Supreme Court of Israel **H.C. 2227/98**

in its capacity as High Court of Justice

1.HaMoked - Center for the Defense of the Individual

2. Association for Civil Rights in Israel

3. Physicians for Human Rights

4. D.C.I. - Defense for Children International - Israel

5. Alternative Information Center

6 - 20. Manco and 14 others.

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and Attorney Leah Tzemel,
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Tel. 02-6273373; Fax. 02-6273373. **The Petitioners**

vs.

Minister of Interior
Ministry of Interior, Hakiryah, Jerusalem. **The Respondent**

PETITION FOR AN ORDER TO SHOW CAUSE AND TEMPORARY INJUNCTION

We hereby submit a petition for an order to show cause, addressed to the respondent, which orders him to provide the reasons:

A. Why the decision to cancel the status of petitioners 6 - 20 and their children as permanent residents of Israel shall not be annulled.

B. Why he should not refrain from canceling the status of the residents of Jerusalem, who possess permanent resident permits in Israel, except if he reveal to them the factual basis for the cancellation or expiration of their status, and hold a hearing - which may be conducted orally - that will offer them an opportunity to state their claims.

C. Why he shall not refrain from acting in accordance with Regulation 11(c) final clause, and Regulation 11A of the Regulations of Entry to Israel, 1974, concerning the expiration of the permanent resident permit of a person who has settled in a country outside of Israel, with respect to residents of East Jerusalem who moved their place of residence in the past to areas under the control of the State of Israel, as well as with respect to residents of East Jerusalem who have maintained their connection with Israel and do not absent themselves from Israel for a continuous period exceeding seven years. Or, alternatively, why these Regulations should not be declared null and void.

D. Why he should not refrain from annulling the status of residents of Jerusalem, who possess permanent resident permits in Israel, except after the formulation of new rules, regulations and criteria, which will guide him in this matter, and after allowing a reasonable transition period for their application, subsequent to the time in which they are made public.

E. Why he shall not refrain from annulling the status of female residents of Jerusalem, possessing permits for permanent residence in Israel, who married foreign spouses and who were prevented, as a consequence of the respondent's policy preceding March 1994, from establishing their families with their husbands in Israel, and who, subsequent to the respondent's change of policy in 1994, which first permitted the unification of families of Jerusalem women, returned to reside in Jerusalem and submitted requests for family reunification with their spouses.

F. Why he shall not approve the requests for permanent residence in Israel for the purpose of family unification, which were submitted by petitioners 6, 12, 13, 14, 15, 16 and 18 for their husbands; or, alternatively, why he shall not renew the permits for [temporary] residence in Israel which were issued to those husbands, until the time of their receiving permanent residence.

Request for Temporary Injunction

Furthermore, the honorable court is requested to issue a temporary injunction, ordering the respondent to refrain from expelling petitioners 6 through 20 and their spouses and children from Israel until the completion of proceedings in this petition.

The following are the grounds for the petition:

The subject of this petition is the annulment of the status of the residents of Jerusalem, whose center of life is in Israel; such annulment leads to a complete revocation of their rights and will lead to their expulsion from their homeland and place of residence. This petition is intended to cancel a new and radical policy which has produced severe perversions of justice and has transformed residents of Jerusalem, who are rooted in the city and are in fact presently living there, into illegal immigrants, lacking all rights in their city of birth. The cancellation of the status of the residents of Jerusalem - the petitioners and others similarly situated - was carried our in flagrant violation of due process, without factual basis, and in sharp divergence from thirty-year-old regulations, all in order to achieve illegitimate aims and in opposition to the rule of law and the principle of equality.

1. The petition is made up of five parts:

A. The policy and regulations until the year 1995 (p. *): A description of the policy and regulations of the Ministry of Interior from the early 70's through 1995, with respect to the exit of residents of East Jerusalem from the country, their return and the preservation of their status, as well as the denial of family reunification from female residents of Jerusalem until 1994.

B. The change in policy and new regulations in 1995 and their retroactive application (p. *): A description of the dramatic change in the above-mentioned policy and the new directive issued by the respondent at the end of 1995, concerning the expiration of residency of the residents of East Jerusalem, who, until that point, had retained their residency in accordance with the previous rules, and the retroactive implementation of this directive and its ramifications.

C. Center of life and the cancellation of the status of the petitioners (p. **): Where is the petitioners' center of life today, why did they remain outside the country in the past, for what lengths of time and for what purposes, how the respondent canceled their status as permanent residents in Israel and the exhaustion of remedies in their cases.

D. The legal framework (p. **): Permanent residence according to the Law of Entry to Israel, the cancellation or expiration of permanent resident permits of the residents of Jerusalem and the significance of the cancellation of residence from the perspective of human rights.

E. The legal argument (p. **): The petitioners argue that the new policy may not be applied to them retroactively. The new policy leads to the cancellation of their permanent residence permits, when they relied, justifiably and in good faith, on the policy and rules that were in force in the past. This retroactive application is not reasonable nor proportional to any suitable public goal, as it severely infringes the legitimate expectations and fundamental rights of the petitioners. The petitioners will furthermore argue, that the respondent does not

apply reasonable and transparent criteria in determining what constitutes the "center of life", and violates the rules of due process when canceling the permanent residence permits of the residents of East Jerusalem (clauses 43-58).

The petitioners

2. Petitioners 1 through 5 are registered associations, whose aim is the protection of human rights.

3. Petitioners 6 through 20 (henceforth: "petitioners") are residents of Jerusalem, who were registered in the population registry of the State of Israel until the decisions issued by the respondent to regard their permits for permanent residence in Israel as having expired.

The common denominator of all the petitioners is the fact that the center of their lives is currently in Israel. Several years after their legal return to Israel and their resettling permanently in Jerusalem, the respondent informed them of the cancellation of their status as permanent residents and ordered them to leave Israel immediately.

A. Policy and Procedures Regarding the Departure of Residents of Jerusalem to Other Countries, their Return and Preservation of their Status (until 1995).

4. Uniform policy for Jerusalem residents and residents of the Occupied Territories

With respect to departure for other countries, their return and their status upon their return, a uniform policy applied to both the residents of East Jerusalem and those of the Occupied Territories. The regulations and policy were set by the IDF, with the participation and accord of the representatives of the Ministry of Interior; regulations for the two groups were the same, and were passed with the explicit aim of "determining regulations for the free exit of **the residents of the Administered Territories and East Jerusalem,** to the West Bank or Arab countries, for the purpose of visits, work, studies and trade" (paragraph 6).

Regulations for exit to Jordan from 1977 and 1988 are attached to the petition and designated as ד/1 and ד/2.

5. The "open bridges" policy

The basis for the regulations was the "open bridges" policy, instituted by Israel after the Six Day War. The "open bridges" policy was designed to encourage free passage of the residents of East Jerusalem and the Occupied Territories by way of the Jordan River bridges, subject to security considerations. This policy recognized the needs of the residents of East Jerusalem and the territories to sojourn in Jordan and other Arab countries, not only for limited time periods and exceptional needs, like visits or trade, but also for needs that necessitated extended stays outside the country, such as studies, work and family ties. The policy that permitted residents to leave for long-range goals, meant also - that they were permitted to return.

See the speech of Defense Minister Moshe Dayan in the Knesset session of February 4, 1970 (Vol. 12, 1970, pp. 697-699), as well as the research of the coordinator of actions in the territories at that time, Shlomo Gazit, The Carrot and the Stick - Israeli Administration of Judea and Samaria (1985), pp. 204-217, designated ד/3 and ד/4 and attached below.

Of course, this policy was well adapted to the needs of the State of Israel, which could not provide employment and higher education for such a large population. It also served as a pressure valve.

6. Exit and entry regulations over the Jordan River bridges - maximal continuous periods of stay outside the country

The exit of residents from Israel was subject to exit permits, and any resident who observed the conditions of the exit permit was permitted to return at any time, and immediately upon his return enjoyed all his rights as a resident.

IDF regulations concerning exit procedures from the West Bank for the residents of East Jerusalem and the administered territories (ד/1 and ד/2 above), established the maximum

uninterrupted stay abroad. All residents were allowed to exit by way of the Jordan River bridges using an exit card, which included a return permit valid for 36 months. At the end of the period, the exit card could be extended by relatives of the resident residing in Jerusalem or the occupied territories, while the resident remained abroad. The period of extension of the card was one year. The exit card could be extended by relatives up to three times; thus the period of validity of the extended exit card could reach a cumulative period of six years of continuous stay abroad.

As long as the exit card was valid, the resident could return to Jerusalem (or to the territories) by way of the Jordan River bridges. His identity card was returned to him at the bridge, and he entered Israel with it.

The residents of East Jerusalem and the territories could go abroad by way of Ben Gurion airport using a "laissez passer". The validity of this document was limited to one year, and it could be extended for further periods of one year.

When the resident returned to Jerusalem or the territories, he could go abroad again using a new or extended exit card or laissez passer.

These regulations enabled lengthy stays in Jordan or other Arab countries, within the framework of the open bridges policy. They enabled thousands of Palestinians who worked in the Gulf States and Saudi Arabia to return to their jobs without losing their rights. Israeli authorities recognized the many forces that causes the residents of East Jerusalem to seek their livelihood in Arab countries, to complete their education there, and even to conduct their family lives there (as will be detailed in discussing the case of Jerusalem women).

7. The consequences of exit and entry regulations on the status of the returning resident

The exit and entry regulations had ramifications for the retention of the status of the resident returning from abroad: not only on his right to return, but also on his ability to continue to

remain permanently in Jerusalem or the territories, without any harm occurring to his status as a result of his stay abroad. The link between the exit and entry regulations, on the one hand, and the status of the resident as a permanent resident, on the other, was made perfectly clear in the affidavit of Colonel Gadi Zohar, the then head of the Civil Administration of Judea and Samaria, deposed on 28.9.94 (in response to a H.C. etition 5606/93, 5810/93, attached and designated as ד/5):

> "Departure abroad with a valid "exit card" or "laissez passer" has far more significance than merely enabling lawful departure from a region that , as described above, has been proclaimed a closed military area. The additional significance is, that a resident of the area currently abroad, and holding a valid "exit card" or "laissez passer" may return at any time that the documents are valid, **and it may not be claimed that the exiting resident has ceased to be a resident of the area.** A resident who returns to the area while his "exit card" or "laissez passer" are valid, is entitled to receive the identity card he deposited with the authorities before leaving the region.
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> "Thus, any resident who has left the area and wishes to return to it while his "exit card" or "laissez passer" is valid is **entitled to return automatically and to continue to be a resident of the area, even if during his stay abroad he transferred the center of his life to another place**." (emphasis not in original - E.A.).

As for the applicability of the same policy and the standard presumption of the retention of the status of permanent residents, see the affidavit of Mr. Amir Cheshin, who served as the head of the military administration for the General Command, and, subsequently, until 1994, as the Advisor on Arab Affairs to the Mayor of Jerusalem. According to him, at least until 1994, the status of residents of Jerusalem returning during the period of validity of their exit card or laissez-passer was never questioned, even if they had spent an extended period of time abroad. (Mr. Cheshin's affidavit is attached below and designated as ד/6).

8. Permanent residence and foreign citizenship

As long as the resident returned during the period of validity of the return permit in his exit card or laissez-passer, the policy in force, until 1995, recognized the right of the resident to return to his home and retain his status as resident, even if he had obtained foreign citizenship.

Evidence of this is the consistent practice - as detailed in the case of petitioner 19 and his children (as will be specified in section 36, below) - of stamping the foreign passport of the Jerusalem resident with the stamp "returning resident" upon his reentry. This regulation reflected a reality in which many residents of Jerusalem maintained close ties to their city and spent time there frequently; the regularization of their stay abroad through the obtaining of citizenship did not signify, for them, a disruption of their permanent liens with the country; it was merely done with the view of returning to their city and dwelling in it after establishing themselves financially, or obtaining a higher education degree or professional experience, whilre abroad.

On the other hand, Jerusalem residents who obtained citizenship abroad or obtained permanent resident status abroad, and returned home in violation of the conditions of the exit permit, without a valid reentry permit - could lose their residency. Such was the case, for example, of Mubarak Awad (H.C. 282/88, Mubarak Awad vs. The Prime Minster, Minister of Interior and others, Supreme Court Judgments vol. 42(2) p. 424).

9. Permanent residence of Jerusalem women married to foreigners

Until 1994, requests made by male residents of Jerusalem for family unification with their foreign wives were answered favorably in most cases, if the husband lived in Jerusalem. On the other hand, women residents of Jerusalem who married foreign residents or residents of the territories were denied permission for family unification in Jerusalem with their foreign husbands.

Such women were obliged to live in the territories or abroad in order to create a common family life with their spouses. Many of these women maintained close ties to Jerusalem through frequent visits, remained in the city for substantial periods of time, gave birth to their children in Israel and registered them in the population registry or reported their births and had their names registered in their identity cards. As long as the woman made sure to return to Israel during the period of validity of the exit card, she retained her status as a permanent resident.

The petitioners are unaware of a single case, preceding 1994, of cancellation of permanent resident status of a Jerusalem woman who was married to a foreign resident and obliged by the respondents' policy to join her spouse abroad, and did not absent herself from Jerusalem for a period longer than three to six years. Such women, who made certain to visit Jerusalem during the period of validity of the exit card, or who made sure to extend it, in practice retained their rights to return to live in Israel.

10. Residents in Jerusalem and dwellings in the territories

The consistent policy of the Interior Ministry until 1995 recognized the status of Jerusalem residents as permanent residents in Israel, even if they moved to live in a house beyond the municipal borders of the city. The authorities did not consider dwelling in the occupied territories to constitute settling abroad, and recognized in fact the reality whereby many Jerusalem residents found dwellings outside the borders of the city, while conducting most of their life's affairs within Jerusalem - work, trade, studies, medical services, etc. This reality corresponded to the restrictions on building and planning and the expropriation of lands in Jerusalem, which created a housing shortage among the Arab population of the city.

11. Residence in Jerusalem in light of the National Insurance regulations and the policy of the National Insurance Authority

A. Already in the early 1970's, some of the residents of East Jerusalem transferred their places of residence to the territories, and a question arose as to their status as applied to National Insurance payments resulting from this move. In a decision made by the Ministerial

Committee for Jerusalem on February 13, 1973 (decision ב'/15, attached below and designated as ב/7) it was determined that:

> "Whoever possesses an Israeli identity card by virtue of his being a Jerusalem resident, and has continued to pay regularly his payments to National Insurance - will continue to enjoy the privileges of National Insurance even if he transferred his place of dwelling outside of the municipal boundaries of Jerusalem".

B. In 1980, the same committee took up the issue again, and decided that a special committee would investigate the matter and present its recommendations. But no new decisions were taken by the Ministerial Committee, at least until 1984.

C. In 1987, the Minister of Labor and Welfare adopted the National Insurance Regulations (Rights and Duties under the National Insurance Law concerning those not Residing in Israel). These regulations applied to those registered in the Israeli Population Registry and possessing Israeli identity cards, but who are not citizens of Israel, and who lived in the areas of Judea, Samaria or the Gaza Strip, but whose registered address in their identity cards was Jerusalem.

These administrative regulations recognized the eligibility of those Jerusalem residents residing in the occupied territories to continue to receive certain benefits under the National Insurance Law, on condition that they began to receive the payments before January 1, 1987. Furthermore, Regulation 15(d) states:

> "If a person changed his place of residence to Israel, and ceased to be a resident of the region [i.e. the occupied territories], these regulations will apply to him for a period of two years after the day on which he changed his place of residence to Israel".

The implicit meaning of this Regulation is that the Government, exercising its power to enact secondary [i.e. administrative] legislation, recognized that the dwelling of a Jerusalem resident in the occupied territories did not result in the revocation of his status as a resident

of Israel, and, if he returned to live within the State's borders, his full rights under the National Insurance Law were renewed after a period of two years. Furthermore, a ruling of the National Labor Court determined that the aforementioned Regulation 15(d) is merely a refutable factual presumption, and a resident returning to Jerusalem could regain his rights immediately under the law if he could prove that he returned permanently to Jerusalem, even without the two-year waiting period.

(**Haldieh et al v. The National Insurance Institute** Labor Court Judgments vol. 23, p. 36).

D. As for residents of Israel who transferred their dwelling place to another country outside of the region, such as Jordan, and returned to live in Israel - the National Insurance Institute throughout the years recognized the continued eligibility, under the National Insurance Law, of any such person who could prove that he re-established his center of his life in Israel, even in cases of extended absence, and without requiring a stay of two years before the resumption of his rights to social security benefits.

E. This policy of the National Insurance Institute corresponded precisely to the consistent policy of the Ministry of Interior, since it is inconceivable that someone whose right to reside in Israel had expired, and whose presence in Israel was not legal and whose status was that of an illegal alien, could be eligible upon his return to the rights of a legal resident according to the National Insurance Law.

F. This approach of the Government in its administrative legislation was again expressed in 1993, with the enactment of the National Insurance Regulations (Payments to Jerusalem Residents who Transferred their Dwellings to Judea, Samaria or the Gaza Strip), 1993.

These regulations reaffirmed and extended the rights of Jerusalem residents, who moved to the territories before January 1, 1987, to receive a renewal of certain payments under the National Insurance Law, even if these payments had been previously canceled. The new regulations relate specifically to Jerusalem residents who transferred their place of residence beyond the Green Line before 1987. Even though they lived in the territories for an extended

period of time, the Regulations hold them to be Israeli residents legally registered in the Population Registry and entitled to social security rights of Israeli residents.

12. Knowledge of the policy and reliance upon it

The policy described above, concerning the exit of Jerusalem residents abroad or to the territories, their return to Jerusalem and the retention of their status, was the official policy of the Interior Ministry towards all who applied to it to receive services. Furthermore, it was also put in writing on the back of the exit permit. It was public knowledge and was never contradicted by any action of the Interior Ministry. The consistent experience of the petitioners and the entire body of residents with the Ministry of Interior, in their necessary contacts with the officials of the Ministry of Interior over the course of many years, confirmed this consistent policy over and over again.

Many Jerusalem residents, including the petitioners, relied on this policy and regulated their lives accordingly.

B. The Change in Policy and Retroactive Deviation from Past Regulations

13. Over the last two years, the Ministry of Interior has informed many Jerusalem residents that their permit for permanent residence in Israel has "expired". This "expiration" is, in fact, an administrative decision to revoke their status as permanent residents; it is addressed to Jerusalem residents, who acted throughout the years in accordance with known policies and regulations, as described above. The cancellation of their status is an entirely new phenomenon. It is not a renewed enforcement of regulations or principles, which were determined in the past but not properly enforced. On the contrary: the Ministry of Interior now cancels the status of those residents based on a deviation from policies and practices that have been in force since the 1970's, and upon which tens of thousands of Jerusalem residents relied with good reason and in good faith.

14. The State Ombudsman's report: publication of new regulations in December 1995

The decision to change the past policy may be deduced from Annual Report 47 of the State Ombudsman (1996), which devotes a special chapter to "the expiration of validity of permanent resident permits" (pp. 575-580). According to the State Ombudsman (p. 576):

> "In December 1995 a discussion was held with the State Attorney General concerning the question as to whether the region of Judea, Samaria and the Gaza Strip (henceforth - the region) was to be considered 'outside of Israel', for the purpose of the expiration of the validity of permanent residence permits according to the Law of Entry to Israel. Pursuant to this discussion, the Legal Advisor of the Interior Ministry ordered the East Jerusalem office to consider the region as also being 'outside of Israel'; thus whoever had remained in the region for over seven years, had his permanent residence permit expire, and was to be listed in the population registry as one who had ceased to be a resident. **Furthermore, the regulation stated, that short visits to Jerusalem in the course of the seven years would not be counted as interruptions of the continuous time period for the purpose of calculation of the period of residence outside Jerusalem** (emphasis not in original - E.A.).

As the Ombudsman's report states, the change in policy, as exemplified in the new instructions of the Ministry of Interior of late 1995, is expressed in two areas:

First, residents of Jerusalem living in settlements beyond the Green Line ceased to be residents of the State of Israel if they dwelt in the territories for more than seven years. **The decision that residence expires as a result of living in territories under Israeli rule, and that this residence cannot be reinstituted - is a new decision and a change in policy.**

Second, the residents of Jerusalem, who made sure, throughout the years, to return to Jerusalem during the period of validity of the 'exit card' or the 'laissez-passer', and to remain

in Jerusalem frequently, also ceased to be residents of the State of Israel. Under the new policy, noncontinuous stays abroad in the past, which cumulatively totaled more than seven years, provide a sufficient basis for a determination that one's "center of life" had changed and that the right of residence is to be annulled, whereas the previous requirement was that only an uninterrupted stay of 7 years abroad without renewal of the exit permit could be considered as a change of "center of life". **The decision that residence expires because of a noncontinuous stay abroad, and that such residency cannot be reinstituted - is a new decision and a change in policy.**

The new directive was not made public. Thus, the full import of the change in policy was not made known. Nevertheless, **the new directive was made immediately applicable. Its effect was that many residents of Jerusalem were deleted from the population registry and their status as residents of the State was immediately canceled, based on their past behavior, without any previous warning of the change and with no transition period.**

15. The change in policy concerning the residents of Jerusalem living in the territories according to the decision of the acting Minister of Interior, Haim Ramon

A decision to consider the residents of Jerusalem living beyond the Green Line as those whose permanent resident permits in Israel had expired was made by Mr. Haim Ramon in the period of his tenure as Minister of Interior, between November 1995 and June 1996. He formulated this position in response to the petition of a woman who had lived for many years in one of the towns of the West Bank, and concerning whose status the Ministry of Interior was called upon to determine its policy. The Minister's decision was that this woman, and others in her situation, had ceased to be permanent residents of the State of Israel. Until this decision, the Ministry of Interior had not formulated a final position, that residence in territories under Israeli control was the same as settlement in a foreign country, leading to the cancellation of the status of Jerusalem residents.

See Mr. Ramon's statement to the attorney for the petitioners, as described in the attached affidavit, designated as ו/8.

16. Change in policy of the Ministry of Interior and the statistics of expired residency

The change in the policy of the Ministry of Interior is vividly expressed in the statistics on the numbers of Jerusalem residents dropped from the population registry each year.

The following is a list of the data for the past decade, as furnished by the Ministry of Interior:

Year	Number of Residents whose residence expired
1987	23
1988	2
1989	32
1990	36
1991	20
1992	41
1993	32
1994	45
1995	96
1996	689
1997	606 (plus 500 cases still under examination)

Attached below are the letter of Attorney M. Bakshi of the Ministry of Interior of January 15, 1997, providing the data until 1996, and the letter of the Director of Population Registry, Mr. Raphael Cohen, of December 17, 1997, providing the data for 1997. These are designated as appendices ו/9 and ו/10 respectively.

The numbers speak for themselves and reveal the radical change in policy instituted by the Ministry of Interior at the end of 1995.

17. The link between the new policy on the expiration of residency and the cancellation of sexual discrimination in family unification

In March 1994, the Minister of Interior and Prime Minister, the late Yitzhak Rabin, decided to cancel the policy which denied family unification to female residents of Jerusalem, and to institute an egalitarian policy. This decision was taken following a petition (H.C. 2797/93 **Belinda Garbit and others vs. the Minister of Interior),** submitted by the Association for Civil Rights in Israel which claimed, that the discriminatory policy was illegal, as it violated

the principle of equality between the sexes, and the basic rights of human dignity. According to the Prime Minister's decision:

> "Permits for permanent residence for spouses of residents of East Jerusalem shall be granted without the distinction previously in force, whereby permits were granted only if the husband requested to be united with his spouse, or when the woman requesting reunification was a citizen and not merely a permanent resident" (Letter of Attorney M. Bakshi of the Ministry of Interior, 31.3.96).

The petition in H.C. 2797/93 is attached below and designated as ד/11. The letter of the attorney of the respondent replying to the attorney of the petitioners in the above mentioned petition of 23.6.94, informing of the cancellation of sexual discrimination, is attached and designated as ד/12. The above-mentioned letter of Advocate Bakshi of 31.3.96 is attached and designated as ד/13.

Thus, women who were previously denied the possibility of submitting family unification requests or whose requests were automatically rejected, and who had waited extended periods for the opportunity to return to live with their families in Jerusalem, now received a new chance. Following the publication of the change in policy, many of these women renewed their permanent residence in Jerusalem, disrupted their ties with the temporary places where they were required to live by the previous discriminatory policy, and expected to realize their newly recognized rights.

This led to "a sharp increase in the number of requests presented for husbands as well as in the number of approved requests", as phrased by Attorney Bakshi in her above-mentioned letter (ד/13). Thus, at first, family unification requests were treated with a tendency to approve them. But the directives on cancellation of permanent residence, which were issued in late 1995, enabled the Ministry of Interior to reject the pending applications for family reunification which were submitted by those Jerusalem women, who had just recently been presented with the opportunity to unite with their families in Jerusalem. The result was that those women, who previously could not live with their families in their city because of sexual discrimination, now found themselves - after presenting their requests for family reunification - completely deprived of residence rights themselves, and the discrimination against them had now become even more severe.

18. The procedure of cancellation of residency after 1995

Starting in 1996, East Jerusalem residents who contacted the Ministry of Interior for various reasons (exchange of a worn-out identity card for a new one, registration of newly born children in the population registry, obtaining an identity card for their child when he reached the age of 16, etc.) were refused the requested services and received a short standard message, written in Hebrew without translation, which informed them that: "your permanent resident permit has expired... as you have moved the center of your life to outside of Israel". This "expiration of residence" usually included the expiration of residence of the person's children as well. The announcement concluded with the instruction that the resident and the other members of his family were to return their identity card and leave the country - usually, within 15 days.

19. Lack of previous warning and retroactive application of the new policy

The announcements on "expiration of residence" caught the residents completely by surprise and were issued without any warning of the new policy or the intent to cancel their residence.

Although the instruction was a radical change in policy, and an act of blatant interference in the patterns of life maintained by residents over a period of many years, in accordance with the known previous policy, nonetheless, the Ministry of Interior did not deem it necessary to make its new policy public or to make it applicable only from the date of its being made public.

On the contrary, the determination of "transfer of the center of life" was based on the resident's actions in the past. The new policy was endowed with far-reaching retroactive applicability: the notices of "expiration of residence" were given to people whose present center of life was Israel, which was their center of life as determined by the National Insurance Institute as well. The same corpus of facts that, until 1995, served as the basis for continuation of permanent residence in Israel, became, after 1995, the factual basis for denial of residence.

20. Lack of supporting reasoning

The notice of "expiration of residence" was given to hundreds of residents without any individual reason, other than the general, standard notice of "transfer of center of life". No one was provided with the factual basis for the decision.

21. Lack of a hearing

At the time that the residents were advised of their "expiration of residence", the Ministry of Interior officials also told them that they were to leave the country within 15 days, and nothing more. In general, these residents were not informed of their right to voice their claim against the cancellation of their residence or to appeal the decision.

Those injured parties who did seek legal help and had petitions presented to this honorable court, arguing for the cancellation of the Ministry's decision on the grounds of a lack of a hearing, received a response from the Ministry, stating that they might present their claims; furthermore, they were told that if the respondent rejected the resident's claims, the resident would be granted a period of time in which he could again appeal to the court before steps would be taken to remove him from Israel. (See **H.C. 3124/97 Iman and others vs. the Ministry of Interior and others,** case 97(2) 360; **H.C. 3125/97 Yusef and others vs. the Ministry of Interior and others** , case 97(2)681).

As a result of these petitions and others, the Ministry of Interior changed the text of the announcement on the expiration of residence. According to the new text, written in Hebrew alone, the Ministry informed the resident that "based on the information in our possession, the validity of your permanent resident permit has expired and you have ceased to be a resident... you may present, over the next 45 days, any evidence or claim that may contradict the information in our possession and prove that the validity of your permit has not expired. If such evidence and claims not be presented within 45 days, we will consider that you have ceased to be a resident, and you will be required to leave Israel within 30 days and return the identity card and/or laissez passer in your possession."

22. It is thus clear that, even according to the respondent, the notices given to the petitioners were defective. Notifications of expiration of residence given to residents without mention of their right to a hearing may be regarded as a provisory notice, which, in itself, cannot effect a change in the status of the petitioners or of others in their situation.

23. The burden of proof

Even though the initiative to cancel the permanent resident permits came from the Ministry of Interior, and it was the Ministry that sought to change the existing situation, nonetheless, the Ministry did nothing to establish a comprehensive, convincing factual framework for verifying change in the center of life. Instead, it shifted the burden of proof onto the shoulders of the resident and required him to prove to the respondent that his center of life had not changed. The respondent did this without revealing the facts or evidence in its possession.

24. Lack of criteria for determining the "center of life"

The Ministry of Interior did not make public clear criteria for determining the center of life of a resident - and it is doubtful whether it formulated such criteria. Neither the petitioners and their attorneys, nor the population of East Jerusalem as a whole, possess sufficient knowledge as to how to act so that their residence not be considered by the respondent as expired; thus, they do not know what evidence or arguments to bring in order to prove that their residence is still in force.

25. Exhaustion of remedies for changing the general policy

The change in policy was not made public, but became known, a little at a time, during the first half of 1996, as the residence permits of East Jerusalem residents were being denied.

When it became clear, that the seemingly sporadic incidents were part of a new phenomenon, and that they indicated a change in policy, the attorneys for the petitioners turned to the director of the High Court department of the State Attorney's office, Attorney Uzi Fogelman. In a letter on behalf of the Association for Civil Rights in Israel (petitioner 2) of

July 31, 1996, the attorneys for the petitioners pointed out "*a new phenomenon of the confiscation of identity cards of East Jerusalem residents who are not citizens, and the cancellation of their status as permanent residents.*"

It was argued that the new phenomenon is illegal "*both in its substance and in the manner in which it is being applied in violation of the rules of due process*". The attorneys for the petitioners requested to be informed of the rules that guide the officials of the Ministry of Interior.

The attorneys for the petitioners emphasized the abrupt departure from the previous policy; the fact that the new regulations were not made public; the reliance of the residents of East Jerusalem on the previous policy; the lack of warning, the lack of hearings and the retroactive application of the policy. They argued that "*any change in policy must only be valid for the future, after a reasonable time period to enable people to adjust to the new situation and plan their lives accordingly*".
The letter of July 31, 1996 is attached and designated as appendix **ט/14.**

The only response to this letter was the reply of September 10, 1996 from Attorney Y. Gensin of the State Attorney's office, which stated that "*the Minister of Interior has only recently assumed his position, and he wishes to study the issue*".

The response is attached and designated as appendix **ט/15.**

Section C - The Facts Concerning the Petitioners' Center of Life and the Revocation of their Status as Permanent Residents [summary only]

26. **Manko**

Manko (petitioner 6) was born in Jerusalem in 1968. Her first name means - "Jerusalemite". From her birth she has known only Israeli rule in her city.

In September 1985 she married Manko, a Jordanian citizen. At the time of their marriage they were prevented from living in Jerusalem. The Israeli Interior Ministry did not accept applications for family unification from Jerusalem wives for foreign husbands. ....

Mrs. Manko gave birth to three of her six children in Jerusalem. She reported the births of all her children to the Interior Ministry, and their names were listed in her identity card.

She gave birth to her first son in Jerusalem in 1986, and stayed in Jerusalem for a long period, living in her parents' home which was was also her own home.

Shortly after the birth of her second son in September 1987 she came to Jerusalem and stayed for approximately three months until early 1988.

At the end of 1988 she returned to Jerusalem with her sons and stayed for half a year, until May 1989.

In September 1989, after the birth of her third child, she returned to Jerusalem and stayed for three months.

In 1990 she spent two months in Jerusalem with her children.

In 1991, after the birth of her fourth child, she came to Jerusalem twice, staying approximately a month each time.

In April 1992 she gave birth to her fifth child in Jerusalem and stayed for two months.

In June 1993 she came with her children to Jerusalem and stayed for over two months. This time her husband joined her, and she tried to submit a family unification application by means of an agent [a professional intermediary with contacts in the Interior Ministry].

In the Spring of 1994 she learned of the change of policy in the Interior Ministry, recognizing the right of family unification of wives with their foreign husbands. This time she came back for good. She and the children reentered Israel on June 6, 1994. Her husband joined her in August. The family has remained in Jerusalem ever since. Mrs Manko returned for a few days to Jordan in order to sell all the family's belongings, terminate their rental contract, and bring back their personal possessions to Jerusalem.

Her school-age children have been attending Jerusalem schools since the 1994-95 school year. Her husband found employment in construction sites in Israel, and worked until his visa was discontinued. The National Insurance Institute confirmed that Mrs. Manko and her family live in Jerusalem, and she has paid her social security taxes. She is a member of an Israeli health cooperative [kupat cholim]. The couple rented an apartment of their own in an East Jerusalem neighborhood.

Mrs. Manko resubmitted a family unification petition in 1995, having been informed that there was no record of her 1993 application.

On March 2, 1997, when she inquired in the Interior Ministry concerning her family reunification request and the extentsion of her husband's visa, the attending clerk confiscated her Israeli identity card, told her that she and her family had 15 days to leave the country for good, and handed her a standard letter in Hebrew which she could not read and which was not translated or explained to her. This letter stated that her permit of permanent residence in Israel had expired because she had transfered her center of life outside of Israel. Mrs. Manko insisted on seeing the Director of the East Jerusalem office of the Interior Ministry. He told her that she must leave within 15 days and that there is nothing she can do about it and no point in consulting a lawyer. He offered no further explanation.

When Mrs. Manko gave birth to her sixth child two months later in a Jerusalem hospital, the National Insurance Institute refused to pay her hospitalization costs and maternity benefits [to which every mother in Israel is entitled by law] explaining that the Interior Ministry's determination that she is not a resident is final.

The Mankos were unable to pay their rent and could not move freely in and out of their neighborhood because they lacked identity documents. During the fall and winter of 1997-1998 they lived in a tent camp for homeless Jerusalem residents, many of whom had lost their residency, in East Jerusalem. The conditions were extremely harsh and their childrens' health was affected. After the late snows of March 1998, and shortly before the camp was disbanded, the family moved into Mrs. Manko's parents' apartment in the Old City.

The appeal to the Interior Ministry submitted by Mrs. Manko's attorney was promptly rejected, without any reasons given, by the Director of the East Jerusalem office.

...

27. **and Sayad**

and Sayad (the 7th and 8th petitioners), both Jerusalem residents from birth, were married in 1972. In 1982 Mr. Sayad was unable to find employment in Israel. He found a job as a truck driver in Jordan. His wife and children joined him in 1985. They spent all their vacations each year in their Jerusalem home. In June 1994 the entire family returned permanently. Mr. Sayad found employment as atruck drive. Later he participated in a government sponsored professional retraining program. All the school age children are studying in Jerusalem schools. The youngest daughter suffers from mental and physical disabilities. She studies in an Arabic language special education school which has been extremely beneficial for her. She also receives social security handicap payments. The oldest son is employed in West Jerusalem.

In 1991 and 1994 the Interior Ministry issued the parents and elder children identity cards without any difficulty.

In October 1996 their third child requested an identity card, having reached the age of 16. He was handed a standard letter stating that his and his parents' permits for permanent residence in Israel had expired because they transfered their center of life outside of Israel, and they must leave the country within 15 days.

28. **Abu Kanfar**

Mr. Abu Kanfar has worked in his family's souvenir and leather goods shop in the Old City every day of his adult life. Except for a period of three and a half years in a rented

apartment in the contiguous Jerusalem suburb of A-Ram, he has lived within the Jerusalem municipal boundaries all his life.

When his first daughter was born and he requested to register her in the Interior Ministry, he was asked to bring proof of his center of life in Jerusalem. Mr. Kanfar lives with his wife and child, his brother, his brother's family and his mother in a house in Jerusalem rented to his mother. He submitted the rental contract with a letter of explanation.

On February 13, 1997, the Interior Ministry confiscated his identity card and handed him a standard letter in Hebrew stating that his and his infant daughter's permits of permanent residence in Israel had expired and they must leave the country.

29 **and Hadad**

and Hadad are both residents of Jerusalem. In 1980 they were married. Shortly after ther marriage Mr Hadad found employment as a bulding supervisor in Saudia Arabia. Mrs. Hadad joined him a year later. They visited Jrusalem frequently with their children who were born in Saudia Arabia and registered as Jerusalem residents. Their status in Saudia Arabia was that of a foreign worker and his dependents on short-term visas (valid for one to two years) dependent on the continuation of Mr. Hadad's employment. In 1991 Mrs. Hadad returned permanently with the children to Jerusalem. Mr. Hadad terminated his employment and returned to Jerusalem in January of 1992. They experienced no problems. Mr. Hadad is employed in Israel and he pays the municipal Jerusalem taxes for their home.

When their eldest son applied for a first identity card at the age of 16, the family received in February 1997 a standard letter by mail to their Jerusalem address, stating that the permits of permanent residence in Israel of the eldest son and of his parents had expired because they had transfered their center of life outside of Israel and they must leave the country.

...

32. **Mishni**

Mishni (petitioner 14) has lived in Jerusalem all her life. In 1983 she married an American citizen originally from the West Bank. She has visited him periodically in the United States, but the great majority of her time she has spent in Jerusalem. All her

children were born in Jerusalem. In 1991 she acquired American citizenship, but since May of 1991 she has not left Jerusalem even once. In 1994, following the change in the Interior Ministry's policy concerning family reunification, she submitted an application for family unification with her husband. Her husband received visas which were periodically extended.

In March 1996 Mrs. Mishni requested a new identity card in place of a worn card. Her identity card was confiscated, her request was refused and she received a written notice that she "abandoned Israel". In August 1997 she was informed that her family unification request was rejected because she and her children "transfered their center of life abroad and what is more, they are United States citizens".

33. **Amira**

Amira (petitioner 15) was born in Jerusalem in 1960. In 1977 she married her cousin, a resident and citizen of Jordan. She immediately submitted a first family reunification request, which was rejected after three weeks. Over the ensuing months and years, Mrs. Amira submitted nine more family reunification requests, as well as appeals and personal letters to the Minister of Interior, all to no avail. She lived with her husband in Jordan but returned frequently and gave birth to most of her children in Jerusalem.

With the change of policy concerning family reunification in 1994, the family returned and settled in Jerusalem in 1994 and the husband's visas were periodically extended.

On April 14, 1997 the Interior Ministry informed Mrs. Amira that her (ninth) family reunification request was rejected as she herself had ceased to be a resident of Israel. A month later her daughter, who had requested a first identity card having reached the age of 16, was asked to present her mother's identity card. The i.d. card was not returned. Instead the clerk handed her a standard letter from the Interior Ministry stating that she, her mother and her elder brother had ceased to be residents.

34. **and Awidat**

D and W..... Awidat (petitioners 16 and 17) were granted family reunification in November 1995. Mrs. Awidat is from Jerusalem and her husband is from Hebron. After their marriage in 1974 they lived in Jordan. Mrs. Awidat visited Jerusalem

frequently and for extended periods. In 1993 they spent half a year in Jerusalem and since July 1994 they reside permanently in Jerusalem with all their children. In July 1996 they received a letter informing them that Mrs. Awidat had seized to be a permanent resident of Israel, that the family reunification request was therefore based on misrepresentation and that the granting of permanent residency to her husband must be revoked.

35. **Zaru**

Zaru (petitioner 18) was born in Jerusalem and has lived her entire life in Jerusalem.

In 1973 she married her husband, himself Jerusalem-born but lacking Jerusalem residency, as he was in Hebron in 1967. Mrs. Zaru and her mother-in-law submitted numerous family reunification petitions for her husband, all of whuch were rejected. From 1973 until 1986 Mrs. Zaru remained in Jerusalem and brought up the couples' children by herself in Jerusalem, visiting her husband periodically in Guatemala, where he worked. In 1986 her husband left Guatemala for Jordan hoping to gain admission to Jerusalem. Mrs. Zaru's requests to obtain a visitor's entry permit for her husband were rejected. She submitted an additional family reunification request, which went unanswered. Finally she joined her husband in Jordan.

Since the beginning of 1994, when Mrs. Zaru's husband was granted a visitor's permit, the entire family has returned to Jerusalem and lived here continuously. The husband's visas have been extended. In a written response of March 1994 the Interior Ministry advised Mrs. Zaru to submit a new family reunification request (which she promptly did) and promised to grant her husband work permits while the request is under consideration.

On December 25, 1996 the Interior Ministry sent to Mrs. Zaru's attorney a standard letter stating that Mrs. Zaru's permit for permanent residency in Israel expired and that she must leave the country within 15 days.

and Greib (petitioners 19 and 20) are both Jerusalem natives, born in Jerusalem and residents of the city. They have lived their entire lives in Jerusalem, married each other in Jerusalem in 1975, and their children, except for the youngest, were born in Jerusalem.

For more than ten years after their marriage they lived in Jerusalem continuously. Mr. Greib worked as the assistant manager of a supermarket in West Jerusalem. Mrs. Greib was a housewife. They were (and remain) members of a local health cooperative ("kupat cholim"), paid social security taxes and received social security payments for their children.

In 1985 the family traveled to the U.S. in order to visit Mrs. Greibs' parents [who are naturalized American citizens living in Virginia]. At the parents' invitation, they stayed on, initially with the intention that their children should learn English. Mr. Greib found employment in an Israeli-owned food chain. They visited home in Jerusalem each summer. While their original intention was to stay in the U.S. only briefly, in 1987 the Intifada broke out and the Greibs decided that conditions in their East Jerusalem neighborhood (Issawiya) were too dangerous. [Schools were closed for extended periods, studies totally disrupted and violent encounters between soldiers and youths frequent.] Wanting to assure their children's safety and education, they decided to stay longer in the States.

However they continued to visit home every summer vacation. Their laisez-passer was renewed without problems every year.

In 1992 the family took advantage of their opportunity to acquire American citizenship. They did not, however, intend to stay permanently. In the same year, 1992, Mr. and Mrs. Greib visited Jerusalem with their youngest (American-born) son. They were again granted a renewal of their laissez-passer and referred by the Interior Ministry to the Israeli Embassy in Washington DC concerning the return of the older

children who had stayed behind. The Embassy informed Mr. Greib that the children should return on their U.S. passports.

In 1993 the entire family returned permanently to their home in Jerusalem. The older children and Mr. Greib were granted by the Interior Ministry stamps in their U.S. passports stating that they are "returning residents". The youngest American-born son received a stamp in his U.S. passport stating that he is a permanent resident under the Law of Entry to Israel, including his Israeli identity number. Both Mr. and Mrs. Greib were issued new Israeli identity cards in place of their old identity cards, which were worn out. The Interior Ministry issued to their eldest daughter a first Israeli identity card in 1994, when she reached the age of 16 [as required by law of every 16 year-old resident of Israel].

The family resettled smoothly in Jerusalem without any difficulties. They are living in their own house, which they expanded and finished using their savings from Mr. Greib's work in the U.S.. Their eldest daughter married a Jerusalem resident and gave birth to her first child, who was registered as a Jerusalem resident. The second daughter also married a Jerusalem resident and will soon give birth to the Greibs' second grandchild. The other children are studying in Jerusalem schools, now in their fifth school year since the family's return. They renewed their social security and national health insurance payments and they are recognized by the National Social Security Institute as residents entitled to child allowances and health care. Mr. Greib works as the warehouse manager of a major supermarket in West Jerusalem.

In January 1997 the Greibs' second daughter, , submitted a request to the Interior Ministry to receive a first identity card, having reached the age of sixteen. On January 23, 1997, an Interior Ministry clerk handed her a form letter in Hebrew, stating that she and her parents had ceased to be Jerusalem residents; their permits for permanent residence in Israel had "expired ... because of the fact that you acquired citizenship of the United States by means of naturalization". The letter also stated that her parents must surrender their identity cards to the Interior Ministry and that she and her parents must leave the country.

The Interior Ministry answered a detailed appeal by the family's attorney with the following statement: "The whole family holds an American passport [sic] and they received on January 23, 1997, a letter that they expired [sic] and ceased to be residents of Israel".

D. THE LEGAL FRAMEWORK

37. The legal framework which regulates, accordingly to the court's precedents, the status of East Jerusalem residents who have not naturalized, is section 1(b) of the Law of Entry to Israel, 1952. This article states :

> "The residence in Israel of a person who is not an Israeli citizen nor a possessor of a new immigrant visa [under the Law of Return], shall be by a residence permit according to this law".

Section 2(a) of the law authorizes the Interior Minister to grant a person a permit for permanent residence in Israel. By virtue of the application of the law, jurisdiction and administration of the State of Israel to East Jerusalem, "every person who was registered in the population census which was conducted in 1967 is considered to be a person who received a permanent residence permit" (H.C..282/88 *Mubarek Awad v. the Prime Minister and the Interior Minister and others*, henceforth "**Awad**").

38. The status of the permanent resident in Israel was held to be a status reflecting the reality of life, and the test of this reality of life, as held in the **Awad** case, is the person's "center of life".

39. Accordingly to Section 11(a) of the Law of Entry to Israel, the Interior Minister may, at his discretion, cancel a residence permit.
In exercising this discretion the respondent is subject to all the grounds of judicial oversight of administrative action [references omitted].
The cancellation of a residence permit of a person legally residing in Israel requires today, in contrast to the past, that the reasons for this measure be stated, according to a recent amendment of the law concerning administrative decisions.

40. In 1985 the Interior Minister adopted for the first time regulations which state the conditions under which the permanent residence permit may expire: the Entry to Israel Regulations (Amendment No. 2), 1985. Regulation 11(c) states :

> "the validity of the permanent residence permit will expire ... if the possessor of the permit abandons Israel and settles in a state outside of Israel".

According to Regulation 11A, a person is considered to have settled in a state outside of Israel if :

> "1. he sojourned outside of Israel for a period of at least 7 years ...;
> 2. he received a permanent residence permit in that state;
> 3. he received the citizenship of that state by naturalization."

The court has held that these conditions under regulation 11A are factual presumptions and "**these presumptions may be refuted by the holder of the permit**" (H.C.7023/94 *Shakaki and others v. the Interior Minister*).

<u>The effects of the cancellation of a permanent residence permit</u>

41. Cancellation of a permanent residence permit in Israel leads to extreme consequences for the resident of East Jerusalem. A person whose permit was canceled is not allowed to be in Israel and he must leave the country. As long as he does not leave, he commits a crime under Section 12 of the Law of Entry into Israel. He is in constant jeopardy of losing his **personal liberty** by arrest and deportation, under Section 13 of the Law.

His **social rights** and those of his children are canceled, including both the right to health care under the National Health Care Law and the right to social security allowances, even if he has payed the health and social security taxes all his life.

His **property rights** are affected: he cannot continue to enjoy his home and any other property belonging to him in Israel.

His **freedom of occupation** is limited: he can no longer exercise his freedom of occupation in Israel, as he must leave his place of work or business and the source of his earnings.

His **freedom of movement** is limited, and he may not re-enter Israel and reside in the country except by virtue of short term tourist visas.

A Jerusalem resident, whose permanent residence was canceled by the respondent, is required to break off his stable connections with his birthplace, with his parents and other family members whose residency was not canceled, with the surroundings which shaped him and with a central element of his own identity. All this amounts to an infraction of his **human dignity.**

From the point of view of the force of injury to the basic constitutional rights of the Jerusalem resident, the cancellation of his residency in Israel is similar to the cancellation of the citizenship of an Israeli citizen, as it tears him away from the very structure of his life. (Compare H.C.2757/96 *Alray v. the Interior Minister and others* [a case in which the High Court rejected a demand to annul the citizenship of Prime Minister Rabin's assassin, inter alia because of the fundamental nature of the right to citizenship].

42. Although for the purposes of the following legal argument the petitioners will base themselves upon the legal framework established in the **Awad** judgment, this precedent is controversial. It ignores the clear distinction between immigrants, who requested out of their own free will to live in Israel, and the special situation of the residents of East Jerusalem, whose Israeli residency was imposed upon them, who did not immigrate to Israel from any place, and whose birthplace and roots are in Jerusalem. Holding people who were born, grew up and have lived their entire life under Israeli rule to be alien guests in Israel, present only by virtue of revocable permits, misrepresents the reality of their lives and is inherently discriminatory.

E. THE LEGAL ARGUMENT

43. Summary of the arguments

The petitioners will argue as follows:

a. That their sole center of life, at present and at the time of the respondent's decisions concerning them, is in Israel, and accordingly the respondent exercised unreasonable discretion when he ignored this fact; and furthermore, the respondent had already recognized their status as permanent residents when they returned and resettled in Israel and only later did he alter his decision and cancel their permits for permanent residence without any justification resting on new facts, as required by the court's precedents;

b. That the petitioners never broke off their connections to Israel and did not change in the past their center of life, in the light of the tests accepted by the court's precedents, which take into consideration a wide range of considerations and facts; the respondent exercised his discretion in a manner revealing extreme unreasonableness, when he took into consideration only a limited and insufficient range of facts and failed to examine all the considerations held to be relevant by the court's precedents;

c. That in fact the respondent exercised his discretion exclusively within the confines of a new internal directive adopted at the end of 1995 and in so doing he violated the law in the following respects:

1) a new directive or policy must not be applied retroactively on past behavior but rather it may only be applied prospectively, after its publication and after a period of transition which would permit Jerusalem residents to adjust themselves to the new situation, unless there is an overriding public interest which could justify retroactive application;

2) the retroactive application of the new directive was not meant to serve a suitable public purpose but rather was intended to achieve totally illegitimate aims - illegal discrimination against Arab residents on grounds of their

nationality, and illegal discrimination against Jerusalem women residents who are married to foreign husbands on grounds of their gender;

3) the new directives were never published but rather their very existence and their substance were kept hidden from those affected by them - the residents of East Jerusalem - and therefore they are void and the decisions made on their basis are illegitimate;

4) the substance of the directives are illegitimate even if they should be applied only in the future after a transitional period of adjustment - the directives are extreme, create serious hardships, entail discrimination and lead to the denial of basic constitutional rights, to an extent which exceeds the degree which could be justified for the purpose of achieving any legitimate public aim;

d. The status of the petitioners cannot be annulled on the basis of regulations 11(c) and 11A of the Regulations of Entry to Israel, because according to the interpretation of these regulations until 1995 - a reasonable interpretation which fits the declared policy ever since the early 1970's - the petitioners did not settle abroad; alternatively, if the regulations must be interpreted consistently with the new policy, the regulations are null and void because they are *ultra vires*, infringing fundamental rights, and in particular the right to equality, beyond the measure required to meet any suitable public purpose;

e. That the respondent's decisions were reached in a defective procedure, by gross violations of the rules of due process;

f. That the women petitioners who are married to foreign husbands, being themselves permanent residents living in Israel, are entitled to family reunification with their husbands according to the rules set by the respondent himself.

A. EXAMINING THE CENTER OF LIFE TODAY

44. The center of life of the petitioners is in Jerusalem and therefore their status may not be annulled

a. The center of lives of each of the petitioners and their family members is at preset, and has been during the past several years, in Jerusalem. There can be no difference of opinion on this matter according to any conceivable test of the "center of life". The places of their residence are in Jerusalem; most of their children are studying in schools in Jerusalem; the women give birth in hospitals in Jerusalem and their children receive care in maternity clinics in the city; they are members of the health clinics in Jerusalem; those of them that work - worked and are now working in Israel; they do not own homes or other property outside of Jerusalem; most of them were recognized by the National Security Institute to be residents of Israel, on the basis of field investigations, and the petitioners pay national security and health taxes. All the connections of their lives today, as also at the time of the respondent's decisions to cancel their status, are to Israel.

b. The respondent's decision to cancel their status causes severe and unbearable hardships in their lives. These are not people who are using Jerusalem as a vacation station or an object of brief visits, but rather people who settled here and cut off all connections to the places in which they resided in the past. Canceling their status means a cruel overturn of their lives: taking their children out of the schools in Jerusalem in which most of them are now studying for the fourth consecutive year (including a girl who was successfully integrated into the special education program for mentally handicapped children - the youngest daughter of petitioner number 7); loss of their places of work in Jerusalem; leaving their homes, which several of the petitioners acquired or expanded from the moneys that they saved during the years of their work abroad with the intention of establishing themselves upon their return to Jerusalem; etc.

c. This factual situation is entirely distinct from the courts' judgments in the cases of Bustani (H.C.7952/96 Bustani v. the Interior Minister) and Shakaki. In both these cases the petitioners had no intention of continuing their lives in Israel but merely

wanted to receive identification documents in order to return to their permanent places of residences and families abroad. The holdings in these cases should thus be restricted to the special circumstances of those petitioners. The situation of the wife of a deported resident of Gaza (Fathi Shakaki) who was living in Damascus and since his deportation was "responsible for carrying out the gravest terrorist attacks against the State of Israel and its citizens" and concerning whom there was no chance that his family would ever resettle in Israel - cannot be compared to the situation of the present petitioners who are in fact living in Israel, who cut themselves off from all previous connections to any other place in the world, who do not pose any security threat and concerning whom there is no public interest in preventing them from living in this country.

...

45. Respondent's decision represents a revocation of a previous decision without justification

a. In fact it is clear that the respondent exercised his authority to cancel the permanent residence permits of the petitioners on the basis of the situation in the past. According to the approach of the Interior Ministry, the petitioners changed their center of life in the past, whether during their time abroad or due to a place of residence in the occupied territories outside the municipal boundaries of Jerusalem. According to this approach no new decision was made in the matter of the petitioners and the respondent did not cancel their permits, but merely declared that their permits had expired in and of themselves in the past, before the petitioners returned to the country.

b. The above construction is an artificial one, contradicted by the Interior Ministry's own conduct toward the petitioners and by the clear representation which it made consistently to the petitioners.

The petitioners returned to Israel several years ago by virtue of valid re-entry permits which the respondent granted them - re-entry permits which may be given only to permanent residents of Israel. Upon their return they were given their Israeli identity cards, which appeared to be valid documents reflecting their status as permanent residents of Israel. The Interior Ministry granted its services to the petitioners after their return, dealing with them as residents in every matter. The

Ministry accepted the applications for family reunification from the women petitioners and granted their requests for visas for their husbands. The Ministry personnel issued new identity cards in the place of worn out cards to several of the petitioners, registered in their documents the names of their newborn children, etc. All this was done by the Interior Ministry until the second half of 1996 when the Ministry told the petitioners that their status as permanent residence had expired. In the meantime the petitioners and their spouses had relied in good faith on the conduct of the Interior Ministry, which led them to understand that they are legally residing in Israel and continue to be permanent residents. This good faith reliance led them to get rid of everything they had abroad, to register their children in Jerusalem schools, and to find jobs in Israel.

...

[It is argued on the basis of Israeli administrative law that the Interior Ministry violated the rules concerning changing its previous decision and its representation to the petitioners, upon which they relied, and concerning the cancellation of valid permits, because such administrative acts require proof of change of facts and an overwhelming public interest in order to justify the damage caused to the individual.]

B. EXAMINING THE CENTER OF LIFE IN THE PAST

46. The tests required for determining a resident's center of life

a. The respondent applies his discretion with extreme unreasonableness on a totally inadequate factual basis in canceling the status of permanent residents. As far as can be understood from his decisions, which lack reasons, he operates on the basis of a superficial test according to a calculation of the dates of entry and exit, to and from Israel, or the period of residence in the occupied territories: if the resident spent the majority of his time abroad, or if he lived in the territories, for a period of seven years - without regard to the frequency of his returning visits to Israel - then according to the Interior Minister the resident changed his center of life and his permit is to be canceled.

b. The examination of where is an individual's center of life, in order to determine his status (and even more so - in order to permanently revoke his status) requires careful and thorough discretionary judgment on the basis of a complete, individual factual foundation. The "center of life", like life itself, is composed of manifold elements. Our court judgments have recognized the subject's complexity, the lack of clarity of the notion of center of life, and the flexibility of the tests required, and the court has done so in many contexts.

[Precedents are cited concerning the center of life in matters of inheritance, social security legislation, joint marital property, jurisdiction of the religious courts, compensation for the victims of Nazi persecution and international disputes over the custody of children. The precedents emphasize the importance of taking into consideration the parties' intentions and display a tendency to recognize the continuing stability and validity of the status of being a permanent resident in Israel despite lengthy periods of living abroad and even after acquiring foreign citizenship.]

47. <u>The petitioners never cut off their stable connection to Israel and never changed their center of life.</u>

A reasonable and individual examination of the facts concerning each petitioner will demonstrate that they did not cut themselves off from Israel during their periods abroad and did not in the past change their center of life. Each petitioner had his reason for residing abroad: studies; earning income in Saudi Arabia, Jordan or the U.S. and gathering savings in order to return home on a sounder financial basis - an intention which the petitioners in fact realized; establishing a family, during the period when the Interior Ministry required Jerusalem wives to join their husbands abroad and they returned to Jerusalem for good as soon as family reunification became possible for them.

The petitioners who were staying in Saudi Arabia and the Gulf States were not legally able to acquire any permanent status and not even real estate in those countries. Their sojourn in those countries was by virtue by temporary visas, conditional on the continuation of their employment, and once they left their places of employment they do not have a right to return. Those petitioners who

stayed in Jordan did not undergo naturalization and did not acquire a status of permanent residents; in any case Jordan recognizes their right to be in Jordan and grants them passports of limited validity, while their status as citizens of Jordan is not at all clear ever since the declaration of the separation of the Jordanian Kingdom from the West Bank in 1988 and the peace agreement between Israel and Jordan of October 1994.

All the petitioners returned frequently to Israel, some of them for lengthy periods. None of them exceeded the permitted period of sojourn abroad under the re-entry permits issued to them by the Interior Ministry. The petitioners behaved in full accordance with the rules set by the Interior Ministry - i.e. the rules and directives according to which the Ministry acted from the 1970s until late 1995. All of the petitioners returned and resettled for good in Israel before the change of policy.

These facts do not reveal any intention to severe ties from Israel, but rather the intention to return home after temporary periods abroad. When the petitioners carried out this aspiration and came back, they could not imagine that after their return and resettlement in the country it would be claimed that they are no longer residents of Israel.

C. THE ILLEGITIMACY OF THE NEW DIRECTIVES OF 1995

48. The retroactive application of the new rules

There can be no doubt concerning the novelty of the rules that were applied in 1996: a place of residence in the occupied territories for seven years became for the first time a cause for annulling the resident status; frequent visits of the permanent resident in Israel during the period of validity of his re-entry permit, ceased for the first time to break the continuity of seven years sojourn abroad, and now the combination of non-continuous periods abroad became sufficient grounds for annulling the resident status. However instead of applying the new directive from the time of its issuance and onwards, the respondent applies it backwards towards the past.

Various elements of the conduct of the resident, which would not have affected his status up until late 1995, are considered since the issuing of the directive to constitute criteria which cancel his status. The resident's past conduct which was good for preserving his status according to the past rules and policy constitute at present the basis for canceling his permit to be a permanent resident.

If a Jerusalem woman resident married a foreigner and lived with him periodically while frequently returning to Israel, she was able at any given time up until the end of 1995 to come back and settle in the country as a permanent resident and to receive all the rights and duties of a resident of Israel. But after late 1995 her periods of being abroad with her husband will be considered abandonment and change of the center of life, despite frequent visits in Jerusalem, and a retroactive examination of her entries and exits will cause the annulment of her status. The same system is applied to a person who moved his house into the occupied territories.

49. Case law concerning retroactivity and periods of transition

The court's precedents hold that an administrative directive should not be retroactive. Only in extraordinary circumstances, in which the retroactive application is required in order to achieve a suitable purpose and this purpose is proportional to the severity of the effect on the individual and is also reasonable - only then can an administrative body act on the basis of such a retroactive directive.

This court recently held that a decision to change the passing grade in the bar examinations, without allowing a reasonable period after the change in order to permit law graduates to adjust themselves to it, is illegitimate due to lack of proportionality.

...

[The decisions are cited and it is argued that a change of policy and rules to cancel residency is much more severe than a change of the bar examinations score and must be held at least to similar judicial scrutiny].

50. The aim - discrimination on the basis of nationality

a. In a speech delivered by the Interior Minister, Eliahu Suissa, on April 16, 1997 before the members of the organization of Professors for Diplomatic and Economic Strength, the Minister explained the purpose of his policy of confiscating identity cards from East Jerusalem residents. "We must increase the Jewish majority in Jerusalem to more than 80%", he explained. The return of East Jerusalem residents to the city of their birth the Minister termed a stampede of Arabs into Jerusalem and he added, "what is called the confiscation of identity cards is a stampede into Jerusalem - carrying out the [Palestinian] right of return by another means". The taking of identity cards, the Minster explained, represents his answer to this action by Jerusalem Arabs who are returning to their city. (The Minister's statements are documented in articles in the Ha-Aretz newspaper of April 17, 1997 and Kol Ha-Ir of April 18, 1997).

b. The respondent's statements reveal that the objective of the new policy, and the public purpose for which the status of the petitioners and others like them has been canceled, as part of a demographic and political aim: to increase the percent of the Jewish majority in Jerusalem by confiscating the identity cards from Arabs who have returned to the city and by canceling their status. The reason for canceling their status is their nationality: they are Arabs.

c. The new policy is functionally suited to its purpose. It is made to fit in a rational and efficient way the objective of removing Arab Jerusalem residents from the country and increasing the Jewish majority in the city. For almost three decades the Interior Ministry applied a stable policy, which permitted East Jerusalem residents to live extended periods abroad or to build their houses on the other side of the Green Line, without endangering their status as permanent residents (see chapter A above). By applying the new policy retroactively the Interior Ministry succeeds in eliminating the resident status of all those Jerusalemites who relied on the past rules and policy, and thus the Arab population of Jerusalem may indeed be considerably decreased and the Jewish majority augmented. The connection between the aim and the means is so clear

and logical, that even without the Interior Minister's open declarations the conclusion would be unavoidable that the aim of the change of policy is to remove Arab residents from Jerusalem because of their nationality.

d. This objective of the respondent's policy, and this aim behind the policy's retroactive application in the matter of the petitioners, is afflicted by blatant discrimination for reasons of nationality. The Law of Entry to Israel, which is the basis of the respondent's authorities, must be interpreted consistently with the fundamental values of the State of Israel and with the basic constitutional rights of man in Israel, among them the right to equality. The respondent must respect the value of man and human dignity in the spirit in the principles enunciated in the Declaration of Independence of the State of Israel, according to which the State of Israel will uphold complete equality of social and political rights. He must preserve the values of the State of Israel as a democratic state, in which the principle of equality is "the heart and soul" of the system of government. He must preserve the values of the state as a Jewish state in which "you know the heart of a stranger, seeing you were strangers in the land of Egypt" (Exodus 23,9). See:

Basic Law: Human Dignity and Liberty, articles 1, 1A, 2, 11.

[Case citations omitted].

By exercising his authority to annul the status of the petitioners for the reason that they are Arabs and for the purpose of removing them from the country due to their nationality, the Interior Minister illegally discriminates and exceeds his authority under the Law of Entry to Israel.

51. Illegal gender discrimination

a. The respondent's discretion is illegitimate also due to violation of the principle of equality between the sexes, which applies to every governmental action, and in this case with respect to the women petitioners who are married to foreign spouses. The express gender discrimination concerning family unification, which the Interior Ministry applied until the policy's revocation and its replacement by an egalitarian policy in March 1994, was described above (Sections 9 and 17).

These women were entitled to marry and to establish families with their spouses: "Every human being has the right to establish a family and give birth to children" (C.D.N.241/95 *Nachmani v. Nachmani*).

Because of an illegitimate policy these women were forced to realize their natural right to marry and found a family outside of the state's borders, but they carefully preserved their connection to Jerusalem, their status as permanent residents in Israel, according to the rules then in force, and their aspiration to return home. They stayed in Israel frequently and for extended periods, gave birth to some of their children in Israel and as soon as the policy changed and it became possible for the first time for them to live with their families in Israel, they came back, resettled permanently in Jerusalem, submitted their applications for family unification with their spouses and received for them entry visas and work permits.

b. The many applications for family unification, which these women submitted during the years 1994 and 1995, were among the factors which led to changing the policy at the end of 1995 concerning the expiration of permanent residence permits of those who never had been absent from Israel for a continuous period even approaching seven years, and who had never exceeded the period abroad permitted by their re-entry permits.

The new policy made it possible for the Interior Ministry to summarily reject the applications of these women, who had returned following the revocation of gender discrimination in matters of family unification. Their applications were rejected and they were informed that their own permits as permanent residents had expired and they must leave the country permanently within 15 days together with their children and spouses.

c. The result of the application of the new policy on these women was unfair and discriminatory : the discrimination of the past was made permanent - these women were again required to abandon their place of residence and to move to the country of their husbands' residence and to lead their family lives abroad. All this was because they are women, for had they been men they would have long since been awarded family unification in Israel. This group of Jerusalem women suffered more than any other group from the new policy. The discriminatory

effect which stems inevitably from applying the policy to a group discriminated against in the past, constitutes in itself a violation of the principle of equality. See: H.C.J. 453/94 *The Women's Lobby in Israel v. the Government of Israel.*

See also a guiding case of the United States Supreme Court, dealing with a discriminatory effect upon alien permanent residents in the U.S. - *Yick Wo v. Hopkins* 118 U.S. 356:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

d. The respondent ignores the discriminatory governmental coercion which led the women petitioners and other women to stay abroad in order to realize their right to establish a family, and he cynically makes use of their predicament in order to throw these women and their families out of the country simply because they are women who married foreigners. Such discretion suffers from illegal discrimination and lack of basic fairness and must therefore be overruled.

52. Voidance of the new directives due to lack of publication

[It is argued that the Interior Ministry deliberately failed to publish the new directive and rules adopted at the end of 1995 and even misled the court, claiming that no new policy had been adopted, in a brief submitted by the state in December 1996. The petitioners reiterate the rule of Israeli administrative law that internal directives which affect people's lives must be open and made known to those concerned, and claim that in this case lack of publication renders the directives void and the decisions made under the new directives illegal.]

53. The directives are unreasonable and disproportionate

a. In this petition the rules and regulations in effect for 28 years concerning preservation of the status of permanent residents have been thoroughly described.

These rules and regulations were applied to a sizable population which was guided by them and acted in consonance with them.

The issuing of the new policy directive in late 1995, which created an abrupt change in the policy applied to the residents of East Jerusalem, interferes unreasonably with the fundamental rights of an entire population and for this reason must be held void, also with respect to the future.

b. The logical and suitable objective of granting permanent residence before 1967 - and accordingly the rules for its cancellation - was to regulate the status of an alien who created for himself a stable and ordered connection to Israel and Israel agreed to receive him. Cancellation of the residency suited a situation of permanently severing the very ties which had justified granting residency. In this way the Population Registry could accurately reflect the number of residents actually in Israel.

c. Granting of the status of permanent residency to the population of East Jerusalem was never based on seeing them as aliens who chose to settle in Israel and who could chose to return to a homeland. Even under the assumption (accepted by the petitioners for the purpose of these arguments), according to which the status of East Jerusalem residents may be canceled upon their complete and lengthy disconnection from Israel - the relevant considerations concerning an alien who became a resident, and as it were a guest, are different from those applying to residents of East Jerusalem.

d. When the law and jurisdiction of Israel were applied to East Jerusalem the principles of equality, human dignity and liberty were applied as well. If the Interior Minister wishes to exercise his authority to cancel the status of permanent residents and to establish regulations and directives in this matter, he must give suitable weight to the right of residents of East Jerusalem to equality with the rest of the residents of the State, and he must deal as far as possible on an equal basis with their right to freedom of movement as with that right of the rest of the residents of the State. The same holds true concerning freedom of occupation and all the other fundamental rights of man in Israel.

Aside from clear cases of abandonment and cutting off all connection to Israel for continuous and extended periods (as for example in the case of Mubarek Awad) there is no place to cancel the permit of the permanent resident of Jerusalem who has been outside of Israel for limited periods during which he preserved his connection to the country and revealed his intention and desire to return in the future and to continue his life in Israel.

Otherwise all residents of Israel, except for residents of East Jerusalem, are free to leave the country for extended periods, to complete their education and professional experience abroad, to endeavor to save capital and to conduct business and earn money abroad in order to establish themselves financially, to marry foreign spouses and to have children abroad, to buy real estate abroad, to travel to their hearts' content, and to pursue any other such goal which may lead a person to depart from his country - and they are free to come back at any time they so desire without their rights having been affected in any way.

By contrast the residents of East Jerusalem will be limited in their freedom of movement and imprisoned in the country. If they should depart abroad and do any of the acts listed above which an Israeli may do as part of his normal life - and even if they return frequently to visit in their homes in Jerusalem - their behavior is liable to be interpreted as a change of the center of their lives and will lead to the cancellation of their rights of residency and kill their chances to ever return home. The Passover Hagaddah's observation - "he did not leave to settle but only to sojourn there" - will never apply to the East Jerusalem resident.

e. [A principle of Israeli administrative law, according to which administrative policy must not ignore life's realities and must not be too harsh in its effects, is cited.]

f. There is no logical or necessary connection between the suitable objective of the authority to cancel the status of a permanent resident, on the one hand, and the extreme policy which cancels this status with ease concerning a Jerusalem resident who has carefully preserved his connections to Israel even while abroad, on the other. There is no proportionality between the advantages which derive from this policy, if there are any such advantages, and the extent of infringement of the

individual's fundamental rights. Therefore, the directive does not meet the standard of proportionality, is not legal and must be canceled.

D. REGULATIONS OF ENTRY TO ISRAEL

54. The legal force of the regulations of entries to Israel

The petitioners who argue that their status cannot be canceled on the basis of regulations 11(c) and 11A of the Regulation of Entry to Israel, for the following reasons:

a. The law itself from 1952 authorizes the Minister to cancel the permit of permanent residence. It is obvious that the legislator did not consider 1952 the dramatic development of the addition of a large population to Israeli sovereignty under the status of permanent residents.

With the adoption of the regulations in 1985 the Minister did not specify any particular regulations that take into account the special situation of the population of East Jerusalem and did not set in the regulations the tests and specific rules which can lead to the cancellation of their status.

As the court held in the **Awad** case: "The Interior Minister's authority of cancellation does not turn permanent residence into an unprotected privilege. The permanent residence status is a status under law and only relevant considerations have the power to bring the Interior Minister to exercise his said authority."

The regulations are not law; they are administrative regulations and as such they are subject to the aims and limitations of the empowering law. Among the delimiting objectives of the empowering law are the preservation of the basic rights of every person in the State of Israel, as well as legal security concerning the status of all residents in the State.

b. Until 1985 this subject of cancellation of the status of permanent residents was not dealt with by the Regulations of Entry to Israel, but rather by the rules and policy of the Interior Ministry. The regulations adopted in 1985 did not in fact alter the rules and directives of the Interior Ministry concerning preservation of the status of residents in East Jerusalem and the manner in which this status could

expire. The directives and rules which guided the lives of the residents of East Jerusalem up through 1995 operated in consonance with the regulations and were seen as the authoritative and definitive interpretation of these regulations in matters concerning East Jerusalem residents.

The factual presumption, under Regulation 11A, concerning the expiration of residency due to being in a country outside of Israel for longer than seven years, was interpreted and applied exclusively as meaning a continuous absence from the country for a period of at least seven years without renewing the exit and re-entry permit as legally required.

The factual presumption, under Regulation 11A, concerning acquisition of permanent residency or citizenship in another country, was interpreted as a refutable presumption, in fact rebutted when the person who acquired permanent residency or citizenship took care to return to Israel within the confines of his Israeli exit and re-entry permit as a returning resident. Such a person was distinguished as one who preserved his connection to Israel and did not cut off the reality of his life from this country and therefore did not lose his residency.

The factual presumption concerning settling in a foreign country never applied - neither by the plain language of Regulation 11(c) nor by the policies in force - to a Jerusalem resident who moved his place of residence outside of the municipal boundaries of Jerusalem and into an area subject to Israeli rule. Such a person did not lose his residency and he was not under any risk of losing it.

c. Should it be held that the new directive concerning cancellation of residency represents the appropriate interpretation of Regulations 11(c) and 11A of the Regulations of Entry to Israel - then these regulations must be held void. This is for the same reasons explained about (Section 53) for the illegitimacy of the directives: the Regulations, according to this interpretation, cause a disproportionate infringement of the basic right of man in Israel to equality and deviate from the objectives from the empowering law.

E. VIOLATION OF THE RULES OF DUE PROCESS

55. The right to a hearing

The right of the petitioners and hundreds of others to a hearing was totally denied at first; to the extent that a hearing was conducted after the fact, the procedure was highly defective.

They received a notice from the respondent which said that their permit for permanent residence had expired, they must surrender their Israeli identity cards and they and their family members must leave the country within 15 days, and nothing more. From some of them the Interior Ministry clerk confiscated their identity cards on the spot. None of them was warned in advance. To none of them was it explained that he has a right, after receiving the notification, to raise his claims in the matter before someone in authority. None of them was told of a right to appeal the decision in writing. On the contrary, when some of them tried to find out the meaning of the notification - which was written in Hebrew without translation - from the Director of the East Jerusalem Interior Ministry office, the Director refused to listen to their claims or said (as in the case of petitioner number 6, Qudsia Manco, according to her affidavit) that there is no sense in opposing the decision or in receiving legal advice because he, the office director, acts according to the decisions of the Israeli Supreme Court.

b. There is no longer any doubt concerning the right of the resident to a hearing concerning the cancellation of his status. Despite the State's claim in the past that the matter concerns only a declarative statement on the expiration of the status without any need for a hearing, in fact the State Attorney's office already conceded that the resident is entitled to raise his claims concerning the cancellation of his residency. This was the position taken in a series of cases in June 1997 [references omitted].

Indeed the right of a hearing must be granted to a person whom the public authority stands to infringe any of his rights, including his status [quotation and reference omitted].

The right of a hearing becomes even more vital when the public authority stands to cancel the person's status and this entails a potential infringement of his

liberty due to the risks of arrest and deportation [reference and quotation omitted].

c. The court's precedents hold "that an authorized public authority which is required to uphold the right of a hearing must carry out the hearing prior to its decision. Should it not do so, and even if it proposes to hold the hearing after it makes its decision, it will have violated the duty to hold the hearing (H.C.J.2911/94 *Baki v. Director of Interior Ministry*).

...

None of the petitioners was granted an advanced hearing. The violation of this right led to decisions without a factual basis, completely at odds with the reality of their lives. The results were immediate: on the basis of a decision made illegally through violation of a basic rule of due process, some of their identity cards were confiscated, their social welfare rights were canceled and they have been living since then like illegal immigrants fearing arrest and deportation.

The appeal in writing by their attorneys to the Director of the East Jerusalem Interior Ministry office - the same official who informed them of the expiration of their residency - was not a fair and efficient substitute for the right to an advance hearing. In many cases the appeal received no answer. In some cases, when the director did respond, he gave his answer within a brief period (less than two weeks), in contrast to his normal dilatorious practice, and rejected the request to reconsider his decision without giving any reasons and without responding to the claims raised. It was clear that the Director of the Interior Ministry's East Jerusalem office did not see any reason to seriously examine whether he should change his decision.

d. The cases hold that there is a duty to inform the affected person in advance of the decision under consideration by the public authority; the authority must inform the individual in detail the facts, the information and the factors upon which this decision may be based. The duty to reveal the factual basis of the decision may also include the duty to reveal specific pieces of evidence which the authority intends to rely upon in reaching its decision. All this must be revealed

before holding the hearing, in order that the person affected can know what he should relate to so that his hearing will be meaningful [citations omitted].

The opportunity granted the petitioners to make their claims heard was valueless: none of the petitioners received any information concerning the basis of the respondent's considerations, despite having asked to receive it. Furthermore the respondent did not even reveal the nature of his considerations. In some of the cases it is not clear whether the decision was taken on the basis of a calculation of the residents exits abroad and entries to Israel, or whether it was based on a claim that the resident has a house on the wrong side of the Green Line. In those cases in which the cancellation of the residence permit was based on the claim that the resident lives in the occupied territories, it is not known what evidence stood before the respondent; there are grounds to believe that this evidence consisted of hearsay or of reports on the visit of the Social Security Institute investigator when the resident was outside of his home in Jerusalem. Such evidence must be revealed to the resident and he must be allowed to respond to such evidence.

The new text of notification concerning the expiration of residency, which has been put into use by the Interior Ministry in recent months, states that information in the hands of the Ministry show that the residency permit has expired. However, the notification does not reveal what is this information, and accordingly, the opportunity to respond does not meet the standards of a true hearing.

e. The question whether or not fairness requires that the person be allowed to make his claims heard in person, in an oral hearing, depends upon the circumstances of the case [references omitted].

In those situations in which an appraisal of credibility is important, the opportunity for a fair and efficient opportunity to make one's case heard requires an oral hearing; and according to the Canadian Supreme Court, considerations of administrative expediency cannot justify denying an oral hearing in these circumstances: *Singh v. Minister of Employment and Imm.* [1985] 1 S.C.R. 177, 17 D.L.R. (4th) 422, 465-469.

An East Jerusalem resident who wishes to persuade a representative of the respondent that the reasons for his absence from the country were temporary and he did not settle abroad and did not cut himself off from his connections to

Jerusalem, will find it difficult to do so without an opportunity for an oral hearing which allows an examination of his credibility. In addition, many East Jerusalem residents live in the house of their extended family, without there being a contract or utility bills or city property taxes on their name. Some of them have difficulty in presenting sufficient documentation to prove their center of life in Jerusalem. One clear example of this predicament is petitioner number 9, Abu Canfar, who lives and works in Jerusalem all his life but he does not have documents to prove it; therefore, this petitioner asked for an oral hearing after the decision to cancel his residency but his request was not answered. In some situations written claims alone are not fair and the written factual basis for exercising the respondent's decision is not sufficient.

56. Reversing the Burden of Proof

Clear, unequivocal and convincing proof is required in order to justify a public authority's infringement of an individual's existing right. "The greater the right the greater and more powerful is the evidence required to be at the basis of a decision concerning detraction from that right" (Election Appeal 21/84 *Neiman v. Chairman of the Central Election Committee for the 11th Knesset*).

Concerning the cancellation of a permit already granted, the court's precedents hold (as discussed in Section 45 above) that the administrative body must conduct an investigation and produce convincing proof, which leaves no room for reasonable doubt, that there has been a new event and that the public interest requires cancellation of the permit.

The burden is on the public authority to check the facts and to gather the evidence which meet the standards set by the Court's precedents before it takes away a person's right. The individual is not required to produce convincing evidence why his rights should not be infringed or why the permit legally granted him should not be canceled.

The burdens have been reversed in the matter of canceling the petitioners' permits for permanent residence in Israel and concerning the denial of all their rights as residents of the State, including the rights to health care, to freedom of occupation in Israel, to property in Israel, and to their liberty. The respondent does not produce evidence; he posits a finding concerning the expiration of the

permanent resident's permit, apparently on the basis of factual presumptions, and places the burden on the resident to persuade him by means of written documents alone that he should not cancel the status and all the associated rights.

It is difficult to imagine a broader infringement of all the rights of a resident of Israel than that deriving from the cancellation of his status and his removal from the country. As powerful as is this infringement of rights, so should be the power of the justifying evidence which the respondent produces, not the petitioners.

F. THE RIGHT TO FAMILY UNIFICATION

57. If the women petitioners preserved their status as permanent residents in Israel, as claimed in this petition, then without doubt their requests for family reunification with their spouses should be approved. On the basis of the rules guiding the Interior Ministry since 1994, the husband of a permanent resident in Israel who actually lives in Israel, is entitled to receive a permit for permanent residence in Israel by virtue of family unification, in the absence of countervailing criminal or security considerations. The women petitioners and their spouses fulfill these conditions and therefore the respondent should be instructed to approve their requests.

58. This petition in essence asks to require the respondent to deal fairly and equally with the residents of East Jerusalem. An ancient tradition stands at the basis of this request - the attitude to foreigners living among us:

> "And if a stranger sojourn with you in your land, you shall not oppress him. But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself for you were strangers in the land of Egypt, I am the Lord your God" (Leviticus 19, 33-34).

Therefore the honored court is requested to issue an interim injunction and a show-cause order as requested at the beginning of this petition, and after receiving the answer of the respondent to the show-cause order, to make this order absolute and to compel the respondent to pay the petitioner's costs.

Today April 5, 1998

Eliahu Abram, Advocate

Lea Tzemel, Advocate