In the Supreme Court in Jerusalem **H.C. 7052/03**
Sitting as the High Court of Justice

The Petitioners

1. Adalah - The Legal Center for Arab Minority Rights in Israel
2. Attorney Morad El-Sana
3. Abeer El-Sana
4. Ranit Tbilah
5. Hatem Tbilah
6. Asala Tbilah, a minor (born 30 May 2001)
7. Dima Tbilah, a minor (born 12 March 2003)

Petitioners 6 and 7 by their parents, Petitioners 4 and 5

8. Shawqi Khatib, Chairperson of the High Follow-up Committee for the Arab Citizens in Israel
9. MK Taleb El-Sana
10. MK Muhammad Barakeh
11. MK Azmi Bishara
12. MK ‘Abd al-Malek Dahamshe
13. MK Jamal Zahalka
14. MK Wasel Taha
15. MK Ahmad Tibi
16. MK Issam Makhoul

represented by attorneys Hassan Jabareen and/or Orna Kohn and/or Abeer Baker and/or Marwan Dalal and/or Suhad Bishara and/or Gadeer Nicola and/or Morad El-Sana, of Adalah – The Legal Center for Arab Minority Rights in Israel, PO Box 510, Shafa’amr 20200. Tel. 04-9501610, Fax. 04-9503140

- v. -

The Respondents

1. The Minister of Interior
2. The Attorney General

represented by the State Attorney’s Office, 29 Salah a-Din Street, Jerusalem.

Tel. 02-6466590, Fax. 02-6466655

Petition for an Order Nisi and Temporary Injunction

A petition is hereby filed for an order nisi against the Respondents ordering them to show cause:

A. Why the provisions of the Nationality and Entry into Israel Law (Temporary Order) (2003), which was enacted on 31 July 2003, should not be declared null and void;

B. Why the gradual process of naturalization of spouses of Israeli citizens practiced in Israel is not applied to Petitioners 3 and 5 in accordance with Article 7 of the Nationality Law (1952).

Motion for a Temporary Injunction

The application is hereby filed for a temporary injunction directing the Respondents to refrain from executing and/or implementing the provisions of the Nationality and Entry into Israel (Temporary Order) Law (2003) (hereinafter: the Law), until a final decision is reached on the petition herein. The grounds for the application are as follows:

1. This petition is directed against the Law, which prevents Petitioner 3, a resident of "the region" and who is married to Petitioner 2, an Israeli citizen, to obtain a permit to reside in Israel.

2. Prior to enactment of the Law, Petitioners 2 and 3 submitted all the relevant documents to obtain a permit to reside in Israel pursuant to Article 7 of the Nationality Law (1952). However, as mentioned above, the Law that is the subject of this petition prevents issuance of said permit.

3. Also, the Law prevents Petitioner 5 from taking part in the gradual process of naturalization and from his status being upgraded from temporary resident to citizen.

4. During the legislation of the Law, the respondents failed to take into account or to set forth before the legislature the extremely grave damage that the petitioners, and thousands of Arab citizens whose applications are pending before Respondent 1, are liable to suffer. The Law retroactively infringes on the rights of many families who relied on the fact that their applications had been lawfully submitted, and it fails to provide a mechanism to hear these persons' cases, in particular, those who submitted their applications prior to the enactment of the Law. The Law therefore contains a grave and fundamental constitutional flaw.

   A copy of the Law as laid before the Knesset for second and third reading and passed by it, and a copy of the proposed bill passed on first reading are attached hereto as Appendix P/1-A.

5. In challenging the constitutionality of the Law, the petition bases its argument on the Law's violation of the Basic Law: Human Dignity and Liberty.

6. The failure to issue a temporary injunction will cause Petitioners 2-7, and many other individuals in their situation, extremely grave, irreparable damage.

7. On behalf of many families, Petitioner 1 filed a petition on 30 May 2002 against Government Decision 1813 of 12 May 2002, which adopted principles comparable to the provisions of the Law (H.C. 4608/02, *Awad, et. al. v. Prime Minister, et. al.,* pending). In the said petition, this Honorable Court issued an order nisi and temporary injunctions against deporting the petitioners. Indeed, this motion relates to legislation and not to a government decision, as was the case in H.C. 4608/02. But since the damage caused to the petitioners is the essence in both cases, and not the process by which the decision was reached, this motion should be treated in the same manner, and the temporary injunctions requested should be granted.

The said government decision is attached hereto as appendix P/1-B.

8. The appendices to the petition and the factual and legal grounds supporting it constitute an integral part of this motion.

9. It is proper and just that this motion be granted.

The grounds for the petitions are as follows:

Then Almitra spoke again and said, "And what of Marriage, master?"
And he answered saying:
You were born together, and together you shall be forevermore.
You shall be together when white wings of death scatter your days.
Aye, you shall be together even in the silent memory of God.
But let there be spaces in your togetherness,
And let the winds of the heavens dance between you.
Love one another but make not a bond of love:
Let it rather be a moving sea between the shores of your souls…

Khalil Gibran, *The Prophet*

Factual background

Preface

1. This petition deals with the constitutionality of the Nationality and Entry into Israel (Temporary Order) Law (2003) (hereafter: the Law), which the Knesset passed on 31 July 2003. This statute prevents the submission of new applications by Israeli citizens to obtain a status in Israel for their spouses who are residents of the West Bank or Gaza Strip, and prevents the granting of any status in Israel to a person who did not submit an application prior to 12 May 2002.

2. The Law also provides that temporary resident status that was granted prior to 12 May 2002 shall not be upgraded to permanent resident status and/or citizenship, even if the application was approved, the applicant met all of the tests in the gradual process for naturalization of spouses of Israeli citizens

(hereinafter: the gradual process), and there was no information that raised suspicions against the applicant. The gradual process was established following the judgment in H.C. 3648/97, *Stamka, et. al. v. Minister of Interior, et. al.,* PD 53 (2) 728; and in the context of H.C. 338/98, *Issa, et. al. v. Minister of Interior*, not yet published.

The statement of the State Attorney's Office is attached hereto as Appendix P/2.

3. The Law violates the constitutional right to equality between citizens of the State of Israel. This is the first Law since the basic laws were enacted that denies constitutional rights to citizens on the explicit and direct grounds of ethnic identity. This Law does not grant rights to a specific group because of its ethnic identity, but makes explicit rather than indirect use of ethnic identity to infringe on the unalienable rights of a section of its citizenry on the basis of ethnic origin or national identity. Therefore, it not only discriminates on the basis of ethnic origin or national identity, but is also tainted by explicit racism.

4. The extremist nature of the Law is further aggravated by the fact that it relates to the right of citizenship. The Law is flagrantly directed against citizens of the State of Israel who are married to Palestinians from the West Bank or the Gaza Strip, and against their constitutional rights to family life, dignity, equality, and privacy. It expressly excludes Israeli settlers who reside in the same two areas. Thus, the Law directly discriminates against Arab citizens of Israel, for they are the citizens who marry Palestinian residents of the West Bank and the Gaza Strip.

5. This petition does not deal with Israel's immigration policy. The Law does not seek to regulate immigration policy, nor is that its purpose. The petition deals with rights granted to citizens of the state who seek to live together with their spouses and/or their minor children in order to carry on family life like other individuals.

6. Therefore, any attempt by the Respondents to base their arguments on an analogy with the Law of Return and/or the rights of states in determining their immigration policy and/or on various definitions of the meaning of "Jewish state," is irrelevant in this petition, because the petition does not deal with these matters.

7. The petition relates to the gross discrimination based on ethnic origin between citizens of the State of Israel as individuals, i.e., to civic discrimination between individuals within the state. In this context, it should be mentioned that there is broad agreement in Supreme Court judgments on the matter of civic discrimination toward Arab individuals, holding that such discrimination is prohibited on ideological, nationalist grounds. This was the principle set forth in the decision in *Qadan.* It was also the minority view (of the Honorable Justice Heshin) in *Adalah, et. al. v. Tel Aviv – Jaffa Municipality, et. al.,* which discussed the status of the Arab language in mixed-population cities.

H.C. 6698/95, *Qadan, et. al. v. Israel Lands Administration,* PD 54 (1) 258.

H.C. 4112/99, *Adalah, et. al., v. Tel Aviv - Jaffa Municipality, et. al.,* Takdin Elyon 2002 (2) 603, 635.

8. The petition relates directly to the rights of citizens of the State of Israel to exercise their constitutional right to personal liberty, which is granted in Article 5 of the Basic Law: Human Dignity and Liberty. This liberty is the basis of individual autonomy, of an individual's self-determination in establishing family life according to his or her choice.

9. This liberty is linked to the most fundamental human need, to love: to love and be loved by a spouse, to aspire to establish a home and live together without institutional obstacles. The Law seeks to limit the freedom of ordinary citizens to choose as their hearts dictate, by restricting the ethnic identity of their spouses. The public cannot meet the proscriptions of the Law, for love between human beings does not recognize ethnic borders. Quite the opposite, it disdains such borders. Therefore, this attempt by the Law will not succeed, not because the individuals are criminals, but because the Law seeks to regulate by means of ethnic identity "matters of love" between individuals, something which legislation cannot guarantee. On this point, the comments of the Honorable Justice Heshin in *Stamka* are appropriate:

> This response, that love would also prevail over a separation of months, is cynical and improper. Furthermore, it would be improper to make light of the injury to the couple's dignity and family unity. And the separation of the lovers, how can that be mitigated in our case? Have we forgotten the pain of Desdemona when the Duke ordered Othello to leave and fight in Cyprus? (William Shakespeare, *Othello*)
>
> Desdemona:
>
> That I did love the Moor to live with him,
> My downright violence and storm of fortunes
> May trumpet to the world: my heart's subdued
> Even to the very quality of my lord:
> I saw Othello's visage in his mind,
> And to his honor and his valiant parts
> Did I my soul and fortunes consecrate.
> So that, dear lords, if I be left behind,
> A moth of peace, and he go to the war,
> The rites for which I love him are bereft me,
> And I a heavy interim shall support
> By his dear absence…

> Should our hearts be indifferent to the distress of separation? Justice Elon spoke of the distress of separation in App. Perm. App. 488/77, *John Doe and Jane Doe v. Attorney General,* PD 32 (3) 421, as follows, at page 432:
>
> The sages said that matching a person is as hard as the parting of the Red Sea …
>
> And if matching and cooperation of couples are such, then even more so is their severance and their "parting" from each other as hard as the parting of the Red Sea.
>
> And we should not disregard the financial problems entailed in the forced separation of the couple ... Indeed, the magnitude of the right and the strong radiation that shines from within it, would dictate, as if from themselves, that the means that the Ministry of Interior chooses would be softer and more moderate than the harsh and drastic action that it decided to use. And it is hard to refrain from concluding that the respondents completely disregarded – or gave little account to – these basic rights of the individual to marry and to establish a family. If these comments are made about an alien, they apply even more so to an Israeli citizen who is a partner in the marriage… The respondents should have selected other means to achieve their goal – a goal proper in itself – means that minimize harm to the individual. For example, by increasing the monitoring of persons staying illegally in Israel, expanding examination of the authenticity of the marriage, and the like.

H.C. 3648/97, *Stamka, et. al. v. Minister of Interior, et. al.,* PD 53 (2) 728, 782-786.

10. Simply put, we are dealing with human beings. Men and women will continue to fall in love, dream together, commune with each other, become engaged, marry, and build a family. The Law will cause much suffering and will embitter their lives, their days and nights. The Law will turn joy into suffering, or at least, mix in suffering amidst the joy. It will present the couple with harsh alternatives on a daily basis regarding their private lives and the intimacy between them. The Law will control their private sphere. The Law cares nothing about the public sphere; rather, it penetrates, enters, observes, controls, and exists constantly only in the domain of the individual, even though the marriage is lawful, legitimate, and proper according to Israeli law. Therein lies the further harm caused by the Law in separating the lovers: violation of the right to privacy, enshrined in Article 7 of the Basic Law: Human Dignity and Liberty.

11. The Petitioners will argue that the Law is unconstitutional because it infringes upon the constitutional right to equality; the constitutional right to personal liberty of the individual to

maintain a family life of his choosing; the constitutional right to privacy; and the constitutional right to due process by retroactively infringing on rights granted to individuals and by failing to grant the right to be heard.

12. The Petitioners will further argue that substantial flaws characterized the legislative process in enacting the Law and that these flaws go to the very heart of the matter. The Law does not comply with the limitations provision; it was not legislated for a proper purpose; it is sweeping in scope, lacks internal logic, violates constitutional rights in a manner that is greater than necessary; and is disproportionate.

13. Parenthetically, on 30 May 2002, Petitioner 1 petitioned this Honorable Court against Government Decision 1813 of 12 May 2002, in its name and on behalf of fourteen families who were harmed by the decision, among them the family of Petitioners 4-7 of the present petition. In the earlier petition, the petitioners attacked the constitutionality of the Government Decision, which revoked, *inter alia*, the relevance of the gradual process for granting a status in Israel as regards to citizens and permanent residents of Israel married to residents of the West Bank, the Gaza Strip, and/or any person who is of Palestinian origin. Shortly after the filing of the petition, the Honorable Court issued interim orders prohibiting the deportation of the Palestinian spouses. On 14 July 2002, the Court issued an order nisi. The petition is still pending (H.C. 4608/02, *Awad, et. al. v. Prime Minister, et. al*.). Following the passage of the Law, which incorporated the main elements of said Government Decision, a hearing on the Government Decision became less relevant, and it became necessary to directly attack the new law due to the constitutional problems it raises. Upon the filing of the present petition, simultaneous notice will be given to the Honorable Court in H.C. 4608/02, whereby Petitioner 1 gives notice of the filing of this petition and requests that the 30 May 2002 petition remain pending until the final disposition of the present petition.

The Petitioners

Petitioner 1

14. Petitioner 1 is a human rights association, duly registered in Israel. It was founded in November 1996 as an independent legal center to advance human rights in general, and the rights of the Arab minority in particular. Its principal purposes are to achieve equal individual and collective rights for the Arab minority in the State of Israel in diverse areas, among them land rights; civil and political rights; cultural, social and, economic rights; religious rights; women's rights; and prisoners' rights.

Petitioners 2 and 3: The El-Sana Family

15. Petitioner 2 is a citizen of Israel, a resident of Lagiyya village in the Negev, and an attorney by profession, who specializes in human rights. He is a staff attorney with Adalah.

16. Petitioner 3 is a Palestinian woman, a resident of Bethlehem in the West Bank, a social worker by profession, a lecturer at al-Quds University in Jerusalem, and a research assistant to Prof. Jim Torczyner of McGill University in Canada for his research in the Negev and in Bethlehem.

    Copies of the identity cards of Petitioners 2 and 3 and a letter from Prof. Torczyner are attached hereto as Appendix P/3.

17. In the past, Petitioner 3 routinely received permits to stay in Israel during the day for work purposes and for medical needs.

    Copies of the entry into Israel permits are attached hereto as Appendix P/4.

18. Petitioners 2 and 3 became acquainted while they were studying together for an MA degree at McGill University in the Middle East Program in Civil Society and Peace Building, in 2000-2001. After completing their studies, and with the relationship between them having deepened, they decided to marry. They became engaged on 20 February 2003 and on the same occasion entered into a marriage covenant that was given effect by the Shari'a [Religious] Court in Jerusalem.

    A copy of the marriage certificate is attached hereto as Appendix P/5.

19. On 19 March 2003, Petitioner 2 applied for a status in Israel for Petitioner 3. The application, given number 1139/03, was filed at the Population Administration office in Beer Sheva. At the end of May 2003, Petitioner 2 received notice that the application had been refused on 25 March 2003 in accordance with the government decision of 12 May 2002.

    Copies of confirmation of submission of the application and the notice of refusal are attached hereto as Appendix P/6.

20. On 11 July 2003, the wedding ceremony of Petitioners 2 and 3 took place. The entry of Petitioner 3 and her relatives into Israel to take part in the ceremony was allowed only following the request of Petitioners 2 and 3, made on their behalf by Petitioner 1, to the State Attorney's Office. Petitioner 3 was allowed to stay in Israel for her marriage for only one week. The request submitted by Petitioners 2 and 3 to renew the permit of Petitioner 3 to stay in Israel was denied. The letter of rejection, dated 29 July 2003, stated that it was not possible to handle the request "until approval of family unification by the Ministry of Interior was obtained." It should be emphasized that, simultaneous with the refusal to grant Petitioner 3 a

permit to enable them to live as a family, she was given a permit that allowed her to stay in Israel during daytime hours for work purposes.

A copy of the correspondence with the army's legal advisor for the West Bank and a copy of the permits are attached hereto as Appendix P/7.

21. As set forth in the affidavit attached to the petition, Morad (Petitioner 2) and Abeer (Petitioner 3) were aware of the legislative proceedings and of the Government Decision that would hamper their daily lives, but they were already deeply in love, and the relationship between them overcame the threat reflected by the Government Decision and future legislation. Their love prevailed over the fear of potential obstacles. They were also aware of the many difficulties entailed in having a wedding party, but they were not deterred. They took the steps necessary to obtain the permits that would enable the party to take place. Love is what strengthened them and their hopes.

22. Petitioner 3 is not allowed to live in the Negev with her spouse. Petitioner 2 is not allowed to live with her in Bethlehem. The couple's suffering became a permanent reality of life. The Law provides no mechanism allowing them to state their case in order to overcome the presumption that they constitute a danger. The Law applies to them retroactively. As a result of the Law, Petitioner 3 will not be able to obtain a permit to live with her husband, not because of a criminal or security background – the pasts of both are without blemish – and not because they had committed any offense, but because of the ethnic identity of Petitioner 3. According to the Law, Morad, Petitioner 2 herein, an Israeli citizen, must forgo his marriage to his heart's choice Abeer, Petitioner 3. But his love for her prevented him from conceding, and this petition is the result.

Petitioners 4-7: The Tbilah Family

23. Petitioner 4 is an Arab citizen of Israel, a resident of Shafa'amr. She teaches hair dressing in the High School of Technology in Sakhnin. On 6 November 1999, she married Petitioner 5, a Palestinian from Nablus who works as an electrician for Salti Electrical Systems 2000, a company in Nazareth. The couple lives in Shafa'amr. They are parents to two daughters, one who is two and a half years old, Petitioner 6 herein, and the other who is four-months old, Petitioner 7.

Copies of the identities cards of Petitioners 4 and 5 and a copy of their marriage certificate are attached hereto as Appendix P/8.

24. The couple became acquainted in Shafa'amr a year before they married. Hatem, Petitioner 5, had a permit to enter and work in Israel, and he worked in Shafa'amr. The romance between them developed, and they decided to marry and establish a family.

25. Ranit, Petitioner 4, an Israeli citizen, wanted to continue to live in Shafa'amr, in the State of Israel. She believed and continues to believe that being a woman does not require her to follow her husband, unless that is the woman's choice. She does not want to raise her children under occupation. She believes that crossing the borders in this situation must be given serious thought, and should not be based on compulsion or lack of choice.

26. In her attached affidavit, Ranit explained that their youngest daughter, Dima, Petitioner 7, was born after the government's decision regarding separation of spouses, while waiting for the Supreme Court decision on her matter, and during the time leading up to the enactment of the Law. In her affidavit, she explained her troubles and nightmares during her pregnancy with Dima, her indecision over bringing a child into a reality so cruel that the infant is liable to be separated from her father, and how their great love and the human and natural decision that they made was stronger than any law.

27. Citizen Ranit wanted to stop time in order not to reach an uncertain future. Not knowing what the future will bring is a constant threat to her family life.

28. The following illustrates the suffering the family experienced in submitting applications to the Ministry of Interior to enable them to live together, with the ministry officials being master of the couple's fate:

- On 19 January 2000, citizen Ranit submitted an application to obtain a status in Israel for her husband. The application was filed in the Population Administration Office in Nazareth and was given number 3/2000. Although the application was approved on 12 July 2000, her husband, Hatem, was not given the status of temporary resident.
- The couple, through Adalah (Petitioner 1), wrote to the director of the Population Administration, and when the director did not reply, to the State Attorney's Office.
- It was not before 22 October 2001 that Hatem obtained temporary resident status for a period of one year.
- In early May 2002, the couple wrote to the Population Administration Office in Nazareth to renew Hatem's status as a temporary resident, which was scheduled to expire on 18 July 2002. An official in the office informed them that the office was not handling applications for family unification, that, in any case, their request was premature, and that they should make their request for renewal of the status in early July 2002.
- On 31 May 2002, the family filed a petition, together with many other affected parties, to the Supreme Court challenging Government Decision 1813 of 12 May 2002, and the Court issued a temporary injunction prohibiting the deportation of Petitioner 5 from Israel.

- On 18 June 2002, the couple again went to the Population Administration Office in Nazareth to renew Hatem's status as a temporary resident. An official in the office, Ms. Laura Shakar, agreed to extend the status for one month only, from the date of expiration until 18 August 2002. She told the couple that they must wait to obtain a decision on their application because she was not empowered to approve extension of status for a one-year period, and it was unclear if the approval would be received from Jerusalem.
- Citizen Ranit again went to the Population Administration Office in Nazareth to check whether a response had been received regarding her application for an extension of her husband's status. Ms. Shakar informed her that a decision had not yet arrived. She agreed to extend his status as a temporary resident for two more months, until 20 October 2002.
- On 22 October 2002, Hatem's temporary resident status was extended until 6 October 2003.

Copies of the confirmation of submission of the application, confirmation of the application, copies of the correspondence with the Respondents, and a copy of the temporary injunction order are attached hereto as Appendix P/9.

29. On 17 July 2003, the family withdrew its individual petition (H.C. 7319/02), which had been separated from H.C. 4608/02 because Hatem's temporary resident status was extended. By doing this, they also reserved their right to return to Court in the event that the temporary resident status would not be extended in the future.

A copy of the decision is attached hereto as Appendix P/10.

30. The story of the Tbilah family also illustrates the pain and suffering of the children, who are liable to find themselves far from their father as the result of enactment of the Law that is the subject of this petition. The Law took no account of their interests and rights. The Law did not establish a mechanism to consider the applications that couples had submitted, and did not establish any mechanism to give the relevant parties an opportunity to be heard. The provisions of the Law are also applied retroactively in regard to married couples with children who are living lawfully in Israel.

31. The Tbilahs are living in fear of what may happen to them. As a young couple and parents to a young child and an infant, it is particularly hard on them to live in constant uncertainty as to whether they will be able to continue to live together as a family. The petition that they previously filed resulted in the extension of the temporary resident status of Petitioner 5, but the extension expires in October 2003. The Law will prevent Petitioner 5 from obtaining the status of citizen, even though, according to the gradual process, he was entitled to become a citizen in 2004. Thus, enactment of the Law establishes new grounds for the couple to return

to the Supreme Court. The Law will not enable Hatem to advance in 2004 to the citizenship stage to which he was entitled pursuant to the gradual process. For this reason, they are among the petitioners herein.

Petitioners 8-16

32. Petitioner 8 serves as chairperson of the High Follow-up Committee for Arab Citizens in Israel. This committee is comprised of elected representatives, such as members of Knesset, heads of local authorities, and representatives of extra-parliamentary bodies. Petitioners 9-16 are Arab members of Knesset from the Hadash (Democratic Front for Peace and Equality)-Ta'al, Balad (National Democratic Assembly), and United Arab List party groups, which opposed the legislation under discussion and voted against it.

Analysis of the provisions of the Law and its purpose

33. Article 1 of the Law defines the terms used in the Law. This article states, *inter alia*, as follows:

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

See Appendix P/1-A.

34. This article relates directly to ethnic identity. It explicitly states that the Law does not apply to Jews residing in settlements in the Occupied Territories. That is, it relates only to Palestinians, including Arab citizens of Israel who are not residents of the Palestinian Authority but reside in "the region" temporarily, and to children born there, even children born to parents who are both citizens of Israel, provided they are not settlers.

35. Article 2 of the Law states:

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

See Appendix P/1-A.

36 This article is the heart of the Law. It states that the gradual process for the naturalization of a spouse of a citizen or resident of Israel does not apply to spouses who are residents of the

West Bank or the Gaza Strip. This article nullifies all prior legislation that grants the Minister of Interior discretion in granting residency permits. The article also nullifies all Supreme Court judgments on the gradual process for naturalization. It should be mentioned that this article infringes on the rights of citizens of the State of Israel as set forth in existing law. This is because the relevant provisions of Article 7 of the Nationality Law (1952), apply only to citizens of Israel, who, in accordance with the article, may submit applications to obtain a status in Israel for their spouses who are not residents and/or citizens of Israel.

37. Furthermore, this article explicitly states that the sweeping restrictions apply only to an Israeli citizen whose spouse is Palestinian. Thus, the restriction affects Israeli citizens who require the process of family unification with their spouses who reside in "the region." These citizens are Arab citizens of Israel. This reality creates the discriminatory effect of the Law. The discrimination in this context is based on national identity.

38. In addition, and as mentioned above, children of parents who are Arab citizens residing in the West Bank or Gaza Strip are liable to lose their entitlement to citizenship if they reside in "the region" even temporarily. The reason is that the definitions article the Law relates to residents of "the region" who are not registered but excludes settlers. Clearly, in the great majority of cases, it is Arab citizens who need to live in "the region" for temporary periods for reasons of study, work, family, and the like.

39. Article 2 of the Law also nullifies the application of the gradual process of naturalization of spouses of Israeli citizens in that it does not apply to spouses who are residents of the West Bank or the Gaza Strip.

40. For several years prior to the adoption of Government Decision 1813 on 12 May 2002, Israel implemented a procedure that was intended to regulate the naturalization of all spouses of Israeli citizens. The gradual process that was intended to regulate naturalization of spouses of Israeli citizens and to conclude in naturalization pursuant to Article 7 of the Nationality Law (1952), was established following the decision in *Stamka*, and is set forth in detail in the state's response of 7 September 1999 in *Issa*. According to this process, the spouse of an Israeli citizen is entitled to become an Israeli citizen in a gradual three stage process:

    a. An Israeli citizen who married a foreigner submits an application for family unification and citizenship in Israel for his spouse at the Population Administration's bureau in the area of his residence.

    b. Upon submission of the application, and assuming that the application does not raise suspicion that it is fictitious on its face, and where there is no security or criminal impediment, the invited spouse will be granted a permit to stay and work in Israel for six months.

c. As a rule, at the end of the six-month period, a decision will be reached on the application and entry of the spouse to the gradual process to obtain Israeli citizenship.

d. The decision will be made taking into consideration the sincere bond of marriage between the couple and its continued existence, that Israel is the their center of life, and there is no security or criminal impediment to the approval of the application.

e. Upon approval of the application, the invited spouse will be entitled to an A5 temporary residency permit. This permit will be given for a total period of four years, which will be extended annually, taking into account the circumstances mentioned in section d.

At the end of four years from the time of approval of the application in accordance with section c, above, the spouse will be granted Israeli citizenship pursuant to Article 7 of the Nationality Law, 5712-1952, provided that he actually lived in Israel for three years of the period of the gradual-process arrangement described above, of which at least two years were lived in Israel continuously prior to the day of obtaining citizenship, and subject to the considerations of section d, above.

The director of the Population Administration may, for special circumstances taking into account special reasons presented to him, shorten the period set forth according to this procedure.

See Appendix P/2.

41. Pursuant to Article 2 of the Law, Petitioner 3 will not be granted a permit to reside in Israel, and Petitioner 5 will not be entitled to any upgrading of his status which will remain vulnerable and unstable.

42. Article 3(1) of the Law states:

> The Minister of Interior or the regional commander, as the case may be, may give a resident of the region a permit to reside in Israel or a permit to stay in Israel, for purposes of work or medical treatment, for a fixed period, and also for other temporary purposes – for a period of time that shall not exceed six months; and also a permit to reside in Israel or a permit to stay in Israel in order to prevent the separation of a child under the age of twelve from his parent who is lawfully staying in Israel.

See Appendix P/1-A.

43. Article 3(1) contains three important components: 1) the readiness to grant, based on discretion, permits to reside in Israel for work or medical treatment for a fixed period of time; 2) a permit for temporary purposes other than of the kind of cases to which Article 2 of the Law relates, i.e. Article 2 excludes family unification and/or naturalization from the acceptable purposes. In other words, the sole purpose acceptable from the start is that which is denied in Article 2, relating to family unification and naturalization; and 3) the end of the article states an exception to Article 2, in which "a permit to reside in Israel or a permit to stay in Israel in order to prevent the separation of a child under the age of twelve from his parent who is lawfully staying in Israel." However, this exception is a fiction, because it conditions its application only to the parent who is "lawfully staying in Israel." Thus, it will not benefit a child under twelve years of age whose parent does not have a residency permit, and the child will be left separated from his parent. That is, the parent must first obtain a permit to stay or reside in Israel, and then request its approval. If he or she has a permit, an additional permit is not necessary. On the other hand, if the parent of the child under twelve years of age does not have a permit to stay in Israel, the exception is useless, because its application depends on the parent residing lawfully in Israel. If this is the case, what help has the legislature provided by adopting this meaningless exception?

44. This article illustrates the Law's constitutional defect: it lacks internal logic, which points out the improper purpose of the legislation. The article creates a mechanism of internal discrimination that is illogical within the legislation itself. According to this article, the legislature is willing to allow the entry of a Palestinian worker into Israel, but is unwilling to allow a parent to enter Israel to maintain a family life. The legislature is willing to have a Palestinian work in Tel Aviv and even to live there for a certain period of time, but if he falls in love with an Israeli citizen and decides to marry her and live with her in Sakhnin or Nazareth, he loses his permit.

45. The Petitioners do not complain about the granting of permits to work or receive medical treatment in Israel, but they argue that this article, in conjunction with Article 2 of the Law, clearly raises a constitutional problem inherent in Article 2 and in its purpose. In enacting the Law, the legislature preferred the right to work, which is a proper purpose in and of itself, over a right of greater constitutional magnitude.

46. Here one finds the improper purpose of the Law. The case law provides that the purpose of a law is to be determined from the language of the legislation itself. In the present case, if the purpose of the legislature is to serve a security objective, the provisions of the legislation indicate otherwise. The Law allows certain groups to enter Israel but prevents such entry only as regards persons who seek permits for family unification unless they are collaborators (see the explanation below). If the assumption is correct that everyone who resides in "the region"

is an extreme direct and concrete danger to state security, why is the legislature willing to allow other groups residing in "the region" to enter Israel? The only rational conclusion is that the purpose of the legislature is to prevent state citizens from marrying persons who live in the territory of the Palestinian Authority. This conclusion is also consistent with the subsequent article of the Law.

47. Article 3(2) of the Law states:

> The Minister of Interior may grant citizenship or give a permit to reside in Israel to a resident of the region if he is convinced that the said resident identifies with the State of Israel and its goals, and that the resident or his family members performed a meaningful act to advance the security, economy, or another matter important to the state, or that granting citizenship or giving the permit to reside in Israel are of special interest to the state. In this paragraph, "family members" means spouse, parent, child.

See Appendix P/1-A.

48. This is the only exception in the Law that enables the granting of citizenship, permanent residency, or temporary residency to residents of the West Bank and Gaza Strip and applies to families of collaborators with the security authorities. This article illustrates once again the constitutional defects of the provisions, which testify to the improper purpose of the legislation itself. Legislation that deals with and regulates nationality and naturalization should be based on substantive and objective considerations while ignoring irrelevant matters. This article, however, flagrantly discriminates between Israeli citizens on prohibited, irrelevant, and unreasonable grounds in the most extreme terms. An application made by a citizen that his or her spouse residing in "the region" be given a visa will not be granted if the spouse is not a collaborator or first-degree relative of a collaborator. The Ministry of Interior may, indeed, grant visas to collaborators, and such action raises no constitutional problems, but it may not turn this component into the only and principal test to obtain visas and/or citizenship.

49. Petitioner 3, attorney Morad El-Sana, is unable to obtain a visa for his spouse, a university lecturer, an academic, a person who has never been involved in matters connected to the security of the State of Israel, for good or for bad. However, if she was a collaborator, and it is immaterial why – whether due to economic difficulties and/or great pressure by the security authorities and/or due to her love for Israel – she would be given a visa.

50. The same is true for Petitioner 4, Ranit Tbilah, who was unable to obtain a visa for permanent residency and/or an upgrading in status for her spouse who had previously received work permits, lives in Israel, and is the father of two daughters who are citizens of Israel. However, if Ranit or her Palestinian spouse were willing to collaborate with the General Security

Services (GSS), they would achieve a pleasant life, one without nightmares and unnecessary suffering. The enactment of this article as a criterion and sole exception is discriminatory without any substantive justification, on the one hand, and forces the couple to face a completely bizarre alternative, on the other hand.

51. Therefore, the Petitioners argue that this article testifies to the improper purpose of this legislation. For even if the purpose is to serve a security objective pursuant to which it is necessary to prevent residents of "the region" to use their relatives residing in Israel to perpetrate acts against state security, why does this sweeping assumption apply to Petitioners 3 and 5, and what is the measure of proof thereof? And why are they a greater danger to state security than the son of a collaborator with the GSS who is condemned by his fellow villagers in the West Bank? Is it not possible that the son will want to prove to his fellow villagers that he is unlike his father, and in proving it, act against the state? Clearly, there is no basis for such a sweeping assumption. The problem in this instance lies in the sweeping assumptions that the Respondents make and which form the basis of the Law, whereby all residents of the West Bank and Gaza Strip constitute an actual threat to state security. The assumption is unfounded, illogical, unreasonably over-general, and immoral as well.

52. Article 4 of the Law states:

> Notwithstanding the provisions of this Law –
>
> 1. The Minister of Interior or the regional commander, as the case may be, may extend the validity of a permit to reside in Israel or of a permit to stay in Israel that was held by a resident of the region prior to the commencement of this Law;
>
> 2. The regional commander may give a permit allowing temporary stay in Israel to a resident of the region who submitted an application to become a citizen pursuant to the Nationality Law, or an application for a permit to reside in Israel pursuant to the Entry into Israel Law, prior to 12 May 2002 and who, on the day of the commencement of this Law, has not yet received a decision in his matter, provided that the said resident shall not be given, pursuant to the provisions of this paragraph, citizenship pursuant to the Nationality Law or a permit for temporary residence or for permanent residence pursuant to the Entry into Israel Law.

See Appendix P/1-A.

53. This article, like other articles of this Law, indicates the inconsistency, irrationality, and lack of internal logic of the legislation, all of which lead to one conclusion: the purpose of the legislation is improper. While the legislation provides, in Article 4, for the granting and/or

extension of a permit for temporary stay to a resident of the West Bank or Gaza Strip who submitted an application prior to 12 May 2002, it does not allow this action in the case of a person whose application was submitted after that date, such as Petitioners 2 and 3, and it does not allow the granting of resident or citizenship status. Is there a substantive distinction in the date of submission of the application, that is, that the security danger existed only as to applications of persons who did not submit his or her application before 12 May 2002?

54. Furthermore, why does the legislature prohibit an upgrade to temporary resident status for persons who were staying legally in Israel pursuant to a permit to stay? We see that the same person is staying in Israel and Article 4(1) allows the permit to be extended. What then is the difference in security terms between the person's stay pursuant to a permit to stay and pursuant to a temporary resident permit? The answer is clear: there is no difference in security terms between a temporary stay permit and a stay pursuant to a temporary residency permit. With regard to basic rights, the difference is extremely significant. In this way, as well, the purpose of the Law is improper.

55. Furthermore, this article is unconstitutional because it violates the personal liberty of the individual. The Law is implemented retroactively and does not provide a right to be heard to those applicants who submitted applications before the enactment of the Law. These applicants relied on the fact that their actions were lawful and knew that the law did not prevent them from forming a family. For these reasons, the Law denies them due process rights. As will be explained in the Legal Arguments section of this petition, the lack of due process violates a constitutional right because the right to due process is derived from personal liberty. In other words, personal liberty contains the principle that citizens' rights will not be infringed without due process.

56. It should be emphasized that there may be many reasons, most of which are not dependent on the individual, for the fact that an application for a status in Israel was not pending on 12 May 2002. It may be that the Population Administration unreasonably refused to allow submission of the application, for example, because it required the applicant to attach documents that the applicant could not possibly obtain. It may be that the application was submitted but refused because of false information that the Population Administration received. Also, during the months that preceded 12 May 2002, Population Administration officials did not accept applications due to instructions of the then-Minister of Interior, Mr. Eli Yishai. In addition, it may be that, because of the heavy workload in the Population Administration office, the family was unable to submit its application. On this point, the comments made to the Knesset's Internal Affairs Committee, in a meeting held on 16 July 2003, are appropriate. In that meeting, in which the Committee discussed the situation in the Population Administration office in East Jerusalem, MK Wasel Taha stated:

> I know of persons who wanted to register their recently born children. It took them months before they were registered. There is the case of a mother who was waiting in line and did not succeed to enter the office. She went home. For fifty days, she has been trying to register her son and has not yet been successful.

The minutes of the Knesset's Internal Affairs Committee of 16 July 2003, page 5, are attached hereto as Appendix P/11.

57. Ms. Anat Hoffman, former member of the Jerusalem Municipal Council and director of the Center for Jewish Pluralism, described the great difficulty in obtaining service from the Population Administration office in East Jerusalem:

> For fourteen years, I served as a member of the City Council, and from the first year, every Jerusalem Day, I had a custom of going to the line in East Jerusalem, and I would hear the rhetoric of members of the Knesset and prime ministers, and mayors, while I was standing there in line. This line, as Eitan said, is absolutely intolerable. There are a few things that you may not have seen… If you are a woman, you are not able to sleep there on cardboard all night long. Women are unable to spend the whole night there, so the women's line is many times longer than the men's line.

See page 9 of Appendix P/11.

58. Article 5 of the Law states:

> This Law shall remain in effect until the expiration of one year from the day of its publication; however, the government may, with the approval of the Knesset, extend its validity by order, from time to time, for a period that shall not exceed one year each time.

See Appendix P/1-A.

59. The problems inherent in this article are explained in detail in the Legal Arguments section of this petition.

60. In sum, the articles of this law serve no proper purpose. The Law's provisions infringe on constitutional rights without substantive justification, and are contrary to the limitations provision of the Basic Law: Human Dignity and Liberty.

Defects in the legislative process and the lack of a factual basis

61. The Knesset enacted the Law although it did not have a reliable factual and informational basis for either the need for the statute or the statute's implications. Also, the promoters of the

legislation failed to present any data to support their arguments for the need for the legislation. On the one hand, they argued that there was a security need for the statute in light of the increasing involvement, in the "course of terrorist attacks," of residents of the West Bank and Gaza Strip who received a status in Israel pursuant to family unification. On the other hand, according to their statistics, *twenty* persons were suspected of being directly or indirectly involved, and this number includes persons involved in the weapons trade, out of a total population of many *thousands* of residents in the West Bank and Gaza Strip who received a status in Israel as part of family unification. The response filed on 13 April 2003 on behalf of the respondents in H.C. 4608/02, which dealt with the legality of the government's decision of 12 May 2002, set forth only six examples in which persons who received a status in Israel were directly or indirectly involved in perpetrating and assisting in the commission of attacks against Israelis. Therefore, even if these statistics are reliable, they represent only a tiny fraction of the total number of persons who obtained a status through family unification. Surely, it is wrong to use these few cases to learn anything about the danger of persons who receive a status, and even more so as regards to all residents of "the region."

Page 20 of the minutes of the Knesset's Internal Affairs Committee meeting, held on 14 July 2003, is attached hereto as Appendix P/12.

The respondents' response in H.C. 4608/02 is attached hereto as Appendix P/13.

62. It should be mentioned that, despite explicit requests of members of the Internal Affairs Committee to delay the second and third hearing of the proposed bill before the Knesset, Committee members were not provided with the data they requested regarding the bill. At the Committee's meeting on 14 July 2003, Attorney Manny Mazuz, deputy attorney general and representative of the Justice Ministry, was asked about the number of adults among the persons who received a status in Israel as part of family unification. His response was, regrettably, "Why is that important?"

See page 16 of Appendix P/12.

63. The data that was provided to legislators is unreliable and therefore cannot provide a factual foundation for the legislation. At the meeting of the Internal Affairs Committee on 14 July 2003, attorney Mazuz contended that from 1994 to 2002, 130,000 to 140,000 Palestinians settled in Israel in the framework of the family unification process. In comparison, Mr. Herzl Gedz, director of the Population Administration, contended that from 1993 to 2002, 22,400 applications were filed to grant a status to residents of the West Bank and Gaza Strip, of which 16,007 were approved.

See pages 4 and 15 of Appendix P/12.

64. Mr. Gedz admitted during the hearing in the Internal Affairs Committee that he did not have the precise number of child-applicants, nor did he have the breakdown of figures according to gender of the applicants. Although the Committee's acting chairperson asked Mr. Gedz to provide the figures to Committee members, the figures were not provided before the members of the Committee approved the bill for second and third reading.

See page 17 of Appendix P/12.

65. Mr. Gedz also did not have statistics on the number of applications to obtain a status that were submitted by citizens and permanent residents of Israel who are married to Jordanian citizens. The Committee's acting chairperson asked him to provide the information. These figures were not provided to the Committee's members before they approved the bill for second and third reading.

See page 19 of Appendix P/12.

66. Mr. Gedz also did not have the annual breakdowns of the number of applications that were approved, and did not provide them to Committee members before they approved the bill for second and third reading.

See page 19 of Appendix P/12.

67. Attorney Danny Guata, legal advisor of the GSS, was asked about the number of cases in which Jordanian citizens married to citizens or residents of Israel were involved in terrorist attacks. He did not respond. The acting chairperson asked attorney Mazuz to inform the members how European countries and the United States cope with the situation of armed conflict. Mr. Mazuz did not provide said information to the Committee.

See pages 20 and 22 of Appendix P/12.

68. Therefore, the data that were provided did not justify the legislation under review. Even if the argument is accepted whereby twenty (or six) individuals were involved in attacks, these cases (notwithstanding their severity, which cannot be belittled), cannot form the basis for the suspicion against an entire population because of its ethnic identity. Certainly, definite assumptions cannot be derived and proven beyond doubt from these cases. In this context, the comments of the Honorable Justice Heshin in *Stamka* are appropriate:

> If, for example, the percentage of fictitious marriages is only a (relatively) small percentage of all marriages in this category, is it justifiable to harass hundreds of innocent couples because of the few transgressors? Is it proper to maltreat the many because of the few? … The established rule is that, until an authority makes a decision that affects the rights of the individual – whether an individual decision or decisions on general policy – it must collect the

> relevant data, separate the wheat from the chaff, analyze the data, consider it, determine the significance of the proposed decision and its anticipated consequences, and only then act… Let us assume that one out of every ten marriages is fictitious. Is there a rational connection between the means and the purpose? Is it a proper rational connection where the nine suffer because of the one? It is hard not to get the impression that chance will be decisive as to whether the policy leads to the uprooting of fictitious marriages or harm to authentic marriages. The damage – the damage to authentic marriages – is real and proven; the benefit – the harm to fictitious marriages – is speculative and unproven. Furthermore, lacking statistics, it is hard to disregard the real possibility that many – those individuals in authentic marriages – will suffer because of the few – those persons in fictitious marriages.

H.C. 3648/97, *Stamka v. Minister of Interior, et. al.,* PD 53 (2) 728, 777-786.

69. Another problem that arose during the legislative process in enacting the Law, was that it violated obligations imposed on it by statute. The Notification on the Effect of Legislation on the Rights of the Child Law (2002), states as follows:

> 2. The purpose of this law is to require members of Knesset and the government to examine, during preparation of proposed bills on first reading, the effect of the proposed bill on the rights of children, in the spirit of the principles of the convention.
>
> 3. In the explanatory notes of a proposed bill on first reading, which on its face seemingly entails, directly or indirectly, an effect on the rights of children, the following shall be mentioned, as the case may be:
>
> > 1. The existence, and magnitude, of a violation or of an improvement relating to the rights of children, including the condition of their lives and of the services granted to them;
> >
> > 2. The data and information that were used to determine the aforesaid in clause 1, if such exist.

70. Members of the Internal Affairs Committee requested the Committee chairperson to hold a hearing on the bill's ramifications on the rights of children, but the chairperson refused to postpone the vote until the Committee received the responses of Ministry of Interior and Ministry of Justice officials. In this context, on 21 July 2003, MK Azmi Bishara wrote to the Committee's chairperson and cautioned him, *inter alia*, that the government did not provide data on the ramifications of the bill on the rights of children and on the need to examine this

subject as part of the legislative process. The Committee's chairperson did not respond to the letter.

A copy of the letter is attached hereto as Appendix P/14.

71. At the meeting of the Internal Affairs Committee held on 29 July 2003, MK Michael Malchior, chairperson of the Committee on Children's Rights, requested the chairperson of the Internal Affairs Committee to move the hearing on the proposed bill to a joint committee of the Internal Affairs Committee and the Committee on Children's Rights for the purpose of debating the bill's ramifications on children's rights. The chairperson of the Internal Affairs Committee refused.

72. At the same meeting, members of the Internal Affairs Committee questioned representatives of the Ministry of Interior and the Ministry of Justice on the consequences of the proposed bill for children's rights. In this context, the representatives of the Ministry of Interior and the Ministry of Justice were asked to provide the Committee's members with figures on the number of children who would be harmed as a result of the bill, their ages, the psychological, medical, and social repercussions of separating children of young age from a parent, and more. The ministries' representatives stated that they did not have the information and they were requested to provide it to the Committee urgently.

73. At the Committee's meeting on 30 July 2003, after it became clear that the Committee's chairperson intended to conduct a vote on approving the proposed bill for second and third reading even though the information requested from the representatives of the government ministries had not been received, a number of members of the Committee requested that the vote be postponed. The Committee's chairperson denied this request as well.

74. At the same meeting, the Committee's chairperson allotted two to three minutes to each member of the Knesset to present his or her objections despite the great number of substantive objections that were submitted to the Committee. After the Committee's chairperson refused to change his decision, the members raising objections stated that they were unable, under the circumstances, to seriously present their objections, and left the meeting. Only members of the coalition were present at the time of the vote; the members who raised objections were not heard. That evening, the Committee conducted a revote, but this time, too, the members who raised objections were not allowed to state their arguments and attempt to persuade the other members of the Committee.

75. Furthermore, GSS officials at various levels of the agency interfered in the legislative process of the bill, even though the legislation was civil in nature. GSS officials even appeared before the Internal Affairs Committee in a closed session.

76. Therefore, the legislature did not have adequate or convincing information that justified the need for the legislation. This testifies to the improper purpose of the legislation and of substantive flaws in its adoption. Also, the legislature did not comply with the statutory requirements of the Notification on the Effect of Legislation on the Rights of the Child Law (2002).

Requests to the legislature by human rights organizations

77. The leading international human rights organizations, Amnesty International and Human Rights Watch, wrote to the Respondents and cautioned them that the proposed bill violated human rights and international law. These human rights organizations, as well as the International Federation of Human Rights (F.I.D.H.), published public statements against the bill. University professors also wrote to the Respondents, contending that the bill was flagrantly unconstitutional. Many other letters were sent to the Respondents from human rights organizations in Israel, such as the Association for Civil Rights in Israel and Petitioner 1, which wrote to members of Knesset even prior to the vote on second and third reading, pointing out that the bill was patently unconstitutional and calling on them to oppose the bill.

The letters and open statements are attached hereto as Appendixes P/15-20.

78. On 23 May 2003, the UN Committee on Economic, Social and Cultural Rights published its concluding observations on the report submitted by the State of Israel. Paragraph 18 of the Committee's report states:

> The Committee is also concerned about the practice of restrictive family reunification with regards to Palestinians, which has been adopted for reasons of national security. In this regard, the Committee reiterates its concern contained in paragraph 13 of its 1998 concluding observations, and paragraph 14 of its 2001 concluding observations.

A copy of the said UN document is attached hereto as Appendix P/21.

Legal Argument

79. The Petitioners will argue that the Law should be nullified because it violates constitutional rights: the right to equality, the right to privacy, and the right to personal liberty – all of which are in contravention of the Basic Law: Human Dignity and Liberty. Also, the Nationality and Entry into Israel Law contains fundamental flaws that require, separately and cumulatively, that the Law be nullified. These flaws are the following: failure to take into account the ramifications of the Law on children's rights in violation of the Notification on the Effect of Legislation on the Rights of the Child Law (2002); retroactive application of the Law; and

allowing extension of the violation of fundamental rights by the executive branch and not by lawful primary enactment by the Knesset.

Violation of the constitutional right to equality

80. The Law breaches the constitutional right to equality. The Law prevents the naturalization of a spouse of an Israeli citizen, if the spouse resides in the Occupied Territories defined as "the region." As defined in the Law, the term "resident of the region" includes Palestinian residents, while excluding "a resident of an Israeli settlement" living in the same geographical area. As a result, naturalization is denied solely on ethnic grounds. Only a person whose spouse is a "resident of the region," but not a "resident of an Israeli settlement," is prohibited from obtaining naturalization for their spouse in accordance with Article 7 of the Nationality Law (1952). In contrast, an Israeli citizen whose spouse is not an Israeli citizen, but who lives in an Israeli settlement in "the region" is still able to have his or her spouse obtain naturalization in accordance with Article 7 of the Nationality Law. Insofar as the vast majority of citizens who marry persons that are "residents of the region" but not "residents of an Israeli settlement" are Arab, the harm inherent in the Law overwhelmingly affects Arab citizens of Israel.

81. The Petitioners will further argue that the discrimination against Arab citizens in the Law is apparent from the clear, unambiguous wording of the Law. The case law provides that discrimination is examined according to a results test. According to this test, it is clear that the present case involves discrimination based on national identity. On the results test, Justice Heshin held in *Israel Women's Lobby* that:

> We should further recall that the principle of equality looks toward the result: regardless of the pure intention of the person and regardless of its merits, if the result of his acts is discriminatory, his act will declared void.

See:

H.C. 2671/98, *Israel Women's Lobby v. Minister of Labor and Social Affairs,* PD 52 (3) 630, 654.

H.C. 1113/99, *Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs,* PD 52 (2) 164, 176.

H.C. /953/87, *Poraz v. Mayor of Tel Aviv – Jaffa,* PD 42 (2) 309, 334.

H.C. 205/94, *Akiva Nof v. State of Israel - Ministry of Defense,* PD 50 (5) 449, 464-465.

82. It should also be emphasized that the prohibition on discrimination, including the prohibition of discrimination in matters regarding the naturalization of spouses, appears in international conventions, including conventions to which Israel is party.

See, for example:

Article 3(1) of the UN Declaration on the Elimination of All Forms of Racial Discrimination.

Article 3 of the Convention on the Nationality of Married Women of 1957, which Israel signed on 12 March 1957 and ratified on 7 June 1957.

83. In H.C. 6924/98, *The Association for Civil Rights in Israel v. Government of Israel*, the Honorable Court emphasized the importance of equality, and the duty of non-discrimination. The emphasis stated by the Honorable Justice Zamir is general, but in the judgment, he chose to point out the special importance of the principle of equality in discrimination based on national identity, and the need to practice equality between Arabs and Jews in light of the unique system of relations between the two groups in Israel. The Honorable Justice Zamir held that:

> The principle of equality in this sense is the soul of democracy. Democracy demands not only one person, one vote in elections, but also equality for everyone at all times. The true test of the principle of equality is inherent in the attitude toward the minority: religious, national, or other. If the minority is not treated equally, the majority, too, is left without democracy … The same is true about equality toward Arabs… Surely at the legal level, there is no fundamental difference between the question of equality toward the Arab population and the question of equality toward another group. At this level, the question of equality is one of equality toward a religious or national minority, whatever it might be. This, too, is a universal question. It also has a universal answer. The answer is that a religious or national minority, especially such a minority, is entitled to equality. However, in practice, the State of Israel recognizes the special significance of the question of equality toward Arabs. This question entails a complex set of relations that developed between Jews and Arabs in this country over a long period of time. Nevertheless, and possibly precisely for this reason, equality is necessary. Equality is vital to communal living. The good of the society, and actually the good of each person in society, requires the nurturing of the principle of equality between Jews and Arabs. In any event, this is what the law commands, and thus, this is the court's duty.

H.C. 6924/98, *The Association for Civil Rights in Israel v. Government of Israel*, PD 58 (5) 15, 28.

84. The Supreme Court has dealt with the constitutional nature of the principle of equality in several of this Honorable Court's decisions, although the Court has not yet issued a ruling on the matter.

See:

H.C. 4394/92, *Huppert v. Yad Vashem Holocaust and Heroes Memorial Authority,* PD 48 (3) 353, 362-363.

H.C. 721/94, *El-Al Airways Ltd. v. Yonatan Danilovich,* PD 48 (5) 749, 760.

H.C. 453/94, *Israel Women's Lobby v. Government of Israel,* PD 48 (5) 501, 526.

H.C. 726/94, *Clal Insurance Company Ltd. v. Minister of Finance,* PD 48 (5) 441, 464.

H.C. 4541/92, *Alice Miller v. Minister of Defense,* PD 49 (4) 94, 141.

H.C. 1113/99, *Adalah v. Minister of Religious Affairs, et. al.,* PD 54 (2) 164, 186-187.

85. The constitutional status of the principle of equality is required for a constitutional regime built on a free and democratic society. In a liberal democracy, the principle of equality is automatically given constitutional status. A society that wishes to establish itself on the fundamental principle of freedom and equality has no choice but to recognize the constitutional status of the principle of equality. This is true of many and diverse societies in the world, which have recognized equality as part of the civil and human rights found in the constitutions of those states. For example, Article 9 of the constitution of South Africa, Article 4 of the Brazilian constitution, Article 15 of the Canadian constitution, the Fourteenth Amendment of the United States' constitution, Article 14 of the Indian constitution, and Article 11 of the constitution of South Korea. The Petitioners will argue, then, that the Basic Law: Human Dignity and Liberty, and particularly the influence on the system of law in general, cannot be understood without recognizing the constitutionality of the principle of equality. By way of example, it is inconceivable that the rights expressly enumerated in the Basic Law will be applied or granted in a non-egalitarian manner. The constitutional status of the principle of equality, therefore, results from the need for harmony between the various rights found in the Basic Law: Human Dignity and Liberty, including harmony in their application and enforcement.

86. The Petitioners will argue that the Law infringes on the right to dignity of Arab citizens who are married to persons from "the region" that they fell in love with, in violation of the Basic Law: Human Dignity and Liberty. The infringement of the right to dignity comprises both a

breach of the right to equality of Arab citizens married to "residents of the region" who do not reside in an Israeli settlement, and it also infringes on their right to live together as a family unit, which constitutes an integral part of human dignity.

87. The Petitioners will argue that the violation of equality on the grounds of group identity necessarily breaches the right to dignity enshrined in the Basic Law: Human Dignity and Liberty. This breach of equality is forbidden, even more so, in that it harms a "suspect" group. This breach of the right to equality results in the devaluation of the dignity of Arab citizens solely because of ascribed characteristics. In *Miller,* Honorable Justice Dorner expressed the significance of discrimination based on the group identity of the victim of the discrimination, and of the devaluation that the discrimination causes to the dignity of the person discriminated against:

> This is not the case in other kinds of harmful discrimination based on group identity, including discrimination based on sex and race. The roots of such discrimination is the inferior status of the person discriminated against, a status that is the result of his alleged inferior nature. Inherent in this, of course, is the profound degradation of the victim.

H.C. 4541/94, *Alice Miller v. Minister of Defense,* PD 49 (4) 94, 132.

88. In H.C. 1113/99, *Adalah v. Minister of Religious Affairs et. al.,* Chief Justice Barak repeated his position that the principle of equality, being part of human dignity, is a constitutional principle which can be examined by considering the constitutional status of laws of the Knesset. Chief Justice Barak emphasized that:

> …My opinion is that equality is a right with constitutional status (see A. Barak, *Interpretation in Law*, Vol. 3, *Constitutional Interpretation*, at page 423). It includes the right to dignity. Indeed, the principle of equality derives from human dignity and can not be separated from it" (see Y. Karp, "Basic Law: Human Dignity and Liberty – Biography of a Power Struggle, at page 352).
>
> … H. H. Cohen spoke well in his statement that:
>
> … the dignity that may not be infringed on and which merits protection is not only the person's good name, but also his status as one among equals. The harm to his dignity is not only a result of slander or insults and vilification, but also discrimination and oppression, prejudicial and racist or degrading treatment. The protection of human dignity means not only a prohibition on slander, but also the guarantee to equality of rights and opportunity, and the

> prevention of discrimination based on sex, religion, race, language, opinion, political or social identity, family lineage, ethnic origin, property, or education (H. H. Cohen, "The Values of a Jewish and Democratic State: Reflections on the Basic Law: Human Dignity and Liberty," at page 32).
>
> Therefore, I am willing – if the matter were to arise before me – to examine if an ordinary law improperly infringes on the principle of equality (that is, does not meet the provisions of the limitations clause).

H.C. 1113/99, *Adalah v. Minister of Religious Affairs, et. al.,* PD 54 (2) 164.

89. In *Israel Women's Lobby II,* the Honorable Justice Heshin pointed out the connection between human dignity and group-based discrimination, stating:

> Discrimination against a woman – because she is a woman – is generic discrimination… If John prefers Joe because he is a man – or disqualifies Jane because she is a woman – this is generic discrimination and not individually based discrimination. Another example of generic discrimination is the discrimination against a person because of the color of his skin or because of his race. Generic discrimination, as was already stated, is discrimination that critically harms human dignity. A person does not have control over his sex (male or female), the color of his skin (black, yellow, or white), the physical integrity of his body (disabled or whole). The person did with his life everything within his capability to attain wisdom and knowledge, to be a good and useful person, pleasant to others, and a person of integrity. And we see that he is rejected by others only because of a feature, genetic or other, over which he has no control.

H.C. 2671/98, *Israel Women's Lobby v. Minister of Labor and Social Affairs,* PD 52 (3) 630, 658-659.

90. In another matter, the Honorable Justice Heshin pointed out the distinction between group-based discrimination and discrimination of another kind:

> However, the essential point is not in discrimination as such but in the kind and intensity of the discrimination, and in this matter, the court held that one discrimination is not the same as another: discrimination in allotting grants is not the same as racial discrimination, and discrimination based on sex is not the same as discrimination in granting licenses. Discrimination based on religion, race, national identity, or sex is among the gravest forms of discrimination […] The foundation of such discrimination is the inferior

> status of the person discriminated against, a status that is the result of his purported inferior nature. Inherent in this, of course, is profound degradation of the victim of the discrimination.

H.C. 6845/00, *Eytana Niv, et. al. v. National Labor Court, Takdin Elyon* 2002 (3) 1867, 1874-1875.

91. Thus, based on the results test, the discrimination against Arab citizens on grounds of group identity, which constitutes a violation of the right to equality, infringes on a constitutional right.

Infringement of the right to privacy

92. The Law also breaches the right to privacy of Arab citizens married to "residents of the region" who do not live in Israeli settlements in "the region," in violation of Article 7 of the Basic Law: Human Dignity and Liberty. Article 7(a) of the said Basic Law states that, "every person is entitled to privacy and intimacy." The Law flagrantly and improperly interferes with the privacy and intimacy of Arab citizens who are married to "residents from the region" who do not reside in Israeli settlements there, by limiting the freedom of choice of whom to love, marry, and raise a family with. This interference in one of the most private of choices of an individual is unjustifiable, and must be prevented by quashing the Law.

93. This Honorable Court has recognized the right of privacy as regards to the establishment of the family unit. The family unit was recognized as an integral part of the constitutional structure of the legal system, which is given protection, *inter alia*, by means of the constitutional right to privacy set forth in Article 7(a) of the Basic Law: Human Dignity and Liberty. The Honorable Court ruled that:

> The family framework does not stand alongside the constitutional system, but is an integral part of it. The family-unit framework grants parents the rights recognized and protected by the constitutional law. The rights of parents to have and raise their children, with everything that entails, is a natural and primary constitutional right in expressing the natural ties between parents and their children (Civ. App. 577/83, *Attorney General v. Jane Doe*). This right is expressed in privacy and in the autonomy of the family: parents are autonomous in making decisions about their children's education, lifestyle, place of residence, and so on, and the interference by society and the state in these decisions occurs in extraordinary instances where reasons exist to justify interference (see Civ. App. 577/83, at pages 468, 485). This approach is based on the recognition that the family is "the basic and most ancient

> social unit in the history of mankind, that was, is, and will be the basic element and will ensure the existence of human society.

Civ. App. 2266/93, *John Doe, a Minor v. John Roe,* PD 49 (1) 221, 235-236.

94. In its decisions, the European Court of Human Rights has recognized the right to privacy as regards the family unit, and has limited the degree of interference of states in the area of individual autonomy. The said court has liberally interpreted the right to privacy as granted to the family in Article 8 of the European Convention on Human Rights. On this subject, see the following decisions of the European Court of Human Rights:

Case No. 3/1987/126/177, *Berrehab v. The Netherlands*, 138 Eur. Ct. H.R.(ser. A.)(1988)

Case No. 85/1996/704/986, *Mehemi v. France*, 30 EHRR 739 (1997)

App. No. 29192/95, *Ciliz v. The Netherlands*, Eur. Ct. H.R. (11 July 2000).

95. The right to privacy, arising from the state's duty not to interfere with the autonomy of the individual in matters regarding the family unit, is also enshrined in the principal international human rights conventions.

See, for example:

Article 12 of the Universal Declaration of Human Rights.

Article 10(1) of the International Covenant on Economic, Social and Cultural Rights of 1966. The State of Israel became party to the Covenant on 19 December 1966 and ratified it on 3 October 1991.

Article 17 of the International Covenant on Civil and Political Rights of 1966. The State of Israel became party to the Covenant on 19 December 1966 and ratified it on 3 October 1991.

Article 10(1) of the Convention on the Rights of the Child of 1989. The State of Israel became a party to the Convention on 3 July 1990 and ratified it on 3 October 1991.

96. Article 10(1) of the Convention on the Rights of the Child states the duty of states to deal with matters of family unification in a humane, positive, and expeditious manner:

> In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Infringement of the constitutional right to personal liberty

97. The Petitioners will argue that the Law under discussion infringes on the constitutional right to personal liberty. This right protects the freedom of individuals to decide on personal matters, and to freely realize and determine themselves. The interference in selecting his spouse based on ethnic identity thus constitutes an infringement on the individual's personal autonomy.

98. A democratic society does not infringe on the right to personal liberty, for personal liberty is a principal element of an individual's right to autonomy. In *Zemach,* the Honorable Justice Zamir discussed the right to personal liberty:

> Personal liberty is, pursuant to Article 5 of the Basic Law: Human Dignity and Liberty, a constitutional right. More than that, the right to personal liberty is a constitutional right of the highest order, and is also, in practice, a condition for the exercise of other fundamental rights. Infringement of personal liberty, like the effect of a stone striking a body of water, creates an expanding circle of violations of other fundamental rights: not only freedom of movement, but also freedom of expression, privacy, the right to property, and other rights… In addition to the provisions of Article 1 of the Basic Law: Human Dignity and Liberty, "The fundamental rights of persons in Israel are based on the recognition of the value of human beings, the sanctity of life, and of the freedom of human beings." Only a free human being can completely and properly exercise his fundamental rights. Liberty, more than any other right, is that which makes a person free. For this reason, denial of personal liberty is a particularly grave violation … In principle, the level of protection of a fundamental right must stand in direct relation to the degree of importance of the right and of the magnitude of the infringement of the right… the conclusion is that personal liberty, being a constitutional right of special import, should be given special protection against its infringement…

H.C. 6055/95, *Sagy Zemach v. Minister of Defense,* PD 53 (5) 241, 263-264

See also:

Civ. App. 294/91, *Hevra Kadisha GHSA of the Jerusalem Community v. Kastenbaum,* PD 46 (2) 464, 525-526.

99. The Petitioners will further argue that the Law breaches the right to due process, which is derived from the constitutional right to personal liberty. Applying the Law retroactively (Article 4(2) of the Law) violates the Petitioners' constitutional rights as enshrined in Article

5 of the Basic Law: Human Dignity and Liberty. The constitutional right to liberty means, *inter alia*, that the citizen has the right to do whatever is not prohibited; to rely on the fact that his deeds are lawful so long as they are performed in accordance with law; to be free to marshal his actions when they are not prohibited at the time they are taken. Retroactive application of the Law interferes with this liberty: it alters the set of expectations and contradicts the reliance on the law of the persons affected by retroactive application of the law.

100. The United States Supreme Court has connected personal liberty and due process. See:

Moore v. East Cleveland, 431 U.S. 494, 503-504 (1977)

Washington v. Glucksberg, 521 U.S. 702, 721 (1997).

101. The Petitioners will argue that the Law should be quashed because it applies retroactively (Article 4(2) of the Law), and due to the actual harm that it causes to the right to liberty. The Honorable Court held in *Arbiv* that a statute is applied retroactively (retrospectively in the language of the Court in that matter) if it is applied to a situation or act that was done in the past and changes its legal consequences. The Court ruled that:

> … A law is retrospective if it is intended to change, and in practice changes, the action from a legal perspective of conduct that took place in the past or alters a situation that took place in the past and no longer exists in the present.

App. Civ. App. 1613/91, *Arbiv v. State of Israel,* PD 46 (2) 765, 782.

102. The Honorable Court further stated in the same matter that there is a presumption against the retroactive application of a statute:

> … the fundamental point of departure is that retrospective legislation is not proper. The presumption is against retrospective application. The "burden" is imposed on the party to overcome the presumption. It is insufficient – to overcome the presumption – to show that the new statute is better than the old, for if that were the case, every statute – which is assumed to be better than its predecessor – would be applied retrospectively.

Ibid., at page 785.

103. The Law is applied retroactively. It affects a legal situation that occurred in the past, i.e., marriage, and subsequently, the establishment of the right of naturalization pursuant to Article 7 of the Nationality Law (1952), prior to enactment of the Law.

104. It should be noted that the Law does not state that, from the day of its passage henceforth, it abolishes the power of the Minister of Interior to exercise his discretion in matters of naturalization pursuant to Article 7 of the Nationality Law. Rather, the application of the Law, i.e., preventing naturalization in accordance with Article 7, is applied retroactively in regard to a legal event that took place and ended in the past: marriage between an Israeli citizen and a "resident of the region" who does not live in an Israeli settlement there, and the fulfillment of the right of naturalization pursuant to Article 7 of the Nationality Law.

105. As to the presumption that statutes are not applied retroactively, the Honorable Court stated:

> The presumption is that a statute does not act retrospectively. This is a "rule of interpretation" (App. Perm. App. 3/73, at page 600, Justice Zusman). It draws its strength from the rationale that retroactive legislation opposes fundamental principles of the system, and it is not to be presumed that the legislature sought to achieve a purpose that contravenes these fundamental principles. The fundamental concept is that, "application of a new law to an action that ended and was completed before the statute was passed, and the persons affected executed and completed the action in reliance on law that was in effect at that time, is liable to bring about injustice" (Justice Zusman in Civ. App. 398/65, at page 405). Retroactive or retrospective legislation contradicts "accepted concepts of justice" (Crim. App. 290/63, at pages 577, 579, Justice H. Cohen), and the presumption against this legislation is necessary to do justice. The principle of the rule of law requires certainty and confidence in relations between people. Retroactive legislation adversely affects both of these necessities. It confuses the "order of creation" (in the language of Justice Zilberg in H.C. 98/53, at page 613). It does not enable conduct to be premeditated, and therefore makes law unstable… Indeed, the purpose of a statute is to guide human conduct. Statutes are intended to establish what is permitted and what is forbidden. By its nature, statutes are directed toward future actions. It is meaningless to direct an action, taking place today, to something that occurred yesterday… Retroactive legislation harms fundamental constitutional conceptions. It impairs the principle of the rule of law, the certainty of the law, and the public's confidence in the law. It harms the fundamental principles of justice and fairness and public trust in government institutions.

Ibid., at pages 767-777.

106. Therefore, the law under discussion herein infringes on the constitutional right to personal liberty because it limits the liberty of a citizen in his or her choice of a spouse based on ethnic identity. Also, in that the Law impairs the rules of fairness and of due process by its retroactive application, it harms the legitimate expectations of the citizen, which are derived from his or her liberty.

The limitation clause

107. The Petitioners will argue that the Law does not meet the conditions of the limitation clause of the Basic Law: Human Dignity and Liberty. The Law does not have a proper purpose, as was explained in detail in the factual section of this petition. The common law rule is that the purpose of a statute is first of all learned from the clear language of the statute. As shown in the factual section above, the Law's articles lack internal logic, are inconsistent, and lack rationality. If the purpose of the Law is to serve a security objective, it is unclear why permits are granted for work-related objectives and to families in which one member was a collaborator; and it is unclear why permits prevented only in cases of marriage. It is also unclear why applications that were submitted prior to 12 May 2002 will be approved, but those, which were submitted after that date will not be given effect: does the date an application was submitted diminish the harm to state security? In addition, the articles of the Law discriminate between individuals within a group, whereas the test for naturalization is supposed to be objective and based on substantive considerations. In the present case, however, Israeli citizens who seek a status for their Palestinian spouse will fail to achieve their objective if the spouse is neither a collaborator nor has a family member who provided services to the GSS, even if the spouse has a past free of criminal and security offenses.

108. Thus, the sole purpose of the Law is to prevent the naturalization of persons from "the region" who are married to Arab citizens. This is the purpose that emerges clearly from the Law's language. Only spouses of Arab citizens, who are "residents of the region" and are not residents in Israeli settlements, are prevented from naturalization in accordance with Article 7 of the Nationality Law. Since the purpose of the law constitutes prohibited discrimination it cannot serve any proper purpose.

109. In the alternative, the Petitioners will argue that the Law does not meet the test of proportionality. The Law does not meet any of the three tests of proportionality: 1) whether the means employed by the statute conform to the statute's purpose; 2) whether the statute's purpose can be attained by using less harmful means; and 3) whether the benefit to the public exceeds the harm to the constitutional right, i.e., the reasonableness of the means that infringe on the constitutional right.

H.C. 4769/95, *Ron Menachem, et. al. v. Minister of Transportation, et. al.,* PD 57 (1) 2345, 279.

110. In all the debates and hearings, the bill's proponents failed to prove a danger to security resulting from the naturalization of persons from "the region" who are married to Arab citizens. In effect, the Respondents used sweeping generalizations. In fact, the number of cases that conformed to the generalizations was extremely small. There is no logical reason to believe there is a "security danger" from the naturalization of spouses of citizens; after all, their only offense is falling in love and marrying. The Law is sweeping in its stated claims and creates an unfounded presumption that defies logic. The general claim that every "resident of the region" is a danger is a vast overstatement that does not conform to the very different reality indicated by the data presented to the legislature.

111. Even assuming that the purpose of the Law is to serve a security purpose, the Law is not proportional: Respondent 1 has all the tools necessary to make the relevant checks before approving permits of any kind. Indeed, this is what he does. The gradual and lengthy process is the tool by means of which he checks the degree of dangerousness of the applicant. Incidentally, Respondent 1 has denied few applications on the grounds that upon investigation, the candidates' past disqualified them for security reasons.

112. The Law imposes on residents of the West Bank and Gaza Strip who are married to citizens or permanent residents of Israel a collective and vague suspicion, as if they endanger state security by misusing the status given them in the course of the gradual process. In *Stamka,* the Honorable Justice Heshin related to a question similar to the one presently before the Court, and held that:

> Furthermore, the Ministry of Interior did not provide us with relevant statistics, either regarding the number of fictitious marriages or the relationship between them and the total number of marriages between Israeli citizens and non-Jewish foreigners. Let us assume that one out of every ten marriages is fictitious. Is there a rational connection between the means and the purpose? Is it a proper rational connection where the nine suffer because of the one?

At page 779 of the judgment.

See also: H.C. 3477/95, *Ben-Atiya v. Minister of Education and Culture,* PD 49 (5) 1, 8.

113. Use of the Law will not benefit the public. Instead it will infringe upon the constitutional rights of a broad sector of the state's citizens. The means that the Law employs to achieve a

security objective – preventing naturalization by breaching numerous constitutional rights – are drastic and extremely unreasonable.

114. The Law implements the option causing the greatest harm – not only does it prevent conferral of permanent status (permanent residence or citizenship), it erases the option of submitting an application to participate in the gradual process and eliminates the chance to upgrade the status from a permit to stay in Israel to the status of temporary resident.

115. If the Law allowed the submission of new applications and the upgrading to temporary-resident status, it would still breach constitutional rights and be disproportionate, but the harm would have been less, for it would at least refrain from causing the grave harm of separation of the married couple and of parents from their children. It should be noted that, to achieve this, a statutory amendment was not necessary, in that the gradual process is an administrative directive and not a statute.

116. Another option that is harmful and disproportionate, but not in the extreme manner selected by the legislature in the Law, would be to extend the gradual process in its entirety, for example by providing for five years of temporary residence rather than four years. In such a case, statutory amendment would also not be necessary.

117. Therefore, the legislature chose the most drastic means, means that completely deny fundamental rights. It should be mentioned that strict compliance with the test of proportionality - in the sense of a means that causes the lesser harm – is directly connected to the magnitude of the right infringed. The Honorable Justice Dorner noted this in *Tenufa Personnel Services*, where she held:

> As regards the test for selecting the means that causes the lesser harm, which, as stated, is not an absolute test, the selection of the means will be affected by the right that is infringed. When a particularly important fundamental right is involved, greater concern is given to select the means that cause minimal harm, even where the cost of employing the means is substantial.

H.C. 450/97, *Tenufa Personnel and Maintenance Services vb. Eli Yishai,* PD 52 (2) 433, 452.

118. The Law, by infringing on fundamental constitutional rights, must also meet the test of proportionality in the narrow sense, i.e., whether the benefit from its enactment is proportional to the resulting harm. Undoubtedly, the means employed by the Law – which includes the total prohibition on the submission of applications after 12 May 2002, the total prohibition on granting a status in Israel to persons who did not submit an application prior to 12 May 2002, and the prohibition on upgrading the status of persons whose applications were submitted prior 12 May 2002 – cause greater harm than benefit.

119. The Law is not proportionate because it is extremely unreasonable. It is sweeping and arbitrary in that it is not built on a precise factual foundation relating to the security threat posed by a specific applicant. The Law eliminates the discretion of the Minister of Interior and of the military commander in the West Bank and the Gaza Strip. For this reason also, the Law is patently unreasonable and therefore disproportionate.

The legislature disregarded the statutory provisions relating to human rights ramifications

120. The Law infringes on the rights of children, one of whose parents is an Arab citizen of Israel and the other a "resident of the region" who does not live in an Israeli settlement there. The Law effectively divides the family unit, or, at least, forces it to live as a unit in a location other than Israel and the Occupied Territories. The Law will have a destabilizing effect on the family unit, and thus reduce the family's ability to form and provide a solid base (parents' employment, place of residence, schooling), i.e. the family is unable to conduct a normal life. In the reality that the Law creates, the rights of the children are flagrantly infringed.

121. Article 3 of the Notification on the Effect of Legislation on the Rights of the Child Law (2002), states, *inter alia*, that the government is required, prior to the first reading of a bill, to detail in the explanatory notes of the bill, the bill's effect on children's rights, regardless of whether the effect is beneficial or detrimental. The same article requires the government to identify the source data and information used to determine the effects.

122. In *National Child Welfare Council,* although the petition was rejected on factual grounds, the Court stated as follows:

> The responses made by the respondents indicate that the question of the effect of the proposed bill on the rights of the child was seriously discussed during the accelerated legislative process, both before and after first reading. The significant treatment of this matter exists also in the explanatory notes of the proposed bill. In these circumstances, we are convinced that, even if the original proposed bill does not completely comply with the provisions of the law requiring the notation of information on the rights of the child – and on this question we are not required to take a position – it is clear that an extreme breach of the law did not occur, of the kind that is liable to justify the intervention of the court in the legislative process.

H.C. 4572, 595/03, *National Child Welfare Council,et. al. v. Government of Israel, et. al*. (unpublished decision of 26 May 2003).

123. The facts of this case are very different. On its face, the Law gravely harms the rights of children, yet the ramifications of the Law on the rights of children were not presented to the

legislature during any stage of the accelerated enactment of the Law. The explanatory notes of the proposed bill make no reference to the bill's ramifications on children's rights. Members of the Internal Affairs Committee and members of the Knesset received no information from the relevant government ministry officials regarding the bill's ramifications on children's rights, notwithstanding members' explicit requests for such information. Therefore, the facts of our case demonstrate that there was indeed an extreme breach of the Notification on the Effect of Legislation on the Rights of the Child Law (2002), which justifies the intervention of the court in the enactment process.

124. For the above reasons, the Law failed to meet provisions of constitutional legislation that prescribes legislative procedures where there is a danger of infringement of children's rights. Thus, the Law should be nullified.

Infringement on constitutional rights by means of a temporary order

125. The Law is enacted as a temporary order. The form of this enactment does not limit the scope of judicial review of the constitutionality of the Law.

H.C. 24/01, *Rassler v. The Knesset,* PD 56 (2) 700, 713.

126. Furthermore, the Law states, in Article 5, that it will remain in effect for one year, and that, "the government may, with the approval of the Knesset, extend its validity by order, from time to time, for a period that shall not exceed one year." The Petitioners will argue that allowing extension of the Law in this manner is a severe defect, and is inconsistent with basic constitutional principles that infringement on constitutional rights are to be done only by means of primary legislation, i.e., by Knesset enactment.

H.C. 3267/97, *Rubinstein, et. al. Minister of Defense,* PD (5) 481, 523.

127. In addition, compare the arrangement for extending the validity of the Law, which entails infringement on and breach of numerous constitutional rights, with the arrangement for declaring an emergency, as set forth in Article 38 of the Basic Law: the Government. The latter article deals with an actual emergency; nevertheless, the power to declare an emergency always remains solely with the Knesset. The exception is where the Knesset is unable to convene, in which instance, the government may declare an emergency, which remains in effect for seven days only, until the declaration is renewed or revoked by the Knesset.

For all the above reasons, the Honorable Court is requested to grant the remedies set forth in this petition, and to order the Respondents to pay the costs herein.

[signed] *[signed]*

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