The Supreme Court Sitting as the Court of Appeals for Administrative Affairs

AdmA 5569/05
AdmA 5805/05
AdmA 6162/05
AdmA 6168/05
AdmA 2936/06

Before: The Honorable Chief Justice D. Beinisch
The Honorable Justice A. Procaccia
The Honorable Justice A. Hayut

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Appellant in Adm.A 5569/05: Ministry of the Interior

- Versus -

Respondents in Adm.A 5569/05: Dalel Awisat and 7 others

An appeal against the judgment of the Jerusalem Court of Administrative Affairs dated 5 May, 2005 in AdmA. 387/04 which was given by the Honorable Justice Y Noam

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Appellants in Adm.A 5805/05:
1. Minister of the Interior
2. Director General of the Ministry of the Interior
3. Director of the District Population Administration

- Versus -

Respondents in Adm.A 5805/05: Sohila Mashada et al.

An appeal against the judgment of the Jerusalem Court of Administrative Affairs dated 17 May, 2005 in Adm. A. 277/05 which was given by the Honorable Justice Y Zur

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Appellant in Adm.A 6162/05: Minister of the Interior

- Versus -

Respondents in Adm.A 6162/05: Hiam Zachariah Jith et al.

An appeal against the judgment of the Jerusalem Court of Administrative Affairs dated 24 May, 2005 in Adm. A. 1277/04 which was given by the Honorable Justice Y Zur

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Appellant in Adm.A 6168/05: Jerusalem Population Administration – Ministry of the Interior

- Versus -

Respondent in AdmA 6168/05: Mona Mansour et al.

An appeal against the judgment of the Jerusalem Court of Administrative Affairs dated 3 June, 2005 in Adm. A. 379/04 which was given by the Honorable Justice Y Noam

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Appellant in AdmA 2936/06: The District Office of the Population Administration – East Jerusalem

- Versus -

Respondent in AdmA 2936/06: Maison Nebhan et al.

An appeal against the judgment of the Jerusalem Court of Administrative Affairs dated 14 February, 2006 in Adm. A. 1085/04 which was given by the Honorable Justice B. Okun

Date of Session: 2 Nissan, 5767 (21 March, 2007)

Acting on behalf of the appellant in AdmA 5569/05, the appellants in AdmA 5805/05, the appellant in AdmA 6162/05, the appellant in AdmA 6168/05 and the appellant in AdmA 2936/06: Adv. Yochi Gnesin; Adv. Ra'anan Giladi

Acting on behalf of the Respondents in AdmA 5569/05 and AdmA 6168/05: Adv. Johnny Shahada

Acting on behalf of the Respondents in AdmA 5805/05: Adv. Daiud Azi

Acting on behalf of the Respondents in AdmA 6162/05:	Adv. Amir Hassan
Acting on behalf of the Respondent in AdmA 2936/06:	Adv. Dr. Kazam Kayoun
Acting in behalf of HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger:	Adv. Osama Halabi; Adv Yotam Ben Hillel

Judgment

Chief Justice D. Beinisch:

Is it sufficient for a person to be registered in the Population registry of the area (hereinafter "the registry of the area" or the "registry') for him to be considered a "resident of the area", to whom the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the "**Temporary Order Law"** or the "**Law")** applies? This is the question that arises in the appeal that is before us. This appeal (AdmA 5569/05) is one of a number of appeals that was filed by the State, against the judgments of the Jerusalem Court for Administrative Affairs, in which it was held that the provisions of the Temporary Order Law should not apply to non-Jewish minors who were registered in the registry of the area, and who were born in Israel to mothers who were Israeli permanent residents, without first allowing them to prove that despite this registration the center of their lives is located in Israel. In addition this appeal raises the question as to the extent of the discretion that is given to the Minister of the Interior under Regulation 12 of the Entry into Israel Regulations, 5734-1974 (hereinafter also: "**Regulation 12**"), which is concerned with granting Israeli status to children who were born in Israel to a parent who resides in the country by virtue of the Entry into Israel Law, 5712-1952 (hereinafter: the "**Entry into Israel Law**").

It should be noted further that pursuant to the decisions of Chief Justice (ret.) A. Barak dated 26 October, 2005 and dated 23 May, 2006 the general legal question that arises in the State's appeals within the framework of the current appeal shall be clarified, whereas a hearing on the remaining appeals that were filed by the State shall be reinstated upon the granting of this judgment. Nonetheless, since the State's appeal raises fundamental legal questions that relate to the judgments under appeal as one unit and does not contain reservations on the concrete result with respect to this or that respondent, we shall also decide the issue, within the framework of this judgment, as it relates to general legal questions that are common to the various appeals. The particular questions that relate to the various respondents in these appeals, and which are still pending before the court, shall become clearer after judgment has been rendered in this appeal.

The factual background and the chain of events in the proceedings

1. The respondents in the various appeals that were filed by the appellant in 5569/05 (hereinafter: the "**Ministry of the Interior**") are non-Jews who were born in Israel to mothers who held Israeli permanent residence permits (and even some of the parents of these respondents are themselves the respondents in the appeals before us, however we shall continue to refer only to those respondents, who filed applications to receive Israeli status as the respondents for the purpose of this judgment). Common to all the respondents is the fact that all of them were registered in the registry of the area and their Israeli status was not resolved by their parents at the time of their birth. When the respondents applied to the Ministry of the Interior to receive Israeli status, their applications were dismissed (it should be noted, that at the time of filing these applications for Israeli status and at the time of their dismissal practically all of the respondents were minors, even if some of them are currently no longer minors. For the sake of convenience alone, we shall continue to relate to them as minors within the framework of this judgment). The Ministry of the Interior based the dismissal of these applications on the fact that the registration of the respondents in the registry of the area forces us to conclude that they are "residents of the area" for the purposes of the Temporary Order Law, which subject to various exceptions froze the handling of applications by residents of the area to receive Israeli status. These decisions by the Ministry of the Interior were made, despite the fact that the respondents claimed that the center of their lives was in Israel, and aside from the fact of their registration in the registry of the area they had no other connection with the Area.

In the wake of these decisions the respondents filed petitions with the Jerusalem Court for Administrative Affairs. In the various judgments handed down by the Court for Administrative Affairs it was held that the mere registration of the respondents in the registry of the area was not sufficient a reason for applying the Temporary Order Law to them, and therefore it was incumbent upon the Ministry of the Interior to examine the respondents' claims that the place of their residence was in Israel. It was also held in some of the judgments under appeal that should the Ministry of the Interior discover that the center of the respondents' lives is in Israel, then it must give them Israeli status pursuant to Regulation 12 of the Entry into Israel Regulations. The State's appeals, as stated, do not focus on the concrete circumstances that apply to each of the respondents, but is rather one that is based on principle. In the framework of the appeals, the State claims that pursuant to the provisions of the Temporary Order Law it is sufficient to rely upon the registration of a person in the registry of the area in order to apply to him the provisions of the Temporary Order Law. In addition to this, the State claims that in the framework of the Ministry of the Interior exercising its discretion under Regulation 12, it is permitted to examine other factors over and above the center of the minor's life. Before dealing with the claims of the parties in this case, we shall first survey the normative infrastructure upon which they are based.

2. On 12 May, 2005 the Government of Israel passed Decision No. 1813 in respect to the "Handling of Illegal Residents and the Policy of Family Unification with regard to Residents of the PA and Aliens of Palestinian Origin" (hereinafter: the "**Government Decision**"). In this Decision the government held that the Ministry of the Interior would no longer handle new applications by residents of the Palestinian Authority to receive Israeli status. In this decision it was not clarified who would be considered a resident of the Palestinian Authority to whom the provisions would

apply. About a year after passing the Government Decision, on 6 August 2003, the Temporary Order Law was published in the Official Gazette. This Law enshrined the principles of the Government Decision and in a similar manner; the Law established that the Ministry of the Interior would no longer handle new applications by Residents of the Area to receive Israeli status (section 2 of the Law). However in contradistinction to the Government Decision, the Temporary Order Law established, in the following language, who would be considered a "Resident of the Area" to whom the Temporary Order Law would apply:

"Definitions"	1…
	"Resident of the Area"- including someone who resides in the Area even if he is not registered in the Population registry of the area, and excluding a resident of a Jewish settlement in the Area"

It should be noted further that a number of exceptions were established in the Temporary Order Law which would enable the granting of Israeli status to residents of the area; according to one of the exceptions (in its version as it appeared at the time the Law came into force) the Minister of the Interior or Regional Commander, as the case may be, may grant a resident of the area a residence permit or permit of stay in Israel for the purpose of avoiding the separation of a minor of up to 12 years old from his parent who lawfully resides in Israel (section 3(1) of the Law).

3. In their applications to receive Israeli status the respondents have claimed that since they were born in Israel and since their mothers hold an Israeli permanent residence permit, it is incumbent upon the Ministry of the Interior to grant them identical status to that of their mothers, pursuant to that which is stated in Regulation 12 of the Entry into Israel Regulations, which establishes the following:

"Status of a child who was born in Israel"	12. A child who was born in Israel, and to whom section 4 of the Law of Return, 5710-1950 does not apply, his Israeli status shall be that of his parents; if his parents do not share one status then the child shall receive the status of his father or guardian unless the second parent objects to this in writing; should the second parent object, the child shall receive the status of one of his parents, as shall be determined by the Minister".

During the examination of the application by the respondents for Israeli status, the Ministry of the Interior discovered that they were registered in the registry of the area.

Therefore the Ministry of the Interior determined that the registration of the minors calls for the conclusion that they are "residents of the area" who are subject, according to the date of filing of the applications, as the case may be, to the Government Decision dated 12 May, 2002 and to the Temporary Order Law. Therefore, basing themselves on the registration of the respondents in the registry of the area the Ministry of the Interior dismissed the applications that the respondents filed under Regulation 12 of the Entry into Israel Regulations. The significance of these decisions meant that in practice the Ministry of the Interior had subjected the respondents to the provisions of the Temporary Order Law, which according to the version at the time of filing the respondents' petition with the Court for Administrative Affairs allowed, as aforesaid, under certain conditions, the granting of a residence permit or a permit of stay in Israel for minors who were "residents of the area" up to the age of 12. However, at that time the Temporary Order Law did not provide any exceptions in relation to minor "residents of the area" who were over the age of 12; so that these minors did not have the possibility of receiving any kind of Israeli status.

4. Opposing the aforesaid decisions by the Ministry of the Interior, the respondents filed petitions with the Jerusalem Court for Administrative Affairs claiming that they should not be regarded, solely because of their registration in the registry of the area, as "residents of the area" for the purposes of the Temporary Order Law. Their argument was that their registration in the registry of the area did not reflect the center of their lives, and therefore it should not be relied upon for applying the Law. Therefore the respondents claimed that it was incumbent upon the Ministry of the Interior to allow them to prove that the center of their lives was in Israel, in order that the provisions of the Law not be applied against them.

The judges in the court of first instance accepted the respondents' petition, and in a number of judgments invalidated the decisions of the Ministry of the Interior to summarily dismiss the respondents' applications for Israeli status merely because of their registration in the registry of the area. In the judgment handed down by Justice Y. Noam in Adm Pet. 387/04 (Jerusalem) 379/04 **Awisat v. Minister of the Interior** (unreported, 5 May, 2005) upon which an appeal was filed in Adm. A 5569/05 it was held that the registration in the registry of the area of five minors who were the subjects of the petition does not, in and of its itself, determine that they are "residents of the area" for the purposes of the Temporary Order Law. Therefore Justice Noam rescinded the decision by the Ministry of the Interior to summarily dismiss the respondents' applications, and determined that the Ministry must reexamine the minors' applications and allow them to prove that the center of their life is in Israel, and that they never had nor do they presently have any ties to the area. A case which contained similar circumstances was discussed in the judgment of Deputy Chief Justice D. Heshin in Pet. Adm. (Jerusalem) 227/05 **Mishara v. Minister of the Interior** (unreported, 17 May, 2005) – upon which the State filed an appeal in AdmA. 5805/05. In this judgment the court of first instance ordered the Ministry of the Interior to arrange for a clarification as to the actual place of residency of the minor who was the subject of the appeal, and whose application for Israeli status was dismissed because of her registration in the registry of the area. Deputy Chief Justice D. Heshin stressed in his judgment that within the framework of the clarification that would be held in the future, the mother of the minor who filed the application for family unification would bear the onus of refuting the significance of the registration

in the area. An additional judgment that is being appealed against by the State (AdmA. 6162/05) was given by Justice Y. Zur in Adm. Pet. 1277/04 **Jith v. Minister of the Interior** (unreported, 24 May, 2005). This judgment involved the case of two minors, who were born in Israel and who were registered in the registry of the area after their birth. In this case, too, the court of first instance held that the Ministry of the Interior may not summarily dismiss applications for granting Israeli status solely on the basis of having been registered in the registry of the area. In this context the court of first instance noted that registration in the registry of the area does indeed create prima facie proof of the correctness of the details that are registered in it, but it held that this could be refuted by presenting documentation that prove that the center of life of the applicant is located in Israel. Therefore the court ordered the Ministry of the Interior to carry out a detailed examination of their claims with respect to the center of their lives being in Israel. Justice Zur added in her judgment that in the event that it has been proved that the center of the lives of the minors is in Israel, they then "have a right to be registered in Israel by virtue of Regulation 12".

Finally, the State also filed an appeal (AdmA. 2936/06) against the judgment of Justice B. Okun in AdmPet 1158/04 (Jerusalem) **Nebhan v. The District Office of the Population Administration – East Jerusalem** (unreported, 14 February, 2006). This case involved the affairs of three minors, who were born in Israel and their eldest sister who was born in France, who claimed that the center of their lives was in Israel and their registration in the registry of the area was done by their father against the backdrop of a dispute between him and their mother. In this case the Ministry of the Interior also decided to apply to the petitioners the provisions of the Temporary Order Law because of their registration in the registry of the area. The court of first instance invalidated this decision by the Ministry of the Interior and held that registration in the area, in and of itself, does not prove to us that there is a real desire on the part of the minors, who were born in Israel and who were children of an Israeli resident, to give up their Israeli status. Therefore the court of first instance ordered the appellant to grant the petitioners the status of an Israeli permanent residence permit under Regulation 12 of the Entry into Israel Regulations. It should be noted that this judgment may be distinguished from the other judgments under appeal before us; since in the other judgments no order was issued to the Ministry of interior to grant the petitioners Israeli status, but it was held that the cases had to be reexamined without regarding the mere registration in the area as decisive proof that they are "residents of the area" for the purposes of the Temporary Order Law.

Amendment No. 1 to the Temporary Order Law

5. Before we deal with the claims of the parties to the proceedings before us, it should be noted that on 1 August, 2005 Amendment No. 1 to the Temporary Order Law was published in the Official Gazette. The judgments under appeal before us were not required to deal with the ramifications of this amendment to the respondents' cases, since they were given before this amendment came into force (with the exception of the judgment under appeal in AdmA. 2936/06 which was indeed given after the passing of this amendment to the Law, however it contains no reference to it). Taking into consideration the fact that the parties before us have related at length to the ramifications of this amendment to the respondents' cases, we shall briefly discuss the ramifications of this amendment.

Firstly, Amendment No. 1 changes the established definition in section 1 to "resident of the area". In the new definition the following was established:

> "Definitions" 1. "resident of the area"- **someone who was registered in the Population registry of the area** as well as someone who resides in the Area even if he is not registered in the Population registry of the area, and excluding a resident of a Jewish settlement in the Area" [Emphasis added – D. B.]

In the first part of the amended definition it is thus explicitly established that "someone who is registered in the Population registry of the area" is a "resident of the area" to whom the provisions of the Law apply. In addition to this, Amendment No. 1 broadens the exceptions to the Law to whom one is allowed to grant Israeli status to minor "residents of the area". Whereas in the original provisions of the Law it was established that only a minor up to the age of 12 years could receive a residence permit or permit of stay in Israel (section 3(1) of the original version), section 3A to the amended Law establishes that a minor under 14 years of age can receive an Israeli residence permit to avoid his separation from his custodian parent who lawfully resides in Israel, whereas a minor over the age of 14 years can receive a permit of stay in Israel for the same purpose, provided that the permit shall not be extended if the minor does not permanently live in Israel.

The main claims of the parties

6. The first claim of the State is that the provisions of the Temporary Order Law apply to the respondents since they are residents of the area according to the meaning of the definition that was established in the Law even before Amendment No. 1. As mentioned, according to this definition, which was discussed by the judge of the court of first instance, a "resident of the area," comes to "include someone who lives in the area even if he is not registered in the Population registry of the area …".According to the State's argument, even if this definition does not explicitly establish that the Temporary Order law applies to someone who is registered in the Population registry of the area, this conclusion may be gleaned from the security purpose of the Temporary Order Law, which was designed to prevent a security risk that flows from granting Israeli status to residents of the area. According to this claim, the registry of the area is different from "regular" population registries, in that it does not only express the physical aspect of "residency", but also expresses the legal connection of "quasi citizenship". This status, so the State argues, contains within it the duty of loyalty towards the Palestinian Authority and even grants the person registered in the Population Registry the right to participate in elections to the institutions of the Palestinian Authority. In these circumstances the State argues it is sufficient that a person has registered in the registry of the area to be considered a "resident of the area": residency which raises a security concern which is the basic purpose of the Temporary Order Law. However the State argues further that there is no longer a real need to rely upon the interpretation given in the original definition to the term "resident of the area" in the Temporary Order Law, since this definition was amended, as stated, in Amendment No. 1 to the Law, in which it was explicitly established that the provisions of the Law shall apply to ""someone who is registered in the Population registry of the Area". The State argues, that the amended definition

explicitly and unambiguously clarified that the Temporary Order Law applies to anyone who is registered in the registry of the Area. Therefore the State argues that the respondents did not acquire any right to receive Israeli status and therefore their applications are currently subject to the provisions of the Temporary Order Law in its amended version, in terms of which, so it is argued, there is no doubt that their registration in the registry of the Area causes them to be subject to the provisions of the Law. It is also claimed that even if this argument is rejected, and it is established that applying the amended definition to the respondents constitutes a retroactive application; considering the security purpose of the Law there is some justification for a retroactive application such as this.

Finally the State argues with respect to the interpretation of Regulation 12 of the Entry into Israel Regulations which establishes that a "child who is born in Israel, and to whom section 4 of the Law of Return, 5710-1950 does not apply, his Israeli status shall be that of his parents". According to the state's argument, as a general rule the Minister of the Interior must act pursuant to the executive guideline that is established in Regulation 12 and grant a minor who was born in Israel the same status as that of his parent. Nonetheless, the State argues further that the Minister of Interior's discretion in this regard is very broad, and alongside the consideration of the center of life of the minor he may also take other considerations into account, including those concerned with security or criminal impediments. Additionally the State argues that the Minister of the Interior may take into account concrete considerations that relate to specific minor in question. In this context we are referred, therefore, to the State's appeals against the findings in some of the judgments under appeal before us, which in the opinion of the State restricted the discretion of the Minister of the Interior and held that within the confines of Regulation 12 he is only permitted to consider the center of life of the minor, so that if the minor lives in Israel there is, so to speak an obligation to grant him Israeli status.

7. The basic argument of the respondents in response to the State's appeals is that they are not included in the definition of "resident of the area", as phrased prior to Amendment No. 1 to the Temporary Order Law. According to this claim, registration in the registry of the area can easily be done and therefore one cannot rely upon it to determine whether the person applying for Israeli status indeed lives in the area and conducts his life there. Instead one should allow him to refute the registration by presenting data that prove that the center of his life is in Israel. For these reasons the respondents argue that one should interpret the definition to "resident of the area" in such a way that registration in the area, in and of itself, does not settle the issue of the applicability of the Law. With respect to anything related to their particular affairs the respondents argue that their registration in the registry of the area was done for various reasons that do not pertain to the center of their lives, and therefore it was incumbent upon the Ministry of the Interior to allow them to prove that the center of their lives was in Israel.

With respect to Amendment No. 1 to the Law and to the amended definition that was established within its framework, in terms of which "someone who is registered in the Population registry of the area" is a "resident of the area" to whom the provisions of the Law apply, the respondents argue that the definition in this version should not be applied to them, since the decisions of the Ministry of the Interior to dismiss their applications was given before Amendment No. 1 came into force. According to their

argument since Amendment No. 1 to the Temporary Order Law does not explicitly establish that the amended definition also applies to a decision that was made with respect to them, before the coming into force of the amendment, applying the amended definition to them is an invalid retroactive application of the law.

In addition it should be noted that the respondents do not argue that Regulation 12 obligates the Minister of the Interior to "automatically" grant Israeli status to every minor who was born in Israel, and they do not dispute the fact that the Minister's discretion has been preserved with respect to operating and implementing the Regulation. Nonetheless the respondents do claim that in regulating Regulation 12 the Minister determined for himself the limits of the discretion in the confines of which he operates, and they hold that the issue of the center of life of the minor, applying for Israeli status, and of his family was always the main issue in the past and needs to continue to be at the core of this discretion, and to remain the determining factor with respect to granting Israeli status. In this context the respondents claim further that in contradistinction to the State's argument the judgments in the court of first instance did not negate the discretion granted to the Minister of the Interior pursuant to Regulation 12 but held that the conduct of the Ministry of the Interior with regard to the respondents was unlawful.

Discussion

The definition of "resident of the area" applies to the respondents' cases

8. The main question that arises in the appeals before us is whether one should view the respondents as "residents of the area', to whom the Temporary Order Law applies. This issue was discussed in the court of first instance which based itself on the definition of the term "resident of the area" which appeared in the previous version of the Law, however after the judgments of the Court for Administrative Affairs which are under appeal before us were given, the definition of the term "resident of the area" as it appeared in the Temporary Order Law was ,as stated, changed and it was determined that "someone who was registered in the Population Registry of the Area" would be considered a "resident of the area" for the purposes of the Law. Therefore it behooves us to first consider whether to apply the definition of "resident of the area", which is currently established in the Temporary Order Law to the respondents' cases; or perhaps the previous definition that was in force at the time that the Ministry of the Interior dismissed their application for Israeli status.

9. The amended definition of the term "resident of the area" is included in Amendment No. 1 of the Law which was published in the Official Gazette dated 1 August, 2005. No one disputes that this date was later than the various dates on which the Ministry of the Interior dismissed the respondents' applications to receive Israeli status. To all appearances the amendment was enacted in the wake of the findings of the Court for Administrative Affairs in the issue before us. At the time that Amendment No. 1 to the Law came into force, however, the handling of the applications by the Ministry of the Interior had ended and they were not pending before it. Therefore we must conclude that from the perspective of the respondents' applications, applying the amended definition of the term "resident of the area" to them would qualify as a retroactive application of this definition; since as it is well known "legislation is retrospective if it changes the future of the legal status, legal content, or legal results of situations that have been completed or of actions or events

(commissions or omissions) that were performed or had happened before the date that the Law came into force" (AdmA. 1613/91 **Arbiv v. The State of Israel** *Piskei Din* 46(2) 765, 777 (1992) (hereinafter: the "**Arbiv case"**). See also: HCJ 334/85 **Gal v. Administrator of the Courts** *Piskei Din* 40(3) 729, 741-742 (1986); Aharon Barak *Legislative Interpretation* (1993) (hereinafter: Barak - *Legislative Interpretation*) pp. 624-626). Note well: In the appeals before us we are not examining the applicability of the amended definition to applications that were filed with the Ministry of the Interior and which remained pending at the time the aforesaid Amendment came into force, nor the applicability of the amended definition to applications that were filed after the said amendment came into force. We are dealing exclusively with those applications whose handling – as far as the Ministry of the Interior was concerned – was completed before the coming into force of the amended definition. With respect to these applications there is no escape from concluding that the application of the amended definition upon them constitutes a retrospective application.

10. Now that it has been confirmed that applying the current definition of the term "resident of the area" to the respondents before us constitutes a retroactive application we have to examine whether the Temporary Order Law in its present version indeed requires a retroactive application of the definition. A basic assumption in our legal theory is that all acts of legislation apply from now onwards and not retroactively. This is the non retrospective presumption of legislation, whose aim it is "to administer justice, the rule of law, behavior direction, certainty and stability" (see LCA 7028/00 **IBI Mutual Fund Management (1978) Ltd v. Alsint Ltd.** (not yet published; 14 December 2006) paragraph 13). This presumption may, of course, be refuted. The legislator may refute it by establishing a clear provision in the new Law that gives it retroactive application. If the legislator has not explicitly established in the new Law that its applicability is retroactive, then the applicability shall be determined pursuant to the general rules of interpretation that are relevant to our legal system, especially considering the purpose which the Law purports to realize (see the **Arbiv case,** pp. 775-776).

Amendment No. 1 to the Temporary Order Law did not explicitly establish that the amended definition of the term "resident of the area" shall also apply to applications to receive Israeli status whose handling – as far as the Ministry of the Interior is concerned – ended before the date of the coming into force of Amendment. The question is, therefore, whether the purpose of the Temporary Order Law requires this conclusion? We have been persuaded that we must answer this in the negative. The purpose of the Temporary Order Law and the background to its legislation was discussed at length by this court in HCJ 7052/0 **Adalah - The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior** (not yet published, 14 May, 2006) (hereinafter: the **Adalah case**.) According to the majority of the judicial panel the State's arguments were accepted in this case and it was found that the purpose of the Law is a security purpose. Thus concerning this matter the honorable Chief Justice Barak noted:

> "The purpose of the Citizenship and Entry into Israel Law is a security one, and it is concerned with decreasing as much as is possible the security risk posed by the alien spouses to Israel. The purpose of the Law is not based on demographic considerations. This

> conclusion is enshrined in constitutional history including the arrangements under this Law. Indeed, underlying this legislation is the security concern with respect to the involvement in acts of terror on the part of the Palestinian couple, who hold Israeli identity documents as a consequence of the "family unification" with their Israeli spouses. The purpose of this Law is to minimize risk as much as possible" (The **Adalah case** paragraph 79 of the judgment of Chief Justice Barak)

A similar conclusion was reached by the Deputy Chief Justice M. Heshin, in paragraph 98 of his judgment:

> The goal which underlay the Citizenship and Entry into Israel Law – a goal which in and of itself is a noble goal…the purpose of the Law is to protect the security and lives of citizens of the State…" (**Adalah case** at paragraph 98 of the judgment of the Deputy Chief Justice M. Heshin).

In the **Adalah case** it was held that the clear aim of the Temporary Order Law is to protect the State from a security risk that may be foreseen from a family unification of Israeli residents with residents of the area. This is because of a concern that there may be an involvement with terror on the part of those family members who are residents of the area, and their entry into Israel and being granted Israeli status will be exploited by the terror organizations for their own purposes. With regard to anything related to the question of retrospective application that has arisen in the appeals before us, and in the circumstances of the case under appeal, we have been persuaded that the security purpose of the Law will not be frustrated if its provisions will not apply to someone who has proved that aside from his registration in the registry he has no further connections to the area. The central reason for this is that registration in the registry, in and of itself, does not constitute a security risk whose prevention is the underlying purpose of the Temporary Order Law. The State has indeed argued before us that this registration which grants the person, inter alia, the right to vote for and to be elected to the institutions of the Palestinian Authority, establishes in practice a quasi citizenship link with the Palestinian Authority territories. However, aside from this claim the Ministry of the Interior did not present any additional data that would likely persuade us that this "registration link" of those minors establishes, in and of itself, an inherent risk to the welfare and security of the State of Israel. So, for example it has not been clarified for us how this registration was carried out at the time that the respondents were registered, what conditions were required from someone who requested to be registered in the registry, whether and how it would be possible to remove the registration, and under what circumstances it would be possible to register a minor in the registry. Considering the aforesaid we have not been persuaded that registration in the residents' registry of the area, in and of itself, and when it involves a minor who has successfully proved that he was born in Israel and for whom in practice the center of his life is not in the area, establishes a security risk whose prevention underlies the purpose of the Temporary Order Law. Nonetheless, our case involves a defined group of minors, who requested that they be granted status in the place in which they were born and in which, according to their

claim, is located the center of their lives, and whose applications to grant them status were decided before the Law was amended.

11. Since we have determined that the purpose of the Temporary Order Law will not be frustrated if its provisions are not made applicable to minors who have been registered in the registry of the area but who have proved that the center of their lives is not in the area; there is then no justification – from the perspective of the language of the Law or its purpose – for retroactive application of the amended definition of the term "resident of the area" to the respondents before us. Furthermore it is appropriate to note that in relation to the State's argument, in terms of which it is not reasonable for the Ministry of the Interior to currently examine the respondents' cases pursuant to the original definition of the term "resident of the area" which is no longer valid, since judicial review of decisions of the Administrative Authority – whether with regard to petitions before the court of first instance or whether with regard to the appeals before us - examines whether the decision of the Administrative Authority has been reached pursuant to the law which was practiced at the time the decision was made. Certainly this is the situation when we are discussing the issue of harming rights; and in the circumstances of our case harm to the rights of the parents of Israeli residents, whose minor children will not be separated from them. As we shall see below, there is no place to adopt the interpretation of the Ministry of the Interior as to the original definition of the term "resident of the area" and instead of summarily dismissing the respondents' application it should have allowed the respondents to argue the merits of their case as to their connection with the area. Under these circumstances it would have been appropriate for the Ministry of the Interior to have examined the respondents' applications pursuant to the law that was valid at the time they reached their original decisions with regard to those applications. One cannot say that such a result is unreasonable since a result such as this falls in line with the principle of legality that applies to all administrative authorities regardless. This result also conforms to the basic principles of justice; since had the respondents' applications not been summarily and unlawfully dismissed (as will become clearer below) it would have been incumbent upon the Ministry of the Interior to examine the applications and to decide them on their merits. Parenthetically we should also take notice of the fact that when we reached the conclusion that one should apply the previous definition of the term "resident of the area" to the respondents, we were no longer required to deal with the question of the current definition to this term (a question which is currently pending before this court in AdmA 1621/08).

The application of the Law to the respondents based upon its original version

12. The Court for Administrative Affairs held, as stated, in a series of judgments, which were given by various judges, that the mere registration in the registry of the area is insufficient for the person to be considered a "resident of the area" for the purposes of the Temporary Order Law, and they should be allowed to prove that aside from their registration in the registry they have no other connections to the area. The judgments based themselves on the following definition of the term "resident of the area" to whom the Temporary Order Law applies, which, as explained above, is not the same as the definition that currently appears in the Law.

"Definitions" 1…

> "resident of the area"- including someone who resides in the Area even if he is not registered in the Population Registry of the area, and excluding a resident of a Jewish settlement in the Area"

From the language of this definition it clearly emerges that the provisions of the Law apply to anyone whose place of residence is in the area, even if they are not registered so in the registry of the area. Nonetheless, this definition does not relate in any explicit way to the "opposite" factual situation, which is claimed by the applicant for Israeli status, that aside from his registration in the registry of the area he has no other connections to the Area. In this context we must examine what is meant by the word "included" at the beginning of the definition. From a linguistic perspective the expression "including" comes, generally to broaden its natural and ordinary meaning of the defined expression and to add on to it, even if at times the expression "including" is only placed there for cautionary reasons (see Barak - *Legislative Interpretation*, pp. 138-139*)*. In this regard it would be most appropriate to cite the words of the (then) Justice M. Landau:

> The word "including" that is found at the beginning of the aforesaid list … may signify one of two things: that the cases in the list are in any event included in the general principle mentioned in the preface, and are mentioned more explicitly only for the sake of further clarity, or that they come to add to what has already been said in the general principle (See CA 48/50 **The Attorney General v. Rivkind**, *Piskei Din* 8, 254, 259 (1954)).

Adding an "inclusive" clause is designed, therefore, to expand the boundaries of the basic definition, to clarify it or to limit it (see CAA 3534/97 **Atlis v. Israeli**, *Piskei Din* 53(4) 780, 791 (1999)). In the case before us we are required to identify the basic meaning of the expression "resident of the area", that very meaning which the word "including" sought to expand or clarify in the present case. From the linguistic perspective, in this context there are two different linguistic possibilities. According to one possible interpretation, the basic meaning of the term "resident of the area" is anyone who is registered in the registry. According to this interpretation the expression "including" is meant to expand the basic definition, so that it applies to anyone who lives in the area, even if he is not registered in the registry of the area. According to the other interpretive possibility the basic meaning of the term "resident of the area" is anyone who lives in the area. According to this interpretation the word "including" is designed to clarify the point that even those who are not registered in the registry of the area shall be considered a "resident of the Area" if he indeed lives within the territory of the area.

13. Both alternative interpretations that are offered above draw support from the language of the Law. Under these circumstances and pursuant to the general rules of interpretation that have become accepted in our legal theory, one must choose the interpretative possibility that realizes the purpose of the legislation (see AdmA 2775/01 **Witner v. The Sharonim Local Planning and Building Commission** (not yet published, 4 September, 2005, at paragraph 8)), and at the same time assimilates

the basic principles of our legal theory. The purpose of the Temporary Order Law, as it has been held in the **Adalah case** and as explained in paragraph 10 above is a security purpose. Therefore, one must examine which of these different interpretations of the term "resident of the area" realizes the security purpose of the law, and falls in line with one of the basic principles of our theory. In the present case we have been persuaded that the interpretation of the term "resident of the area" which refers to anyone who in practice lives in the area (even if he is not registered in the registry of the area) and not to anyone who is registered in the registry of the Aera (even if he does not live in the area) is the interpretation which best realizes the security purpose of the Temporary Order Law. This, because the security purpose of the Temporary Order Law will also be achieved if the applicant for Israeli status succeeds in proving that despite his registration in the area he is disconnected with it, since he does not live in the area and has no connection to it aside from the "registration connection". In this context it should be noted that in any event the Minister of the Interior is entrusted with broad discretion within the framework of exercising his authority in granting Israeli status (see AdmA 11538/05 **Netyosov v. Minister of the Interior** (unreported, 25 November, 2005) at paragraph 5 and the references that are cited there). As explained in paragraph 10 above, the Ministry of the Interior has been unable to clarify what security risk flows from those who apply for Israeli status, whose connection to the area is one exclusively based on a "registration connection" and who have succeeded in proving that the center of their life is not in the area. In this context it is important to note that even if those seeking Israeli status like in the example of the respondent, who were registered in the registry of the area but at the same time claimed that the center of their lives was not in the area, and they were thus not considered "residents of the area" for the purposes of the Temporary Order Law, the Minister of the Interior is still entrusted with the discretion to examine whether there is a concrete security impediment with regard to the applicant for Israeli status (see HCJ 2208/02 **Salamah v. Minister of the Interior**, *Piskei Din* 56(5) 950, 960 (2002) (hereinafter the **Salamah case**); AdmA 9993/03 **Hamdan v. The Government of Israel** *Piskei Din* 59(4) 134, 140 (2005) (hereinafter: the **Hamdan case**)).

14. Furthermore in making the choice between these two possible interpretations of the term "resident of the area" in the Temporary Order Law, consideration must be given to the general assumption that states that the purpose of every act of legislation is to realize the basic values of legal theory and not to oppose them (see HCJ 953/87 **Poraz v. Mayor of Tel Aviv-Yafo**, *Piskei Din* 42(2) 309, 329-331 (1988)). Derived from this basic assumption is the notion that one must adopt a "restrictive and literal interpretation of a provision of the law that negates or limits a human right" (see Barak - *Legislative Interpretation*, 558). In the case before us an interpretation of the term "resident of the area" which does not necessarily apply to all those who have been registered in the registry of the Area but only to those who indeed live in the Area, is an interpretation which imposes less harm to the rights of family members of Israeli residents to enjoy their family life in Israel together with their minor children. This right was recognized by a majority of the judicial panel in the **Adalah case**, as a basic constitutional right, which is derived from human dignity. This interpretation of the definition "resident of the area" enables those applying for Israeli status to persuade the Ministry of the Interior that aside from their registration in the registry of the area they have no other connections to the area. Thereby it is liable to avoid harm to the constitutional rights of an Israeli resident to a family life. All of this must be

done without frustrating the security purpose of the Temporary Order Law. It is also for this reason that we must prefer an interpretation that is focused upon who lives in the area, rather than a broader based interpretation which would entail a sweeping application of the provisions of the Law not only to those who live in the Area but also to anyone who is included in the registry of the area, even if he has no connection to the area and does not reside there at all.

This conclusion is further strengthened in the circumstances of the appeals before us, which are concerned with minors who claim that they were born in Israel and that their registration in the registry of the area was done for motives that have nothing to do with any type of connection to the area. Thus, for example the respondents in AdmA 5569/05 argued in the court of first instance that ever since their birth they have permanently lived in Jerusalem and their registration in the registry of the area was done in order to enable them to be registered at a school. Thus, also in AdmA 6168/05 it was argued that the minors, ever since their birth have lived in Jerusalem and they have no connection at all with the area. The respondents in AdmA 2936/06 argued that the center of their lives ever since their birth has been in Israel and only after their parents' divorce were they registered in the registry of the area by their father, who did this of his own accord in the course of a family conflict between him and the mother of the minors. The appeals before us therefore illustrate to us the difficulty latent in choosing the broader alternative interpretation, which relies solely on the registration in the registry of the area for the purposes of applying the Law. This broader interpretation is likely to deprive the minors, for arbitrary reasons, of any possibility of arguing that the center of their life is exclusively in Israel. On the other hand, the other possible interpretation that has a more restrictive definition of a "resident of the area" which does not rely exclusively on the registration in the registry of the area, will allow minors to claim recognition of their status in the place in which their mothers or parents have status; the place which serves the center of their lives. All of the above does not in any way prevent the Ministry of the Interior from examining the minors' clams on their merits.

15. Our conclusion is that the judges of the Jerusalem Court for Administrative Affairs were correct in finding that the definition of "resident of the area" in its original version prior to the amendment to the Law, should be interpreted in a way that it does not become "automatically" applicable because of the mere registration of a person in the registry of the area. Therefore, the Ministry of the Interior was not permitted to dismiss the respondents' applications solely for the reason that the respondents were included in the registry of the area. It should have examined in detail the claims that aside from the registration in the registry they did not have any other connection to the area. We should note in this context that we accept the rulings that are in some of the judgments of the court of first instance, in terms of which registration in the registry *prima facie* establishes the assumption that the applicant for Israeli status **does have** other connections to the area aside from the registration. Therefore, in the absence of other data the Ministry of the Interior may rely on the registration and assume that the provisions of the Temporary Order Law do apply to the applicant for Israeli status. Nonetheless, pursuant to the narrow interpretation of the definition "resident of the area", it is incumbent upon the Ministry of the Interior to allow the applicant for status to persuade it by means of producing administrative evidence that aside from registration in the registry he lacks any other connection to the area, so that the Law should not apply to him. If the applicant for status discharges

this onus then the regular arrangements with respect to granting Israeli status will apply to him. Amongst these arrangements, the relative arrangement for our case is that which is established in Regulation 12 of the Entry into Israel Regulations.

Examining the respondents' applications under Regulation 12 of the Entry into Israel Regulations

16. Since we have found that the respondents have the right to argue that the Temporary Order Law does not apply to them, the question arises how then the applications for Israeli status are to be examined, if they are successful in persuasively showing that aside from their registration in the registry of the area they have no other connections to the Area.

As has been mentioned, the respondents are not eligible to Israeli citizenship by virtue of the Law of Return. They are not even applying for Israeli citizenship for other reasons. Their application is to receive a status that is identical to that of their mothers, who reside in Israel by virtue of a permanent residence permit that was given to them under the Entry into Israel Law. On the assumption that the Temporary Order Law does not apply to them, the respondents' status must be resolved pursuant to section 1 (B) of the Entry into Israel Law, which establishes that "the residence of a person, other than an Israel national or the holder of an *oleh* visa or an *oleh* certificate, his residence in Israel shall be by permit of residence, under this Law". The authority to give permits of residence under the Entry into Israel Law was delegated to the Minister of the Interior, who may for these purposes exercise broad discretion. This discretion is, of course, subject to judicial review (see AdmA 4614/05 **The State of Israel v. Oren** (not yet published, 16 March, 2006) paragraph 5 (hereinafter: **the Oren case**); HCJ 2828/00 **Kowalski v. Minister of the Interior**, *Piskei Din* 57(2) 21, 27-28 (2003)). It should be noted, that as a rule the Entry into Israel Law and the Regulations that were regulated by virtue thereof are devoid of any criteria for exercising the discretion of the Minister of the Interior (see HCJ 3403/97 **Enkin v. Ministry of the Interior** *Piskei Din* 51(4) 522, 525 (1997); the **Hamdan case**, p. 140).

17. Nonetheless in the case of minors who were born in Israel to parents who are holders of an Israeli residence permit the secondary legislator regulated the Entry into Israel Regulations, which establish how their applications should be handled. This Regulation establishes the following:

"The status of a child who was born in Israel	12. A child who was born in Israel, but to whom section 4 of the Law of Return 5710-1950 does not apply, his Israeli status shall be the same as the status of his parents; should the parents not share one status the child shall receive the status of his father or of his guardian unless the second parent objects to this in writing; should the second parent object, the child shall receive the status of one of the parents, as shall be

determined by the Minister."

Regulation 12 therefore resolves the status of children who were born in Israel but to whom section 4 of the Law of Return 5710-1950 does not apply. The Regulation establishes that when both parents of the child have the identical Israeli status, the child's status shall be the same as the status of his parents. The Regulation also establishes that if only the father of the child has Israeli status, the child shall receive the status of his father provided that the second parent does not object to this in writing. In this context it should be noted that the language of the Regulation, *prima facie* discriminates between the sexes, since it establishes that when only one of the parents has Israeli status, the child can choose to receive the status of his parent and provided that this involves the father. Criticism of this point has been raised by the court in the past (see HCJ 979/99 **Pabaloya Carlo (minor) v. Minister of the Interior** (unreported 23 November, 1999) paragraph 3 (hereinafter the **Carlo case**). However in the appeals before us the State announced that it routinely reads into the language of the Regulation a stipulation that the child shall receive the status of the parent with whom he maintains the center of life in Israel, even if this involves his mother. It should also be noted that in the appeals before us the State has announced that in contradistinction to the previous position which was presented in the other proceedings, it is currently of the opinion that the provisions of the Regulation also apply when the application under Regulation 12 is filed at a time that is not close to the birth of the child, similar to the circumstances of the respondents.

18. The question that was raised before this court in the **Carlo case** was whether the language of Regulation 12, in terms of which a "child who was born in Israel … his Israeli status shall be the same as the status of his parents", obligates the Ministry of the Interior to grant the child status merely because of his birth in Israel. This question was answered in the negative. We ruled that Regulation 12 should be interpreted in a way that conforms to the purpose of the Entry into Israel Law, by virtue of which it was regulated. For this reason it was ruled that considering the fact that the Entry into Israel Law does not recognize the right to Israeli residence "by virtue of birth", Regulation 12 is then not designed to grant Israeli status merely by "virtue of birth". Its aim is to avoid "creating a disconnection or chasm between the status of the parent whose residence in Israel is by virtue of the Entry into Israel Law, and between the status of his child who was born in Israel, and whose mere birth in Israel does not grant him legal status in it" (see the **Carlo case**, paragraph 2). As was ruled in the **Carlo case**, the reasons for this are associated with the welfare of the minor, to his right to a family life, and to honoring the family unit:

> As a rule our legal theory recognizes and respects the value of the integrity of the family unit and the interest of maintaining the welfare of the child, and therefore one must avoid creating a chasm between the status of a minor child and the status of his parent who has custody over him or who is entitled to custody over him. Also from the standpoint of granting Israeli residence permits it appears that there is no justification for creating such a chasm, since the justifications that underlay the granting of a residence permit to the parent

> shall, as a rule, also apply to his child who was born in Israel and who lives with him." (See *ibid*.)

Pursuant to this, it was held in the **Carlo case**, that when the purpose of the integrity of the family unit (with the parent who holds an Israeli residence permit) does not underlie the minor's application for Israeli status, the Minister of the Interior is not obligated to give the minor status merely because of his birth in Israel to a parent who holds an Israeli residence permit.

The question that was raised by the State in the appeals before us were not directly addressed in the **Carlo case**, and that question is whether in the framework of exercising his authority under Regulation 12 of the Entry into Israel Regulations, Minister of the Interior may take into account other considerations in addition to the center of life of the minor; or perhaps his discretion is exclusively restricted to examining this specific consideration. According to the State's claim, from what has been said in some of the judgments that were given in the court of first instance it is evident that the Minister of Interior's discretion is limited to an examination into the center of life of the minor and he may not take into account other considerations. According to this claim, this determination undermines the purpose of the Entry into Israel Law which assigns the Minister of the Interior with broad discretion for exercising his authority – also when this involves circumstances which are discussed in Regulation 12.

19. As has already been noted the Entry into Israel Law indeed grants the Minister of the Interior broad discretion. This discretion is derived from the principle of sovereignty in terms of which the state may decide who stays in its territory and who does not (see **Oren case** at paragraph 5). Alongside this, and at the very foundation of this law there is also a humanitarian rationale, which is concerned with the readiness to grant Israeli status to a family member who is a relative of someone who lawfully resides in Israel, and who applies to live with him in Israel, and aspires to prevent the breakdown of the family unit (see HCJ 3648/97 **Stemka v. Minister of the Interior**, *Piskei Din* 53(2) 728, 787 (1999); AdmA 7088/03 **Mahamid v. Minister of the Interior** (unreported 1 March, 2004) at paragraph 4, AdmA. 9018/4 **Mona v. Ministry of the Interior** (unreported 12 September, 2005) at paragraph 7). Note well: the significance of these things is not that the humanitarian consideration is decisive. Within the framework of the broad discretion of the Minister of the Interior he may determine that despite possible harm to the family unit, there is no place to grant that specific person Israeli status, whether for a security reason, a criminal reason or any other relevant reason. When exercising the discretion that is assigned to him under the Law, the Minister of the Interior is required to balance various considerations relevant to the issue of granting Israeli status and to accord each consideration the appropriate weight it deserves. Included in this is the requirement by the Minister of the Interior to also consider the value of the integrity of the family unit in the course of examining the applicant's center of life; however it is clear that this consideration is not the only one that the Minister of the Interior may consider.

20. How, therefore, is the discretion of the Minister of the Interior meant to be exercised when dealing with the application that was filed under Regulation 12 of the Entry into Israel Regulations? The point of departure in this issue is that the interpretation of secondary legislation is integrated into the interpretation of the primary Law by virtue of which it was regulated. Indeed, as a rule the purpose of the

secondary regulation conforms to the purpose of the primary Law (see HCJ 8233/99 **Ben Zuk v. Minister of Transport**, *Piskei Din* 55(2) 311, 316 (2000)). This is clearly also the case when it comes to the Entry into Israel Law and the regulations which were regulated by virtue thereof. Considering the fact that we have clearly held in the past that Regulation 12 should be interpreted "in a way which conforms to the primary act of legislation by virtue of which it was regulated, and which falls in line with the underlying purpose" (**Carlo case** at paragraph 2). In this spirit, we accept the State's claim that like in a "regular" exercise of authority under the Entry into Israel Law – in which the appellant is assigned broad discretion - here too in exercising authority under Regulation 12 the Minister of the Interior may take into consideration additional factors beyond the minor's center of life. Thus, the Ministry may take into account security or criminal considerations that pertain to the broad public interest, or any other pertinent consideration that relates to the exercise of authority under the Entry into Israel Law.

Nonetheless it must be emphasized that when the Minister of the Interior considers the application that is filed under Regulation 12, he must allot **significant weight** to the welfare of the child and to the integrity of the family unit. This is for two main reasons. **Firstly,** he must set his mind to the fact that the secondary legislator chose to regulate a special regulation on the matter of the status of children who were born in Israel. As we have already noted, for the most part the provisions of the Entry into Israel Law and those of the regulations which were regulated by virtue thereof do not establish criteria for granting an Israeli permanent residence permit. Therefore by the very fact that a special regulation was instituted that deals with the resolution of the Israeli status of children who were born there we may learn that the secondary legislator sought to establish that when dealing with these minors special and significant weight should be accorded to the aspect of the integrity of the family unit. **Secondly** we must take into account the special nature of Regulation 12 as a regulation that is designed to promote human rights, and it does so from two aspects. The first one is the aspect which relates to the right of the parent with Israeli status to raise his child, that is to say the constitutional right of the parent to a family life. The second aspect relates to the independent and autonomous rights of the minor to live his life alongside his parents. Chief Justice Barak related to this in the **Adalah case**:

> The second aspect [of honoring the family unit] is a right of the child to a family life. It is based on the independent recognition of the human rights of the child. These rights are given as a matter of principle to every human being by virtue of him being a human being, to the mature person and to the minor … a child has the right to grow up in a complete and stable family unit. His welfare dictates that he should not be separated from his parents and he should grow up in the lap of both of them. Indeed, it is difficult to exaggerate the importance of the link between the child and each one of his parents. The continuity and persistence in this link to his parents is an important foundation for the correct development of children. From the viewpoint of the child, his detachment from one of his parents is liable to be perceived as abandonment and will have ramifications upon his

> emotional development." (Paragraph 28 of the judgment of Chief Justice A Barak in the Adalah case).

These two aspects – the one, which focuses on the rights of the parent who has Israeli status to live with his child in Israel, and the other, that focuses on the minor, who even though he has no Israeli status must still have his human rights not to be separated from his parents taken into account – underlie the purpose of Regulation 12. Against this backdrop, the Minister of the Interior is required to exercise his authority in such a way that these considerations are accorded significant weight, so that he can realize the special purpose of the regulation. Indeed, recognition of the family unit which has expanded with the birth of the child, and recognition of the independent rights of the minor to a continuous relationship with his parents and to his emotional development, requires that at the time of considering an application which has been filed under Regulation 12 significant weight be accorded to the fact that the center of life of the child is in Israel, alongside his mother, his father or both of them together.

From the State's arguments before us it emerges that even they are of the opinion that one must accord significant weight to considerations such as the integrity of the family unit and the center of life of the child when examining an application that was filed under Regulation 12. Therefore the State claims that as a rule a child should be given the Israeli status of his parent, in the course of implementing the executive guideline the secondary legislator established in Regulation 12. Nonetheless the state claims that when there is a security or criminal impediment with relation to the minor or when there are other relevant circumstances that pertain to the minor and to his family, the Minister of the Interior may deviate from the guideline which is established in Regulation 12 and prevent the granting of Israeli status to that minor. The State's position conforms to the conclusions we have arrived at, in terms of which even within the confines of Regulation 12 the Minister of the Interior is entrusted with broad discretion with respect to exercising authority under the Entry into Israel Law. Nevertheless, despite the existence of such broad discretion – even within the confines of Regulation 12 – the Minister of the Interior must accord the greatest weight to the consideration of the integrity of the child's family and the center of his life. Therefore one should assume that the closer to the birth that the application is filed, and the longer and more continuous the period the center of life of the child was located in Israel alongside his parents, except for rare and extreme cases, and in the absence of any concrete criminal or security impediment, the more the obligation will be upon the Minister of the Interior to grant a status that is identical to that of his mother and of his father who have Israeli status. :

Conclusion

21. The issue that was placed at our doorstep relates to the Israeli status of minors who were born on Israel, but who, for various reasons, were registered after their birth in the population registry of the area. These reasons, so argue the respondents were disconnected with the center of the minor's lives, which was and which remains in Israel.

From the outset it has appeared to us that the approach adopted by the Ministry of the Interior has been excessively rigid. At the end we reached the overall conclusion that the Ministry of the Interior's reliance on the registration of the minors in the registry of the area for the purposes of applying the Law to them does not conform to the law

that applied at the time the applications were dismissed. Our approach articulates the required balance between the security purpose of the Temporary Order Law and between the need to protect as much as is possible the constitutional rights of the mothers of the minors, who are permanent residents of Israel, to live in Israel together with their children. This approach also articulates our legal system's recognition of the independent rights of every minor to develop and mature within a loving and supportive family framework. This approach does not contravene the purpose of the Law and does not ignore the security risks to which the State referred, since it allows the Minister of the Interior to exercise his broad discretion and to examine in detail whether it is foreseeable that this specific minor, like anyone else who applies for Israeli status, presents a security risk. The point of departure however is not summarily to dismiss the minors' applications (which were filed before Amendment No. 1 to the Temporary Order Law came into force) solely for the reason that those minors were registered, by chance or not by chance, in the registry of the area. The recognition of the constitutional right of the mothers who are permanent residents of Israel to a family life and of the independent rights of the minors requires that the security clarification be meticulously carried out without exclusive reliance on the registry of the area.

Parenthetically I would only add, that I am alert to the fact that the interpretation which has been determined in this judgment and the results of this judgment will apply only to the defined group of those who were minors at the time of filing the application for status, who claimed that the center of their was in Israel and whose applications were summarily dismissed because of their registration in the registry; and all of this before the definition of the term "resident of the area" was amended in Amendment No. 1 to the Temporary Order Law.

22. The result is therefore the following:

A. The appeal as to the matter of the essential rulings with respect to the interpretation of the definition "resident of the area" in the Temporary Order Law according to the version before Amendment No. 1 to the Law came into force is dismissed and the interpretation given by the Court for Administrative Affairs with respect to this definition remains intact; this, subject to our determination with respect to the manner in which the discretion of the Minister of the Interior is exercised under Regulation 12 of the Entry into Israel Regulations.

B. With the parties' consent, the particular appeal in AdmA 5569/05, in whose context we heard the claims of the parties pursuant to the decision of Chief Justice (ret.) A. Barak dated 26 October, 2005, shall be dismissed without prejudice, since the issues of the respondents in this case were resolved. The question as to legal costs in AdmA 5569/05, which is still the subject of dispute, will be transferred for a decision by the registrar of this court.

C. Pursuant to the aforementioned decision of Chief Justice (ret.) A Barak and relying on the principles that were outlined in this judgment the State shall file within 60 days (counting court recess days) a notice with respect to its updated position vis-à-vis each one of the three following appeals, which also discussed the question as to the interpretation to the definition of the term "resident of the area" in the Temporary Order Law – AdmA 5805/05, AdmA 6162/05, and AdmA 6168/05, in the specific aspect related to the implementation of this judgment. The

respondents in each one of the aforementioned appeals shall file their replies to the State Notice within thirty days of receiving the Notice, if there is still place to conduct a hearing in their cases. After that we shall decide how to proceed with the handling of these appeals. AdmA 2936/06, in which the State is appealing the determination of the Court for Administrative Affairs that the respondents in that appeal are eligible for the status of a permanent residents in Israel, shall be transferred to the Court registrar for the purpose of issuing a summations order according to the practice.

Chief Justice

Justice A. Procaccia:

I agree

Justice

Justice A. Hayut

I agree

Justice

Case decided as stated in the judgment of Chief Justice D. Beinisch.

Given today, 9 Av 5768 (10 August, 2008), in the absence of the parties.

Chief Justice Justice Justice