment in Karlo, supra). Revoking the Respondents' discretion, such that *no child* over the age of 12 can obtain a status in Israel *in any case*, is an extreme action, which causes much greater harm than is necessary.

131. The revocation of discretion also contravenes basic concepts of law. An administrative authority must weigh the merits of exercising a power given it, and must exercise it reasonably, to the extent necessary, in good faith, in a non-arbitrary manner, without taking into account extraneous considerations, and giving proper consideration to fundamental rights and principles of our system of law (see Ra'anan Har Zahav, *Israeli Administrative Law* (5657 – 1996) 103-109, 435-440, and the references provided there; HCJ 3648/97, *Bijebahan Petel and Three Others v. Minister of the Interior and Three Others*, Piskei Din 53 (2) 728, 770).

This duty of the government authority is a fundamental norm of administrative law, and also finds expression in the common law regarding the granting of a status to children. See HCJ 48/89, *Issa v. District Office Administration et al*., supra.

Revoking the authorities' discretion compels it to act arbitrarily.

A law that requires the authorities to act arbitrarily, and compels the Respondent to be "malicious with the backing of the law" undermines the foundation of administrative law, and the fundamental principle of individual responsibility, and constitutes the worst kind of law for "sidestepping the High Court." Such a law should be treated in only one way – by nullifying it.

Collective sanctions

132. By including requests for child registration with requests for family unification, in order to freeze their handling completely, the law separates in gross fashion an entire group, based on national origin, and imposes a sweeping, dreadful decree, without distinction and without discretion. In effect, we have a collective sanction against hundreds, and possibly thousands, of innocent children.

These children are prevented from receiving a status in the place in which they live. Their parents, residents of Israel, are not given the right to give a status to their children in their own country.

133. The Respondents' position constitutes a sweeping punishment of children and parents. Yet, the Respondents have not even bothered to explain the purpose of the harsh sanction – revocation of such a fundamental right. In the past, the Supreme Court has nullified, on the grounds of lack of proportionality, collective punishment. For example, in Ben Atiya, which dealt with the revocation of the right of a school to hold an examination after it was discovered that copies of the previous exam had been copied in large numbers, the Court held:

> **The occurrence of a relatively large number of cases of harm to the purity of the examinations indicates a lax system of supervision, and the way to cope with the phenomenon is to increase the effectiveness of the supervision and to impose suitable punishment on the persons involved, and not in harming students "of the next class and the educational institution and its teachers."** (HCJ 3477/95, *Ben Atiya v. Minister of Education*, Culture and Sport, Piskei Din 49 (5) 1, 8).

The position of the Honorable Court in Ben Atiya is even more relevant in the present case because cessation of the handling does not result from the acts or omissions of any of the minor Petitioners or of any other children in their situation, and the cessation is not connected to them in any way whatsoever.

The infringement of rights is not proportional in the narrow sense

134. We have seen the scope of the harm to the Petitioners. Yet, the Petitioners are only one example. What happens to a child one of whose parents is a resident of Israel and the other a resident of the Occupied Territories, who lived in the Occupied Territories until age 14, at which time his father died, and he and his mother went to live in Israel? According to the Law, this child, too, would not be granted a status.

The harm caused by the Law is harsh and certain. It covers all areas of life. It prevents children from living with their parents. It places pressure on Israeli residents married to residents of the Occupied Territories to break the law or emigrate. It is discriminatory, and thus is extremely humiliating. The National Insurance Institute recently stopped a special procedure that assigned children of permanent residents to a

health fund, even if the children were not yet registered in the Population Registry.[6] What this means is that children who are not registered as residents in the Population Registry will not be recognized as persons entitled to health insurance pursuant to the National Health Law, 5754 – 1994. Also, we have seen the case of the Petitioners' children, who are prevented from taking part in regular school activities in which their classmates participate as a matter of course.

The purpose of the Law, on the other hand, is improper, and at most, vague, hypothetical, and puzzling. The assumption that a child of 14 is liable to become at some time in the future a dangerous terrorist who exploited his residency for evil purposes, is hypothetical and unfounded, and reflects degrading and malicious prejudgment.

The balance between the questionable purposes of the Law and the fundamental rights that it infringes, clearly leans to a determination that the infringement of the rights is, at least, disproportionate.

The Notation of Information Regarding the Effect of Legislation on Rights of the Child Law

135. The process in which the Law was enacted was also improper for a reason that is ostensibly procedural, albeit closely tied to the substantive grounds for nullifying the Law. The Notation of Information Regarding the Effect of Legislation on Rights of the Child Law, 5762 – 2002 (hereinafter: the Notation of Information Regarding Rights of the Child Law) requires special procedures in statutes that have an effect on children. The essential elements of the said law are found in Sections 2 and 3.

Section 2 of the law states its purpose:

> **The purpose of this Law is to require members of Knesset and the government to examine, in the course of preparing a proposed bill for first reading the effect of the proposed bill on the rights of children, in the spirit of the Convention's principles.** [UN Convention on the Rights of the Child – A. L.]

As appears form the above provision, the effect of the Proposed Nationality and Entry into Israel Law on children was not examined during its preparation for first reading. Respondent 1 did not even mention this impediment when he presented the bill in the plenum prior to holding the vote on first reading.

[6] By means of a "passport number" that the NII issued.

Section 3 of the law states that:

> **The explanatory notes of a proposed bill on first reading, on the face of which it appears that the bill affects, directly or indirectly, the rights of children, shall mention the following, as the case may be:**
>
> **(1) the existence and magnitude of harm or of improvement relating to the rights of children, including their living conditions and the services granted to them;**
>
> **(2) the data and information that was used in determining the aforesaid in subsection (1), if such exist.**

In a meeting of the Knesset's Internal Affairs and Environment Committee held on 29 July 2003, the Committee's legal advisor related to the proposed bill, as follows:

> **[...] There is the Notation of Information Regarding the Effect of Legislation on Rights of the Child Law…. Section 3 of the proposed bill states that in the explanatory notes of the proposed bill for first reading, which on its face seems to directly or indirectly affect the rights of children, they [the effects] will be mentioned as the case may be, and there is here the beginning of a list.**
>
> **The government's proposed bill comes before the Knesset for the first time, on first reading, to the Knesset plenum. When the bill is laid on the table of the Knesset, the government must draft explanatory comments of the indirect and direct effects of the proposed bill.**
>
> **Regarding Members of Knesset, they either do this on preliminary reading or when the bill goes to committee, and when the committee prepares the bill for first reading, the committee has the duty to relate, as was the case with the government, in the explanatory notes to the indirect or direct effect on children.** [The minutes state, apparently in error, "direct effect on Members of Knesset" – A. L., page 5 of the minutes].
>
> **I made further comments at the closed meeting: if the government did not write in the explanatory notes about the**

> **effect on children, the defect could be rectified. Let the members of the committee now present to the Internal Affairs Committee of the Knesset what the direct or indirect effect is, and then it would not be necessary to return the bill for first reading in the Knesset plenum.**

The Committee's legal advisor's comments, like the Law itself, were ignored. The explanatory notes to the proposed bill do not mention the harm to children that will result from the bill. The harm to children was mentioned by Members of Knesset and representatives of human rights organizations during the Committee's hearings, but not by the drafters of the bill. The only thing that the latter did was confirm, in the course of the hearings, that the bill indeed applies to children, but denied that it would harm them – for where there is no right, there is no infringement of a right. (See the comments of Attorney Mazuz, quoted in Section 83 above.) Drafters of the bill on behalf of the Ministry of the Interior and the Ministry of Justice failed to provide figures and information on the subject, and relevant questions that were raised by Members of Knesset and invitees to the Committee remained unanswered.

<u>Unconstitutionality of the Law and possible remedies</u>

136. At least as regards children, the Law is unconstitutional in that it fails to meet the requirements of the limitations clause of the Basic Law, and the process by which it was enacted was faulty to the core. This is not to say that it should not be nullified for other reasons and as regards other people, and those matters will be heard, as stated, in another framework.

137. Having reached this conclusion, three remedies are available:

    A. The first possible remedy relates to Section 12 of the Entry into Israel Regulations. This section makes an unreasonable distinction and discriminates between children born in Israel and children born outside of the country. This discrimination is especially grave in light of the provisions of the Law, whereby the right of the former [children born in Israel] to receive a status is clear, while the latter, if born in the Occupied Territories, are not granted any status, not even following the exercise of discretion, in that the minister does not have authority to exercise discretion in their cases. This prohibition, set forth in the section [12] of the regulations, can be rectified by "red penciling" the words "born in Israel" from the wording of the regulation. This change in the wording of the regulation reflects, in practice, the Respondents' policy over the years, when they arranged the status of children born in Israel and

children born elsewhere by the same procedure and according to the same criteria. If Section 12 were to state that it applies also to children born outside of Israel, in any case the Law does not relate to children who have a parent or guardian who holds a status in Israel.

B. A second possibility is an interpretive approach that would neutralize the unconstitutional effect of the law as regards children. As we have seen, the Respondent construes the phrase “resident of the region” to include every child born in the region. This interpretation is not required. The procedure of registering children is based, as we have seen, on center of life. A child who lives in Israel, or whose custodial parent is a resident of Israel, can be deemed to come within this definition. Even if the child is born in the Occupied Territories, lived in the Occupied Territories, or has an identity number of the Occupied Territories, he does not necessarily have be viewed as a resident of the Occupied Territories if he currently lives in Israel. The same is true as regards a child who lives in the Occupied Territories and his parents (or parent, if he has only one custodial parent) establish their address in Israel at a specific point in time, in accordance with the authority given to him pursuant to the Guardianship Law. Another way is to hold, for the purposes of the Law, that the term “resident” relates to adults only, in light of the actual purpose of the Law and in light of the general purposes of every law, including protection of children and protection of human rights.

Interpreting the Law in this manner also strengthens the legislative harmony between it and the Guardianship Law and the Penal Law as regards the rights and obligations of parents toward their children.

This interpretation of the Law finds additional support in light of the presumption that laws of the state conform to the conventions to which the state is party (several provisions of which are mentioned above), the fundamental principles of the system, and human rights.

C. A third possibility is to accept the Respondents’ interpretation of the Law, find that the Law infringes fundamental human rights in a sweeping and excessive manner, and reach the necessary conclusion and nullify the law as regards its application to children (without the necessity, in the context of this petition, to decide regarding the overall nullification of the Law, which will be heard in another petition).

The obligation to formulate and publish a fair and reasonable policy

138. It is not necessary to expand on the great importance of publishing the decisions and procedure of state authorities. We see from the description of events set forth above that the Respondents took care not to publish its changing policy, forcing the residents to discover the changes that had been made regarding their most basic rights and needs, over which the Respondents were entrusted, only after frequent visits to the Ministry of the Interior's office or by announcements published by human rights organizations. Unfortunately, recent attempts to discover the procedures for arranging the status of children of residents who were born outside of Israel, or if such procedures in fact exist, were in vain.

139. As described above, it was not until the correspondence with clerks in the office of Respondent 3 that the Petitioners learned about the refusal of Respondent 3 to register children in their situation. The response of Respondent 3 was received only after repeated requests by Petitioner 6. Questions asked by Petitioner 6 in its letters of 14 August and 29 September 2002 were not answered.

140. As a result of the failure of the Respondents to publish their decisions, many families that are not represented wait in vain to register their children, and it is very doubtful whether other residents in the same situation as the Petitioners, but who do not have representation, would receive any reply whatsoever from Respondent 3. Also, formulating a decision in writing and publishing it provides further guarantee that discretion lies at the foundation of the decision.

141. The right of the public to know and receive information from the state authorities as regards their actions is a right set forth expressly in Israeli legislation and case law. The public's right to know is a necessary means for public review of the actions of state authorities; the right is important to ensure public trust in the authorities' actions, for there can be no public trust where actions are taken in secret. The public's right to know also entails the right of every member of the public to have direct access to information that the state authorities gather in carrying out their functions. The corollary of the right of the public to know is the "duty of persons holding public positions to provide information to members of the public" (HCJ 1601-1604/90, *Shalit et al. v. Peres et al., Piskei Din* 41 (32) 365).

Regarding the obligation to publish criteria and procedures, see HCJ 5537/91, *Efrati v. Ostfeld et al., Piskei Din* 46 (3) 501; HCJ 3648/97, *Stemkeh et al. v. Minister of the Interior et al., Piskei Din* 53 (2) 728, 767-768.

142. We see from all the above that the Respondents must act, as regards children born in the Occupied Territories, in accordance with the guidelines set forth in Section 12 of

the Entry into Israel Regulations, and to the holding in *Issa*, set forth above. This means that the Respondents are required to grant every child the status in Israel held by his parents or custodial parent. Where both parents are entitled to custody of the child, and only one of them has a status in Israel, there may be reason to apply the test that is based on the actual place of residence of the child, provided that the child's right to maintain complete relations with both his parents. In that children are involved, it is important that acquisition of the status be done in simple and expeditious procedures, which do not place difficult obstacles in the face of residents from all segments of the public. The procedures must be published in a proper manner, and must be accessible to the entire population, and be written in Arabic.

Conclusion

143. The Nationality and Entry into Israel Law flagrantly violates fundamental rights of the Petitioners and of other residents in similar situations. The rights infringed include the right to grant a status to minors, the right to protection of the family unit, the right to protection of the welfare of minors, the right of minors to maintain relations with their parents, and the right of parents to maintain relations with their minor children. The Law violates the right of residents and their children to a status, on the pretense of security grounds that the Respondents attribute to children of tender age, through no wrongdoing on their part.

144. The Respondents created a distressing reality, whereby in the same family, a request to arrange the status of two sisters is rejected while the status of other siblings is approved, although it has been proven that all are children of a resident of the State of Israel and live in the same place – Jerusalem.

145. The Respondents change their policy repeatedly: residents of the state do not know the applicable procedures, whereby, in a certain period, only males were allowed to arrange the status of their children, and after that, the children were given a temporary status, later the status of children born in Israel was arranged, while children born elsewhere were left with no status. Now, a statute has been enacted, pursuant to which children over the age of 12 are not to be given a status, while the granting of a status to children under the age of 12 is unclear.

146. A request to arrange the status of a child changes its name and nature according to the changing desires of the Respondents: today it is called a request for family unification, tomorrow child registration, and the day after, again family unification, all with the intention of preserving the desired demographic balance. The public is left to discover

these changes, which affect its ability to exercise its fundamental right – to protect their children – only after a long wait for the response of an official in the office of the Ministry of the Interior. If, indeed, the official chooses to respond.

147. While the Respondents insolently contend that, if any harm is caused, it is minimal and in proper measure under the circumstances, Petitioner 1 finds herself in a distressful and frightening situation because no way exists for her minor children to obtain a status.

148. The comments of the Honorable President Barak in HCJ 840/79, *Contractors Center v. Government of Israel and Builders in Israel, Piskei Din* 34 (3) 729, 745-746, are appropriate in our matter:

> **The state, through those acting in its name, is the public's trustee, and it holds the public interest and public property for use that benefits the public… This special status is what imposes the duty on the state to act reasonably, honestly, with integrity, and in good faith. The state is forbidden to discriminate, act arbitrarily, or without good faith, or be in a conflict of interest. In brief, it must act fairly.**

The Honorable Court is requested, therefore, to order the Respondents to act in accordance with the rule of law, according to reasonable and fair criteria, and to ensure the welfare and rights of residents of the state and of their children.

For these reasons, the Honorable Court is requested to issue an Order Nisi as requested at the beginning of the petition, and after receiving the response of the Respondents to the Order Nisi, to make it absolute, and to order Respondent to pay the costs of suit.

Jerusalem, today, 3 December 2003

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Yossi Wolfson, Attorney	Adi Landau, Attorney
Representing the Petitioners	Representing the Petitioners