Before the Supreme Court, **HCJ 4608/02**
Sitting as the High Court of Justice

In the matter of:

1-57. Imad Abu As'ad, et. al

58. Adalah: The Legal Center for Arab Minority Rights in Israel

Represented by Adv. Orna Kohn and/or Hassan Jabareen and/or Jamil Dakwar and/or Marwan Dalal and/or Suhad Bishara and/or Morad el-Sana, from Adalah: The Legal Center for Arab Minority Rights in Israel, PO Box 510, Shefa'amr 20200, Israel, tel. 04 950 1610, fax 04 950 3140

Petitioners

v.

1. **Prime Minister**

2. **Minister of the Interior**

3. **Director of the Population Bureau**

Represented by the State Attorney's Office, 29 Salah a-Din Street, Jerusalem, tel. 02 646 6590, fax 02 646 6655

Respondents

Petition for an *Order Nisi* and Temporary Injunction

A petition is hereby filed to obtain an *order nisi* against the Respondents and to direct them to explain:

1. Why they do not continue to apply, as to Petitioners 2, 4, 9, 12, 14, 19, 23, 26, 30, 35, 39, 43, 52, and 55 the gradual naturalization procedure customarily employed in Israel regarding the spouses of Israeli citizens, pursuant to section 7 of the Citizenship Law (1952).

2. Why they do not revoke Cabinet Decision 1813, of 12 May 2002, which states that:

    a. The general procedure regarding the granting of citizenship to the spouses of Israeli citizens in a gradual process will not apply to spouses who are residents of the Palestinian Authority and/or are of Palestinian descent;

    b. Until a new procedure is formulated that establishes stricter conditions for the naturalization of spouses who are residents of the Palestinian Authority and/or are of Palestinian descent, submission of applications to obtain status by spouses of Israeli citizens who are residents of the Palestinian Authority and/or are of Palestinian descent will not be allowed;

    c. Until the new procedure is formulated, pending applications for status in Israel that were filed by spouses of Israeli citizens who are residents of the Palestinian Authority and/or

are of Palestinian descent will not be approved, and the spouses will be required to stay outside Israel until a decision is made on their applications.

d. Until the new procedure is formulated, where the spouses of Israeli citizens who are residents of the Palestinian Authority and/or are of Palestinian descent have received a permit, "the status will not be upgraded."

3. Why they do not register Petitioners 24 and 41 in the population registry and recognize them as Israeli citizens from birth.

Application for Temporary Injunction

The Honorable Court is requested to issue a temporary injunction directing the Respondents as follows:

1. To extend the temporary residency of Petitioners 2, 4, 9, 12, and 14.

2. To issue Petitioners 19, 23, 26, 30, 35, 39, 43, 52, and 55 temporary permits to stay in Israel until a final decision is delivered on the petition.

3. In the alternative, to refrain from expelling Petitioners 2, 4, 9, 12, 14, 19, 23, 26, 30, 35, 39, 43, 52, and 55 from Israel.

The grounds for this request are as set forth in the petition. The relief is sought in particular to prevent irrevocable harm resulting from the separation of Petitioners 2, 4, 9, 12, 14, 19, 23, 26, 30, 35, 39, 43, 52, and 55 from their families, including from their spouses and/or minor children, and from the arbitrary revocation of their status in Israel, thus making their presence in Israel illegal.

Issuing the temporary injunction will not cause any damage to the Respondents; however, the failure to issue it will cause extremely grave and irrevocable harm to the Petitioners.

Application for Urgent Hearing

The Honorable Court is requested to order an urgent hearing on the petition. The basis for this request is the extremely grave violation of fundamental constitutional rights of the Petitioners, and of others in a similar position, for the reasons set forth in this petition.

The grounds for the petition are as follows:

Factual Background

Introduction

1. The subject matter of this petition relates to a decision by the Respondents that flagrantly discriminates against the Petitioners and Arab citizens of Israel regarding their constitutional rights to family life, dignity, equality, and privacy. The decision that is the subject of the petition relates to the granting of status in Israel to Palestinian spouses of Israeli citizens; in practice, the decision harms only Arab citizens of Israel, because they are the ones who are married to Palestinians. The said decision does not relate to granting status in Israel to spouses who are not Palestinians who are married to Israeli civilians. Therefore, based on the disparate impact test, the decision is tantamount to discrimination based on nationality. As such, it violates human dignity.

2. It should be noted that the subject matter of this petition is not a request by persons wanting to immigrate to a foreign country, but requests by citizens of the state to live jointly with their spouses and/or parents of their minor children, and to enable them to live as a normal family.

3. Cabinet Decision 1813, of 12 May 2002, in the matter of "the treatment of persons staying illegally and policy of family unification relating to residents of the Palestinian Authority and to foreigners of Palestinian descent" (hereinafter: the Cabinet Decision), states that the general procedure regarding the gradual process of the naturalization of spouses of Israeli citizens - as established following the decision in HCJ 3648/97, *Stamka, et. al. v. Minister of the Interior, et. al.,* P.D. 53 (2) 728, about which Respondent 2 informed the Honorable Court in HCJ 338/98, *Sabri 'Issa, et. al. v. Minister of the Interior* (pending before the Honorable Court) - will not apply to spouses who are residents of the Palestinian Authority and/or are of Palestinian descent.

   Attached hereto is a copy of the Cabinet Decision, marked Appendix P1, and the state's response in *'Issa,* marked Appendix P2.

4. The Cabinet Decision establishes regulations for an unlimited interim period until formulation of a new procedure. The new procedure will contain stricter conditions for the naturalization of Israeli citizens' spouses who are residents of the Palestinian Authority and/or are of Palestinian descent. It is emphasized that the gradual process of the general naturalization procedure of spouses of Israeli citizens will continue to apply to all non-Palestinian spouses of Israeli citizens.

5. The Cabinet Decision provides that, during the interim period, Israeli citizens' spouses who are residents of the Palestinian Authority and/or are of Palestinian descent will not be allowed to submit applications to obtain status; pending applications for status in Israel that were submitted by Israeli citizens' spouses who are residents of the Palestinian Authority and/or are of Palestinian descent will not be approved; the spouses will be required to stay outside Israel until a decision is made on their applications; where Israeli citizens' spouses are residents of the Palestinian Authority and/or are of Palestinian origin have received permits, "the status will not be upgraded."

6. This decision is discriminatory, arbitrary, sweeping, without criteria, and excessive. It violates the Petitioners' fundamental constitutional rights, including the right to family life, dignity, privacy, and equality. Furthermore, it contravenes the Basic Law: Human Dignity and Liberty, the Citizenship Law (1952), and international law. It also contravenes the rule set by the Honorable Court in *Stamka* and the commitment made by the state to the Honorable Court in *'Issa.* The Cabinet Decision also violates the right to be heard and is applied retroactively.

The Petitioners

7. The Petitioners are Arab citizens of Israel whose spouses are Palestinians, [non-citizen Palestinian] spouses of the former, and their joint children. The Petitioners' applications to obtain a status in Israel for one spouse [of each couple] were filed in the offices of the Population Bureau, which is subordinate to Respondents 2 and 3. These applications were in various stages of the gradual process toward obtaining Israeli citizenship, when handling was frozen at the end of March 2002 pursuant to the directive of Respondent 2. They presently are the subject of the Cabinet Decision.

8. Petitioners 2, 4, 9, 12, and 14 had obtained temporary residency status. As a result of the Cabinet Decision, they are unable to become citizens. Petitioners 19, 23, 26, and 30 had not received temporary residency status, although their applications had been accepted in principle; as a result of the Cabinet Decision, they will not obtain any status.

9. Petitioners 35, 39, 43, and 52, have not received any decision regarding their applications. As a result of the Cabinet Decision, their applications will be refused.

10. Petitioner 55 was not allowed to file an application for a status in Israel by employees of Respondents 2 and 3, and she requested Respondent 3 to allow her to submit an application. As a result of the Cabinet Decision, she will not be allowed to submit an application.

11. Also, even after the Cabinet Decision was reached and prior to filing of the petition, officials at the offices of the Population Bureau, which are administered by Respondent 3, did not extend the status of Petitioners 2 and 4 as temporary residents. As a result, these two petitioners will become persons staying in Israel illegally.

Abu As'ad Family - Petitioners 1 and 2

12. Petitioner 1 is an Arab citizen of Israel, who resides in Nazareth. He was married on 21 April 1999 to Petitioner 2, who is a Palestinian who was born in Syria. On 27 May 1999, Petitioner 1 filed an application on behalf of Petitioner 2 to obtain a status in Israel. The application was filed at the Population Bureau's office in Nazareth and was given number 45/99. On 3 November 1999, Petitioner 2 was granted the status of temporary resident, which was renewed twice, each time for one year. Her temporary residency status expired on 23 May 2002.

13. On 8 April 2002, Petitioners 1 and 2 requested the Population Bureau's office in Nazareth to extend the status of Petitioner 2 as a temporary resident. Ms. Laura Ashkar, an employee of the Population Bureau's Nazareth office, informed Petitioners 1 and 2 that she was unable to accept their application to renew the status of Petitioner 2 as a temporary resident. The reason she gave was that the new directives given by the Ministry of the Interior in Jerusalem stated that the handling of pending files were to cease and that new applications were not to be accepted for submission.

14. On 21 May 2002, Petitioners 1 and 2 went to the Population Bureau's office in Nazareth to try once again to submit an application for extension of the status of Petitioner 2 as a temporary resident. However, the officials at the office refused to accept their application and informed them that the handling of all such applications had been frozen. The officials added that Ms. Ashkar, who was in charge of those matters, was on vacation. A notice was posted on Ms. Ashkar's office door announcing that the handling of all applications for family unification had been frozen until further notice.

15. On 23 May 2002, Petitioners 1 and 2 again went to the Population Bureau's office in Nazareth. They saw that the notice on Ms. Ashkar's door had been removed, and that she had returned to work. However, they were told that their applications could not be submitted because a quota of twenty applications a day had been set, and that they would have to try their luck the following day.

16. On 24 May 2002, Petitioners 1 and 2 returned once again to the office. They saw a notice on Ms. Ahskar's door that indicated she was on vacation. They went to officials in the office and asked who was substituting for Ms. Ashkar in the handling of urgent cases. Petitioners 1 and 2 were told that there was no person substituting for her, and that they would have to wait until she returned.

    Attached hereto are copies of the identity cards of Petitioners 1 and 2, their marriage certificate, confirmation of submission of the application, correspondence with Respondent 3, [and] a pre-petition to the State Attorney's Office, marked as Appendixes P3 (A-H).

'Awad family - Petitioners 3-7

17. Petitioner 3 is an Arab citizen of Israel who resides in Haifa. He was married on 13 June 1993 to Petitioner 4, a Palestinian from Bethlehem, in the West Bank. Petitioners 3 and 4 are the parents of three little girls, the youngest an eighteen months' old infant, who are Petitioners 5, 6, and 7. Petitioner 3 filed an application on behalf of Petitioner 4 to obtain a status in Israel. The

application was filed on 2 August 1993 at the Population Bureau's office in Haifa and was given number 3009/93.

18. Only on 23 March 2000, Petitioner 4 received the status of temporary resident for a period of one year. That is, it took no less than seven years of waiting to receive the status, and then only following a pre-petition to the State Attorney's Office. The temporary residency status of Petitioner 4 was renewed for one year, and is scheduled to expire on 31 May 2002.

19. On 22 April 2002, Petitioners 3 and 4 requested the Population Bureau's office in Haifa to extend the status of Petitioner 4 as a temporary resident. The head of the visas section in the Population Bureau's office in Haifa refused to allow the application to be submitted, claiming that they were not handling any pending applications until further notice.

20. On 23 May 2002, Petitioners 3 and 4 went to the Population Bureau's office in Haifa to try again to submit an application for extension of the status of Petitioner 4 as a temporary resident. The director of the visas department agreed to accept the application, but she informed them that it was impossible to extend the status of Petitioner 4 until the head office issued its approval; she estimated that it would take at least a month and a half, and that she was unable to give Petitioner 4 any status until the approval was received. Therefore, on 1 June 2002, Petitioner 4 will become a person staying in Israel illegally.

    Attached hereto are copies of the identity cards of Petitioners 3 and 4, their marriage certificate, confirmation of submission of the application, and correspondence with Respondent 3 and the State Attorney's Office, marked as Appendices P4 (A-X).

Tabila Family - Petitioners 8-10

21. Petitioner 8 is an Arab citizen of Israel who resides in Shefa'amr. On 6 November 1999, she married Petitioner 9, who is a Palestinian from Nablus, in the West Bank. Petitioners 8 and 9 are the parents of a one-year-old infant, who is Petitioner 10.

22. On 19 January 2000, Petitioner 8 submitted an application on behalf of Petitioner 9 to obtain a status in Israel. The application was submitted at the Population Bureau's office in Nazareth and was given number 3/2000. Although the application was approved on 12 July 2000, Petitioner 9 did not receive the status of temporary resident until 22 October 2001. His status as a temporary resident in Israel is for one year, which will expire on 18 July 2002.

    Attached hereto are copies of the identity cards of Petitioners 8 and 9, their marriage certificate, confirmation of submission of the application, and correspondence with Respondent 3 and the State Attorney's Office, approval of the application, and the birth certificate of Petitioner 10, marked as Appendixes P5 (A-N).

Abu Dahir Family - Petitioners 11-12

23. Petitioner 11 is an Arab citizen of Israel who resides in Yafiyeh. On 13 June 1996, she married Petitioner 12, who is a Palestinian from Nablus, in the West Bank. After years of fertility treatment, Petitioners 11 and 12 are expecting their first child. In 1996, Petitioner 11 filed an application on behalf of Petitioner 12 to obtain a status in Israel. The application was filed at the Population Bureau's Nazareth office and was given the number 204/96. The application was denied on 17 June 1997. Shortly thereafter, Petitioners 11 and 12 appealed the decision. In a letter dated 27 December 1999, the director of the Nazareth office announced that the appeal had been accepted and the application approved. Notwithstanding the approval, Petitioner 12 was not given the status of temporary resident until 14 August 2001, *i.e., five years after submission of the application.* The status was granted for one year, until 31 July 2002.

Attached hereto are copies of the identity cards of Petitioners 11 and 12, their marriage certificate, correspondence with respondent 3, approval of the application, and confirmation of the fertility treatment that Petitioner 11 underwent, marked as Appendixes P6 (A-I).

Zidan Family - Petitioners 13-17

24. Petitioner 13 is an Arab citizen of Israel who resides in Jaffa. On 9 July 1995, she married Petitioner 14, who is a Palestinian from Gaza. Petitioners 13 and 14 are parents to three young children, the youngest of them an infant ten months' old, who are Petitioners 15-17. On 14 August 1995, Petitioner 13 filed an application on behalf of Petitioner 14 to obtain a status in Israel. The application was filed at the Population Bureau's Tel Aviv Central office and was given the number 51/0080. On 6 June 1999, *four years after submission of the application,* the application was approved. However, Petitioner 14 did not receive the status of temporary resident; he was only given a permit to stay in Israel, which did not include a work permit.

25. It was not before 15 August 2001, i.e., *six years after the application was submitted*, that Petitioner 14 received the status of temporary resident in Israel. It was granted for a period of one year, which will expire on 2 August 2002. The status was obtained followed a pre-petition to the State Attorney's Office.

    Attached hereto are copies of the identity cards of Petitioners 13 and 14, their marriage certificate, confirmation of submission of the application, approval of the application, correspondence with Respondent 3 and the State Attorney's Office, marked as Appendixes P7 (A-I).

Sabihat Family - Petitioners 18-21

26. Petitioner 18 is an Arab citizen of Israel who resides in Salem. On 26 July 1997, he married Petitioner 19, who is a Palestinian from Rumaneh, in the West Bank. Petitioners 18 and 19 are the parents of one-year-old twins, who are Petitioners 20 and 21. In 2001, Petitioner 18 filed an application on behalf of Petitioner 19 to obtain a status in Israel. The application was filed at the Population Bureau's Afula office and was given the number 840/01. The application was approved on 16 September 2001; nevertheless, in breach of the state's commitment in HCJ 338/99, Petitioner 19 was not given the status of temporary resident.

27. An appointment was made for Petitioners 18 and 19 to appear at the Population Bureau's Afula office on 8 April 2002, and they were promised that Petitioner 19 would be given the status of temporary resident. Nevertheless, when they appeared on that day, the officials at the Population Bureau's Afula office refused to allow Petitioners 18 and 19 to enter the office, and informed them that it was closed until further notice, the reason being the events that were taking place and the security situation, and that until then, applications would not be handled.

    Attached hereto are copies of the identity cards of Petitioners 18 and 19, their marriage certificate, birth certificates of Petitioners 20 and 21, confirmation of submission of the application, approval of the application, marked as Appendixes P8 (A-G).

Mahamid Family - Petitioners 22-24

28. Petitioner 22 is an Arab citizen of Israel who resides in Jaffa. On 18 July 1998, he married Petitioner 19, who is a Palestinian from the Asqar refugee camp, in the West Bank. Petitioners 22 and 23 are the parents of a one-month-old infant, who is Petitioner 24. On 13 September 2001, Petitioner 22 filed an application on behalf of Petitioner 23 to obtain a status in Israel. The application was filed at the Population Bureau's Tel Aviv Central office and was given the number 51/0493. The application was approved on 20 February 2002; nevertheless, Petitioner 23 was not given the status of temporary resident. Their request to extend the permit to stay in Israel that had been granted to Petitioner 23 was also refused by the liaison officer in Nablus, who

contended that handling of these matters had been frozen until the Population Bureau authorized such handling.

29. On 21 April 2002, Ms. Pnina Oded, an employee in the Population Bureau's Tel Aviv Central Office, refused to allow Petitioners 22 and 23 to register their son, Petitioner 24, who was born in Wolfson Hospital on 16 April 2002. She contended that all applications were frozen.

    Attached hereto are copies of the identity cards of Petitioners 22 and 23, their marriage certificate, confirmation of the birth of Petitioner 24, confirmation of submission of the application, approval of the application, marked as Appendixes P9 (A-E).

Quariq Family - Petitioners 25-28

30. Petitioner 25 is an Arab citizen of Israel who resides in Fureidis. On 17 April 1995, she married Petitioner 26, who is a Palestinian from Awarta, in the West Bank. Petitioners 25 and 26 are the parents of two young children, who are Petitioners 27 and 28, and are expecting another child. In 1995, Petitioner 25 filed an application on behalf of Petitioner 26 to obtain a status in Israel. The application was filed at the Population Bureau's Hadera office and was given the number 90/95. The application was approved on 23 March 1999; nevertheless, Petitioner 26 was not given the status of temporary resident until this petition was filed, *i.e., seven years from the day of submission of the application.* Repeated attempts made by Petitioners 25 and 26 to submit an application for temporary residency, including several attempts in April 2002, failed; officials at the Population Bureau's Hadera office refused to allow the applications to be submitted. Their attempts to provide documents that they were required to supply, as set forth in the letter of 26 March 2002 signed by Ms. Loris Hecht, of the Population Bureau's Hadera office, failed because office officials refused to allow them to submit the documents. They contended that the handling of all applications had been frozen until further notice.

    Attached hereto are copies of the identity cards of Petitioners 25 and 26, their marriage certificate, medical confirmation that Petitioner 25 is pregnant, approval of the application, correspondence with Respondent 3, marked as Appendixes P10 (A-G).

Farahti Family - Petitioners 29-33

31. Petitioner 29 is an Arab citizen of Israel who resides in Sulam. On 20 January 1995, she married Petitioner 30, who is a Palestinian from Jalama, in the West Bank. Petitioners 29 and 30 are the parents of three young children, the youngest a four-month-old infant, who are Petitioners 31-33. On 23 February 1995, Petitioner 29 filed an application on behalf of Petitioner 30 to obtain a status in Israel. The application was filed at the Population Bureau's Afula office and was given the number 38/95. In a letter of 1 July 1996, Mr. Ronen Yerushalayim, of the head office of Respondent 3, informed Petitioners 29 and 30 that a decision had been made to give Petitioner 30 a permit to stay and work in Israel for a period of three years, the permits to be provided by the Liaison and Coordination Office for a period of six months' each. In a letter of 21 November 2001, Mr. Ovadia Baninu, director of the Population Bureau's Afula office, informed Petitioners 29 and 30 that their application for family unification had been granted. Despite this, and the fact that *Petitioner 30 has been waiting for a status in Israel for more that seven years*, as of the time of the filing of this petition, he has not been granted the status of temporary resident.

32. Petitioners 29 and 30 failed in their repeated attempts, including attempts they made in April 2002, to submit an application for temporary residency. Each time, the officials at the Population Bureau's Afula office refused to let them submit their application. The attempts made by Petitioners 29 and 30 to renew the permit to stay in Israel that had been given to Petitioner 30 by the Liaison and Coordination Office also failed.

Attached hereto are copies of the identity cards of Petitioners 29 and 30, their marriage certificate, confirmation of submission of the application, and approval of the application, marked as Appendixes P11 (A-E).

Abu Wadi Family - Petitioners 34-38

33. Petitioner 34 is an Arab citizen of Israel who resides in the unrecognized village Abu Jawad, in the Naqab (Negev). On 3 March 1996, he married Petitioner 35, who is a Palestinian from the Tulkarem refugee camp, in the West Bank. Petitioners 34 and 35 are the parents of three young children, the youngest a two-year-old infant, who are Petitioners 36-38.

34. After they married, Petitioner 34 tried several times to file an application on behalf of Petitioner 35 to obtain a status in Israel. However, the officials at the Population Bureau's Beer el-Sebe (Beer el-Sebe) office refused to let him submit the application. The reason given was that Petitioner 35 did not have an identity number.

35. It should be explained that Petition 35 is not listed in the population registry of the West Bank. She does not know the reason she is not listed. Her birth was registered in the birth records, and when she was twelve, she was issued a birth certificate, albeit without an identity number. On 15 November 1993, when she was seventeen, Petitioner 35 submitted an application to be recognized as a resident ("family unification for the unregistered") in the Civil Administration office in Tulkarem. As of the day of the filing of this petition, no decision has been made on the application.

36. It was only after repeated requests to Respondent 3 that officials of the Population Bureau's Beer el-Sebe office allowed Petitioner 34 to submit an application, which was given number 8/02, on behalf of Petitioner 35 to obtain a status in Israel. Handling of the application was delayed after Petitioner 34 was repeatedly requested to provide the identity number of Petitioner 35. As of the day of the filing of this petition, she has not been granted a status in Israel.

    Attached hereto are copies of the identity card of Petitioners 34, the birth certificate of Petitioner 35, confirmation of the application for family unification without being registered, their marriage certificate, confirmation of submission of the application, the birth certificates of Petitioners 36-38, correspondence with Respondent 3, marked as Appendixes P12 (A-R).

Al 'Isawi Family - Petitioners 39-41

37. Petitioner 39 is a Palestinian from Nablus, in the West Bank. She is the widow of Mr. Sa'id al-Isawi, an Arab citizen of Israel who was a resident of Ramla (ID number 024794026). Mr. al-'Isawi died on 9 May 2000. Petitioner 39 is the mother of two infant children, Petitioners 40 and 41.

38. On 26 September 2000, Petitioner 39 filed an application for a status in Israel. She also filed an application to register Petitioner 41 in the population registry. As of the day of the filing of this petition, she had received no reply. Her request of 6 October 2001 to Respondent 3 also remained unanswered. Petitioner 39 lives with her children Petitioners 40 and 41 at her late husband's parents' home in Ramla.

    Attached hereto are copies of the identity card of Petitioner 39, the birth certificate of Petitioner 40, confirmation of submission of the application, correspondence with Respondent 3, marked as Appendixes P13 (A-D).

Shahin Family - Petitioners 42-50

39. Petitioner 42 is an Arab citizen of Israel who resides in Kufr Qassem. On 21 June 1986, she married Petitioner 43, who is a Palestinian from Nozirat, in Gaza. Petitioners 42 and 43 are the parents of seven children, the youngest being a year-and-a-half old, who are Petitioners 44-50. They are also expectant parents. On 19 July 1994, Petitioner 42 filed an application on behalf of Petitioner 43 to obtain a status in Israel. The application, which was given the number 219/94, was filed at the Population Bureau's Petach Tikva office. It was denied without explanation.

40. On 2 July 2001, Petitioner 42 went to the Population Bureau's Petach Tikva Office to submit a new application. The official refused to accept the application. The official said that it could not be accepted without a picture containing all the family members, and other unreasonable conditions. It was not until request was made to Respondent 3 that Petitioner 42 was allowed to submit the application, which she did on 2 January 2002. As of the day of the filing of this petition, no decision had been made, and Petitioner 43 had not been given any status in Israel.

    Attached hereto are copies of the identity cards of Petitioners 42 and 43, their marriage certificate, confirmation of submission of the applications, the birth certificates of Petitioners 44-50, correspondence with Respondent 3, marked as Appendixes P14 (A-R).

Shibli Family - Petitioners 51-54

41. Petitioner 51 is an Arab citizen of Israel who resides in Shibli. On 19 August 1996, he married Petitioner 52, who is a Palestinian from Barta'a, in the West Bank. Petitioners 51 and 52 are the parents of two young children, the youngest being about one year old, who are Petitioners 53 and 54. After several failed attempts, on 6 May 1998, Petitioner 51 submitted an application on behalf of Petitioner 52 to obtain a status in Israel. The application, which was given the number 561/98, was filed at the Population Bureau's Afula office. Petitioners 51 and 52 provided all the documents, the application has been pending for about five years, and the said petitioners have made written requests to Respondent 3; nevertheless, no decision has yet been made on the application, nor has Petitioner 52 been given a status in Israel.

    Attached hereto are copies of the identity cards of Petitioners 51 and 52, their marriage certificate, confirmation of submission of the application, the birth certificates of Petitioners 53 and 54, and correspondence with Respondent 3, marked as Appendixes P15 (A-K).

John Doe Family - Petitioners 55-57

42. Petitioner 55 is a Palestinian who resides in J, in the West Bank. She is divorced from John Doe, an Arab citizen of Israel who resides in R. The couple married on 16 December 1995 and lived in I. They have two young children, who are Petitioners 56 and 57. It should be noted that Petitioner 55 was a Muslim, whereas her husband is a Christian, and she converted before they married. Because Petitioner 55 married a Christian, and also because she converted, her family threatened to kill her. Since marrying, she has not had any contact with them and there is a real fear that if her family were to get her, they would carry out their threats.

43. After having suffered her husband's violence for a prolonged period of time, Petitioner 55 divorced on 25 January 2002. The judgment of divorce expressly granted her custody of the children.

44. From the time that she married, Petitioner 55 has gone many times to the Population Bureau's Akka (Acre) office to submit an application for a status in Israel. Each time, her application has been summarily denied because she could not meet the conditions for submitting an application, i.e., that she attach a certificate of honesty from the Palestinian Authority. She is unable to meet this requirement because, to obtain the certificate, she would have to go to J where her family lives. Going there would jeopardize her life. Petitioner 55 requested Respondent 3 to allow her to

submit an application to obtain a status in Israel and to be granted a status. Respondent 3 has not yet replied.

Attached hereto are copies of the identity card of Petitioner 55, her marriage certificate, the birth certificates of Petitioners 56 and 57, and correspondence with Respondent 3, marked as Appendixes P16 (A-G)

Petitioner 58

45. Petitioner 58 is a legally-registered NGO, dedicated to the protection of human rights and the rights of the Arab minority in Israel in the legal sphere.

The Cabinet Decision and Requests made by Petitioner 58

46. On 12 May 2002, the Cabinet made a decision that states, *inter alia,* as follows:

> B. Family Unification Policy
>
> In light of the security situation and because of the implications of the processes of immigration and settlement in Israel of foreigners of Palestinian descent, including through family reunifications, a new policy will be formulated to handle applications for family unification by the Ministry of the Interior together with the other relevant ministries. Until this policy, which will be expressed in new procedures and legislation, is formulated, as necessary, the following rules will apply:
>
> 1. Handling of New Applications, including Applications in Which a Decision has not been Issued
>
> a. Residents of the Palestinian Authority - no applications to obtain the status of resident or other status will be accepted from residents of the Palestinian Authority; an application that has been submitted will not be approved, and the foreign spouse will be required to stay outside of Israel until another decision is made.
>
> b. Others - the application will be reviewed taking into consideration the descent of the person invited.
>
> 2. Applications in the Gradual Process
>
> During the interim period, the validity of a permit that has been issued will be extended, provided there are no other impediments. There will be no upgrading to a higher status.

See Appendix P1.

47. The Cabinet Decision also sets forth the principles of the new policy, which is intended to provide stricter conditions for Palestinians who marry Israeli citizens to be granted citizenship and/or any status in Israel.

48. Petitioner 58 learned about the Cabinet Decision from media reports. It then immediately wrote to the Respondents and to the Attorney General, protesting the decision and indicated the grave violation of basic constitutional rights inherent in the decision. As of the day of the filing of this petition, Petitioner 58 received no reply to its letter, other than an acknowledgment of receipt from the Prime Minister's Office.

Attached hereto is a copy of the letter, marked Appendix P17, and a copy of the confirmation of receipt of the letter, marked Appendix P18.

49. On 12 May 2002, immediately following the initial reports in the media, Petitioner 58 requested the secretary of the cabinet to provide it with the text of the Cabinet Decision. On 13 May, Petitioner 58 sent a follow-up letter, and, on 15 May, received the text of the Cabinet Decision.

    Attached hereto are copies of the letters, marked Appendixes P19 and P20.

50. It should be explained that, prior to the Cabinet Decision, Respondent 2 had directed, at the end of March 2002, Respondent 3 to freeze the handling of all applications that had been submitted to obtain a status in Israel for [non-citizen] spouses of Arab citizens of Israel (hereinafter: the freezing order).

51. Media reports contended that the freezing order was issued following the suicide bombing at the Matza Restaurant in Haifa, which was committed by a person whose parent had received status following his marriage to an Israeli citizen. The freezing order was issued as a result of Respondent 2's intention, which had been formed long before then, as appears from an article that was published in *Ha'aretz* on 9 January 2002. According to the article, Respondent 2:

    > Directed the legal department in his ministry to examine ways to change the legislation that will reduce the number of non-Jews receiving Israeli citizenship. The reference was to residents of the Palestinian Authority who receive citizenship as a result of their marriage to holders of Israeli citizenship… The Minister indicated that he sees an urgent need to find ways to reduce the number of non-Jews receiving Israeli citizenship, including Arabs, which increased dramatically in recent years and "threaten the Jewish nature of the state of Israel."

    Attached hereto is a copy of the article, marked P21.

52. Petitioner 58 learned about the freezing order issued by Respondent 2 from articles that were published in *Ha'aretz* and *Ma'ariv* on 1 April 2002. The same day, Petitioner 58 sent a letter to Respondent 2 protesting against the freezing order, in which Petitioner 58 pointed out the severity of the violation of fundamental constitutional rights that would result from it, and requested the text of the order and the relevant directives that were issued in regard thereto. As of the day of the filing of this petition, Petitioner 58 had received no reply to its request. On 13 April 2002, Petitioner 58 sent a reminder, and another reminder on 28 April, in which it also mentioned the grave implications of the freezing order on Petitioners 1, 2, 3-7, 18-21, and 22-24. On 6 May 2002, Petitioner 58 sent another reminder, in which it also mentioned the grave implications of the freezing order on Petitioners 29-33. As of the day of the filing of this petition, Petitioner 58 had received no reply.

    Attached hereto are copies of the articles, marked Appendixes P22 - P23, and copies of the letters, marked Appendixes P24 - P27.

The Gradual-Process Arrangement - The General Naturalization Procedure for Spouses of Israeli Citizens

53. In recent years, Israel has employed a procedure for the naturalization of all spouses of Israeli citizens. The Cabinet Decision nullifies, as noted, the application of the procedure to residents of the Palestinian Authority and others of Palestinian descent who are the spouses of Israeli citizens. The procedure continues to apply to all other spouses of Israeli citizens.

54. The naturalization procedure of the spouses of Israeli citizens that will lead ultimately to citizenship according to the provisions of section 7 of the Citizenship Law (1952) (hereinafter:

the gradual procedure), was established following the judgment in *Stamka*, and is described in the state's response of 7 September 1999 in *'Issa*. According to this procedure, the spouse of an Israeli citizen is entitled to Israeli citizenship in a gradual process encompassing three stages:

5. a. An Israeli citizen who married a foreigner shall submit an application for family unification and naturalization in Israel for his spouse at the Population Bureau's office in the area of his residence.

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

   c. As a rule, within 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 their center of life, and there is not security or criminal impediment to approval of the application.

   e. Upon approval of the application, the invited spouse will be entitled to an A5 permit to stay temporarily in Israel. This permit will be given for a total period of four years, and will be extended yearly, taking into account the circumstances mentioned in Section d.

   f. 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 Section 7 of the Citizenship Law (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 in Israel continuously prior to the day of obtaining citizenship, and subject to the considerations of section d above.

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

See Appendix P2.

Legal Argument

55. The provisions of the Cabinet Decision relating to the period prior to the formulation of the new arrangement severely violates the fundamental constitutional rights of the Petitioners to a family life, dignity, privacy, and equality, which are enshrined in the Basic Law: Human Dignity and Liberty. These rights are also set forth in international conventions to which Israel is party, and in the Citizenship Law (1952).

56. The Cabinet Decision is discriminatory, arbitrary, sweeping, without criteria, and excessive. It contravenes both the rule set by the Honorable Court in *Stamka* and the commitment made by the state to the Honorable Court in '*Issa*. The Cabinet Decision flagrantly discriminates against Arab citizens of Israel, who are those who marry Palestinians, in comparison with other groups in Israel, as to whom the Cabinet Decision does not apply. Therefore, and based on the disparate impact test, the decision is tantamount to discrimination based on nationality. As such, it violates human dignity. Also, the Cabinet Decision violates the right to be heard and is applied retroactively.

The Cabinet Decision Was Issued Without Authority and Contrary to Existing Legislation

57. The Cabinet Decision was taken without authority as it professes to regulate a subject of the utmost significance, the right of spouses of citizens of the state to citizenship and a status in Israel, while infringing fundamental constitutional rights, among them the rights to family life, dignity, equality, and privacy, by administrative decree. [The Cabinet] is not competent to make a decision that violates fundamental constitutional rights. It goes without saying that an administrative decision that is given in the absence of authority is void; this is true even more so when the decision violates fundamental constitutional rights.

    HCJ 355/79, *Katlan v. Prisons Service,* P.D. 34 (3) 294;
    HCJ 144/50, *Sheib v. Minister of Defense, et. al.,* P.D. 5 (1) 399, 411;
    HCJ 1/49, *Bejarno v. Minister of Police,* P.D. 2 (1) 80.

58. This principle also applies to the government, which is the most senior administrative body. The comments of the Honorable Justice Dorner in *Kiryat Gat* are appropriate:

    > Our constitutional system protects the individual against the arbitrariness of the government. This principle obliges us to see the rules that were stated by courts in the matter of the rights of the individual in Israel as "law" for the purposes of Section 29 of the Basic Law: The Government… The exception in Section 29 of the Basic Law: The Government, which subjects the general powers of the government to law, prevents it not only from acting contrary to a statutory provision, but also prohibits it from infringing the rights of the individual… The same result may be reached by caselaw that directs - by interpretation - that an administrative authority is not allowed to violate the rights of the individual, unless it is empowered to do so by express language… Section 29 of the Basic Law: The Government does not state that the government is empowered to violate the rights of the individual; therefore, the section shall not be interpreted to mean that the government is empowered to do in the name of the state "any act whose commission is not imposed by law on another authority" as relating also to acts that violate human rights.
    >
    > HCJ 2918/93, *Kiryat Gat Municipality v. State of Israel, et. al.,* P.D. 47 (5) 832, 846-847.

59. On the limitation of acts that the government is empowered to do, Chief Justice Shamgar wrote in *Federman*:

    > There are acts that are not within the domain and power of the government, because performing them without statutory authorization contravenes the basic conceptual norms resulting from the nature of our regime. This is true for fundamental rights that are part of our positivist law, whether they are included in a Basic Law or if not yet included. The government is not empowered, for example, to close a newspaper pursuant to execution of an administrative decision, if there is not a specific statutory provision that expressly regulates such a matter, even if a basic law has not yet been legislated that defines freedom of speech; such an act would contravene our fundamental norms on human freedoms inherent in our regime, which may be limited only by statute. The fundamental right of freedom of speech, which is part of our positive law, binds the hands of the executive authority and does not allow it to deviate, without authorization by law, from the prohibition against infringing a freedom that was granted pursuant thereto.
    >
    > HCJ 5128/94, *Noam Federman v. Minister of Police, Moshe Shakhal, et. al.,* P.D. *4*8 (5) 647, 652.

    Chief Justice Barak ruled similarly in *The Public Committee Against Torture in Israel*:

> There are to be no violations on this liberty but through statutory provisions which successfully pass constitutional muster. The government's general administrative powers fail to fulfill these requirements. Indeed, when the legislature sought to endow the GSS with the power to violate a human right, [it] set a specific provision on the matter.
>
> HCJ 4054/95, 5100/94, *The Public Committee Against Torture in Israel, et. al. v. State of Israel, General Security Service, et. al.*, P.D. 53 (4) 817, 833-834.

See also:
HCJ 3267/97, *Rubenstein, et. al. v. Minister of Defense,* P.D. 52 (5) 481, 530;
HCJ 5016/96, *Horev, et. al. v. Minister of Transportation, et. al.,* P.D. 51 (4) 1, 43;
HCJ 337/81, *Miterani v. Minister of Transportation,* P.D. 37 (3) 337, 355;
HCJ 75/76, *Hilron v. Council for Fruit Production and Marketing,* P.D. 36 (3) 645, 653;
Civ. App. 723/74, *Ha'aretz Newspaper Publishers v. Israel Electric Corporation,* P.D. 31 (2) 281, 295.

60. The Cabinet Decision contravenes the Citizenship Law (1952) (hereinafter: the Citizenship Law), in particular Section 7 of the law, which eases the conditions set forth in Section 5 of the law when the application for citizenship is submitted by a spouse of an Israeli citizen. The Cabinet Decision prevents any possibility of considering the applications in accordance with the provisions of the said Section 7, thus making it impossible to use.

61. In *Stamka*, the Honorable Justice Heshin related to the restrictions placed on implementation of Section 7 of the Citizenship Law, which were less strict than in the present case, and ruled that they were unreasonable and excessive:

> The boundaries of the discretion of the Minister of the Interior will be derived, *inter alia,* from the nature of the citizenship right, and it is generally stated that the nature of this right calls for broad discretion… However, as in the case of every other exercise of discretion, limitations and restrictions are also placed on the discretion of the Minister of the Interior pursuant to the Citizenship Law… the purpose of the statute - in its Section 7 - is to protect the rights of the spouse, which indicates that the Minister of the Interior must incorporate this purpose in the policy that is established in implementing Section 7. For example, a rigid policy whereby the spouse of an Israeli citizen will not be granted Israeli citizenship unless he or she fulfills all the conditions set forth in Section 5(a) of the statute, would be hard for us to accept as a policy that was established pursuant to his authority and in accordance with law… It seems that in making it difficult for the spouse in the manner that he does, the Minister of the Interior exceeded even the boundaries of his broad discretion… Even if we believed and accepted this policy as it relates to the right to acquire permanent residency, as regards acquisition of citizenship, we found it hard to understand how the Minister eased the situation of the spouse as the statute directed him (in accordance with the principle)…. The legislature did not want to be harsh with the spouse of an Israeli citizen, therefore, instead of establishing rigid conditions and predetermined times - the conditions set forth in Section 5(a) of the statute - requested that the Minister of the Interior ease each person's case according to a predetermined policy. Now the Minister of the Interior comes and acts harshly with the spouse as if he were an ordinary applicant for naturalization… The directives that the Minister established for himself do not meet the test of reasonableness and proportionality.
>
> Pages 791-794 of the judgment.

62. This is true even more so in the present case, in which the Cabinet Decision is so rigid that it does not enable the initial and indispensable stage - submission of the application to obtain a status. The Cabinet Decision does not even enable those who have already submitted their applications

to reach the stage at which they will be considered according to Section 7 of the Citizenship Law; the Cabinet Decision states that pending applications are not to be approved, and those which were approved already are not to be upgraded.

63. As a result of the Cabinet Decision, Petitioners 24 and 41 will be among the persons whose applications will not be approved because they are of Palestinian descent and will have to leave Israel and wait until the new policy is formulated, although they are children of fathers who are Israeli citizens, therefore Israeli citizens by birth, as stated in the express language of Section 4 of the Citizenship Law:

    (A) All these will be, from the day of their birth, Israeli citizens pursuant to birth:

        (1) Anyone who is born in Israel when his father or mother were Israeli citizens;

        (2) …

        (3) For the purposes of this section, if a person is born following the death of one of his parents, it is sufficient that the said parent was an Israeli citizen at the time of his death.

64. It should be emphasized that the refusal of the Respondents to allow registration of Petitioners 24 and 41 in the population registry and to recognize them as Israeli citizens from birth violate the express provisions of the statute, as well as international law. The Convention on the Rights of the Child, for example, states in Article 7:

    (1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

    (2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

65. Thus, the Cabinet Decision violates fundamental constitutional rights, among them the right to family life, dignity, privacy, and equality, without meeting the express requirement of Section 8 of the Basic Law: Human Dignity and Liberty, whereby the violation must be done by a law. It is emphasized that the Basic Law: Human Dignity and Liberty applies not only to the legislature, but also to the administrative authority, as stated in Section 11 of the Basic Law.

    Y. Zamir, *Administrative Authority* (Vol. 1) (Nevo Publishing Co., 1996), p. 115.

The Cabinet Decision Violates the Right to Equality and the Right to Human Dignity

66. The Cabinet Decision prevents and/or limits the Petitioners' ability to live together normally with their families, with their spouses and children. Thus, it severely violates the Petitioners' dignity by discriminating against [them], in comparison with other couples in their situation, on the basis of their nationality, i.e., because they are Palestinians.

67. The Cabinet Decision establishes a special arrangement for the handling of applications to obtain a status in Israel that are submitted by Palestinian spouses of Israeli citizens. This arrangement is different and inferior to the procedure applied to non-Palestinian spouses of Israeli citizens. The arrangement is biased against Israeli citizens with Palestinian spouses, their spouses, and their children, in comparison with all other Israeli citizens who are married to non-citizens. This arrangement of different treatment based on the national descent of the spouse is discriminatory and violates the principle of equality and the constitutional right of the Petitioners to dignity.

68. It should be emphasized that, in practice, the Israeli citizens who are married to Palestinians are Arab citizens of Israel. Therefore, the Cabinet Decision flagrantly discriminates against the Arab citizens of Israel, and, based on the disparate impact test, it is a nationality-based discrimination that is so grave as to cause a breach of dignity.

69. The Petitioners will argue that the principle of equality, as a fundamental principle of Israeli law, requires equal treatment for equal persons, and that the Cabinet Decision, by establishing a different arrangement for applicants for a status in Israel because they are Palestinians, i.e., on the basis of the national group to whom they belong, is discriminatory and breaches the principle of equality.

    On the principle of equality as a fundamental principle of Israeli law, see:

    HCJ 727/00, *The Committee of the Heads of Municipalities v. Minister of Construction and Housing*, Takdin Elyon 2001 (4) 363, 367;
    HCJ 1113/99, *Adalah: The Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs,* P.D. 54 (2) 164, 170;
    HCJ 2671/98, *Israel Women's Network v. Minister of Labor and Social Welfare,* P.D. 52 (3) 630, 650-651;
    HCJ 637/89, *Constitution for the State of Israel v. Minister of Finance,* P.D. 46 (1) 191, 201;
    HCJ 98/69, *Bergman v. Minister of Finance,* P.D. 23 (1) 693.

70. Discrimination based on group affiliation is especially injurious because it degrades, thus infringing the right to dignity. As the Honorable Justice Dorner stated in *Miller*:

    > Undoubtedly, the purpose of the Basic Law is to protect the individual from discrimination. Degrading a person injures his dignity. It is impossible to reasonably interpret the right to dignity, as stated in the Basic Law, such that the degradation of a person is not considered a violation of the right. Indeed, not every breach of equality amounts to degradation; thus, not every breach of equality violates the right to dignity… This is not the case in certain kinds of discrimination based on group affiliation, among them discrimination based on sex, as well as discrimination based on race… The Basic Law protects against breach of the principle of equality when the breach causes degradation, i.e., injury to the dignity of a person as such. The same is true when a woman is discriminated against because of her sex.
    >
    > HCJ 4541/94, *Miller v. Minister of Defense, et. al.,* P.D. 49 (4) 94, 132-133.

    See also:
    HCJ 7111/95, *Local Government Center v. Knesset,* P.D. 50, (3) 485, 503;
    HCJ 721/94, *El Al Israeli Airlines v. Yonatan Danilovich,* P.D. 48 (5) 749, 757-758;
    HCJ 453/94, *Israel Women's Network v. Government of Israel, et. al.,* P.D. 38 (5) 501;
    HCJ 5394/92, *Huppert v. Yad Vashem,* P.D. 38 (3) 353, 362;
    HCJ 1/88, 953/87, *Labor Faction of the Tel Aviv-Yafo Municipality, et. al. v. Tel Aviv-Yafo Municipal Council,* P.D. 42 (2) 309, 332-333.

71. Different treatment based on nationality is, in the words of Chief Justice Barak in *Qa'dan,* suspected to be discriminatory:

    > Equality is a complex concept. Its scope is disputed. However, everyone agrees that equality forbids different treatment based on religion or nationality… As regards equality, the practical translation of these fundamental conceptions is that the (general) purpose of any legislation is to ensure equality between persons without discrimination

on the basis of religion or nationality. Different treatment based on religion or nationality is "suspicious" treatment, and is *prima facie* discriminatory treatment.

HCJ 6698/95, *Qa'dan, et. al. v. Israel Lands Administration, et. al.,* P.D. 54 (1) 258, 277-278.

72. It should be emphasized that the right to dignity, protected and enshrined in the Basic Law: Human Dignity and Liberty, contains within it the right to family life, for, in the words of the Honorable Justice Beinisch:

> In the era in which "human dignity" is a protected fundamental constitutional right, effect must be given to the aspiration of a person to fulfill his personal being, and for this reason, it is necessary to respect his desire to belong to the family unit that he considers himself part of… The person's parents and children are also part of his personality, part of his personal, familial, and social "I"…

Civ. App. 7155/96, *John Doe v. Attorney General,* P.D. 51 (1) 160, 175-176.

73. The Honorable Chief Justice Shamgar related to the practical expression that is to be given to the constitutional right to dignity:

> In the constitutional context, human dignity is a legal concept, but its practical expression, as stated, is in human, daily existence and in the treatment given by the state and society, including the courts, to the individual living in it. Human dignity reflects, *inter alia,* the ability of a human being as such to develop his personality freely, as he wishes, to express his aspirations and choose the ways to fulfill them, to make his desired choices, not to be subject to arbitrary compulsion, to receive fair treatment by every authority and by every other person, to enjoy the equality shared by human beings…

Civ. App. 5942/92, *John Doe v. John Roe, et. al.,* P.D. 38 (3) 837, 842.

74. International law, which forbids discrimination based on nationality, particularly prohibits such discrimination in matters relating to the right to citizenship. For example, Article 3(1) of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination states:

> Particular efforts shall be made to prevent discrimination based on race, color or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

The International Convention on the Elimination of All Forms of Racial Discrimination, of 1965, which Israel signed on 7 March 1966 and which it ratified on 3 January 1979, states in Article 1:

> (1) In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
>
> (2) This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
>
> (3) Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

The Convention on the Reduction of Statelessness, of 1961, which Israel signed on 30 August 1961, states in Article 9:

> A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

The UN Convention on the Nationality of Married Women, of 1957, which Israel signed on 12 March 1957 and which it ratified on 7 June 1957, states in Article 3:

> (1) Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.
>
> (2) Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.

It should be emphasized that the Honorable Justice Heshin held in *Stamka*, that the principle of equality grants the right set forth in Article 3 of the said convention to married men as well.

Page 792 of the judgment.

75. Article 5(1) of the European Convention on Nationality, of 1997, prohibits discrimination based, *inter alia,* on nationality in the citizenship laws:

> The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, color or national or ethnic origin.

Article 6(4) states:

> Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons:
>
> (a) spouses of its nationals…

76. The European Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950, also includes an article forbidding discrimination based, *inter alia,* on national origin. In Article 14, it states:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The Cabinet Decision Violates the Right to Family Life

77. The implementation of the Cabinet Decision, which directs the prevention of submission of applications to obtain a status in Israel, that pending applications are not to be approved, and that spouses are to stay outside Israel, will cause the break-up of families. It will break up the families of Petitioners 19, 23, 26, 30, 35, 39, 43, 52, and 55, and [cause] the separation of the spouses, and the separation of parents from their minor children. [These break-ups will take place] although the applications of Petitioners 19, 23, 26, 30, 35, 39, 43, and 52 have been pending before Respondents 2 and 3 for many years, an they still have not received temporary

residency. The life of Petitioner 55, who has tried unsuccessfully to submit her application for a status in Israel for several years, and the lives of her children, Petitioners 56 and 57, will be in real jeopardy if she is compelled to stay in the West Bank until a decision is given on her application, as explained in sections 42-44 above.

78. The Cabinet Decision, which prohibits "upgrading of status" in those cases in which the applications received approval in principle and the applicants received a temporary status, as was the cases of the families of Petitioners 2, 4, 9, 12, and 14, will, therefore, result in extending the intolerable situation of maintaining a family without a stable status in Israel. This intolerable situation will cause enormous difficulties in convincing employers to accept an employee whose future in Israel is uncertain and who is unable to make a commitment for an extended period; in convincing landlords to rent an apartment to a person whose future in Israel is uncertain and who is unable to make a commitment for an extended period; the inability to obtain a mortgage; etc. This situation is like a sword hanging over the heads of the Petitioners, most of whom have been waiting many years to obtain a status in Israel, and they will have to live with the perpetual fear of what the day will bring and what directive one Minister of the Interior or another will issue.

79. Therefore, the Cabinet Decision severely violates the Petitioners' fundamental right to family life, breaches the prohibition on interfering arbitrarily in family life, and contravenes the state's duty to protect family life. All these principles are recognized in both Israeli law and international law.

80. Israeli law recognizes the fundamental right to family life, including the right of parents to raise their children, as well as the central importance of the family unit in Israeli society. Specific provisions have been enacted in various statutes that are intended to protect the different aspects of the right to family life. An example is Section 7 of the Citizenship Law. On this point, the comments of the Honorable Justice Heshin in *Stamka* are appropriate:

> The State of Israel recognizes the right of the citizen to choose a spouse according to his desire and to establish a family in Israel with that person. Israel is committed to protecting the family unit… Israel recognized and recognizes its duty to protect the family unit also by granting permits for family unification. In doing so, Israel joined the enlightened states, those states that recognize - subject to restrictions regarding state security, public peace, and public welfare - the right of family members to live all together in the territory they choose.
>
> Pages 781-782 of the judgment.

See also:
HCJ 754/83, *Rankin, et. al. v. Minister of the Interior, et. al.,* P.D. 38 (4) 113, 117;
HCJ 693/91, *Efrat v. Director of the Population Bureau, et. al.,* P.D. 47 (1) 749, 783;
HCJ 2266/93, *John Doe, et. al. v. John Roe,* P.D. 49 (1) 221, 235.

81. International law, both customary and conventional, including the many international conventions to which Israel is party, explicitly recognizes the right to family life, prohibits arbitrary interference in it, and obliges states to protect it.

82. The Universal Declaration of Human Rights states in Article 12:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16(3) provides:

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The International Covenant on Economic, Social and Cultural Rights, of 1966, which Israel signed on 19 December 1966 and which it ratified on 3 October 1991, states in Article 10(1):

> The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

The International Covenant on Civil and Political Rights, of 1966, which Israel signed on 19 December 1966 and which it ratified on 3 October 1991, states in Article 17:

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

Article 23(1) provides:

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The Convention on the Rights of the Child, of 1989, which Israel signed on 3 July 1990 and which it ratified on 3 October 1991, states in its preamble, *inter alia*, that:

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

The Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live, of 1985, states in Article 5(1)(b):

> The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950, states in Article 8:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

83. The European Court of Human Rights has ruled in several cases that the said Article 8 was breached when the state refused to extend the residency status of the former spouse of a citizen of the state where the spouse is the parent of a minor who is a citizen of the state. For example, in *Berrehab v. The Netherlands,* a citizen of Morocco married a citizen of Holland and was the father of a Dutch citizen. The Dutch government refused to renew his residency and sought to expel him a number of years after he and his wife had divorced. The court held that, although the decision conformed to law and was for a proper purpose, in balancing interference in family life and the public interest in security, the interference in family life was excessive; therefore, in a democratic society, the act was unjustified and breached the provisions of Article 8 of the said convention.

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

    Mehemi v. France involved an Algerian citizen and resident of France who was married to an Italian citizen and the father of three children who were French citizens. He had been convicted of drug offenses, for which the French government revoked his residency status and expelled him to Algeria. The court ruled that, although the decision conformed to law and was for a proper purpose, the interference in family life was disproportionate and therefore unjustified in a democratic society and a breach of Article 8 of the said convention.

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

    Ciliz v. The Netherlands involved a Turkish citizen who obtained residency status in Holland after marrying a Dutch citizen and was the father of a child who was a Dutch citizen. After he separated from his wife, the Dutch government demanded that he find employment within a year. When he failed to do so, the Dutch government refused to renew his residency. The court ruled that the parent-child relationship is protected under Article 8 of the said convention, and that it does not terminate upon separation or divorce of the parents. Therefore, although the government's decision was for a proper purpose, the interference in family life was not a pressing need in a democratic society and breached the provisions of Article 8 of the said convention.

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

84. The fundamental right to family life in international law imposes a duty on the state to allow the spouses of citizens to receive a status in the state, and a special protection to the child's right to live with his family, especially with his parents. Article 10(1) of the Convention on the Rights of the Child expressly states:

    > 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.

    See, also, Articles 2, 3, 5, 7, 9, 16, and 18 of the said convention.

The Cabinet Decision Violates the Right to Privacy

85. The Cabinet Decision which arbitrarily interferes in the family life of the Petitioners, as described above violates the Petitioners' right to privacy. It is well-known that the right to family life also constitutes part of the right to privacy, a fundamental right that is protected and enshrined in the Basic Law: Human Dignity and Liberty. In *Gilam,* the Honorable Justice Ariel commented on the importance of this right, stating:

> This right is one of the fundamental human rights in Israel. It is one of the freedoms that give the regime in Israel a democratic character, and it is one of the paramount rights that are the foundation of the dignity and liberty to which persons are entitled as such, as a value in and of itself.
>
> Criminal App. 2963/98, 5026/97*, Gilam v. State of Israel,* Takdin Elyon 99 (2) 1149, 1153.

See also:
HCJ 2481/93, *Dayan v. Jerusalem District Commander, et. al.,* P.D. 48 (2) 456, 470;
Civ. App. 1302/92, *State of Israel v. Nahmias,* P.D. 49 (3) 309, 353.

The Cabinet Decision is Disproportionate

86. The Cabinet Decision is disproportionate since its purpose is improper, and because it includes means that violate constitutional rights to an extent greater than required.

87. The beginning of the Cabinet Decision states that, "… because of the implications of the processes of immigration and settlement in Israel of foreigners of Palestinian descent." The hidden consequence of these words is, apparently, the intention of Respondent 2 to limit the number of Arab citizens of the state. It was reported in an article in *Ha'aretz* of 9 January 2002 that:

> He [the Minister of the Interior] believes there is a pressing need to find ways to limit the number of non-Jews who receive Israeli citizenship, among them Arabs, whose numbers have increased dramatically in recent years and "threaten the Jewish character of the State of Israel."
>
> See Appendix P21 above.

88. However, even if the purpose underlying the Cabinet Decision was proper and conformed to the values of the State of Israel, the result would still be that the Cabinet Decision is disproportionate because of the *magnitude of the violated right.* Thus, in *Stamka,* the Honorable Justice Heshin held that the policy of Respondents 2 and 3, whereby they demanded that persons who were married to Israeli citizens and were staying illegally in Israel leave the country as a condition for reviewing their applications to obtain a status in Israel, fails to meet this test. His comments are also appropriate in the present case:

> The test of proportionality centers on the means to achieve the purpose. The assumption is that the purpose - in and of itself - is a proper purpose, and the question is only whether the means to achieve the purpose is proper, too. In applying the grounds of proportionality, we should further mention that, as the magnitude of the violated right or as the magnitude of the violation of the right so, too, will be the magnitude of the strictness with the authority as regards the grounds of proportionality. In the present case: the assumption is that the war to the bitter end that the Ministry of the Interior has been waging in prohibiting the fictitious marriages is a "proper purpose," and that the ministry's intent to uproot this noxious practice so that it disappears is a proper intent. Everyone agrees that the intent of the Ministry of the Interior conforms to the values of the State of Israel, and that it is intended for a proper purpose. The State of Israel is attempting to cope - and it is entitled to cope - with illegal immigration into its territory, and it is certainly proper to recognize its right to battle the persons and entities that exploit the limitations of the enforcement mechanisms in order to stay and continue to stay in Israel illegally. The war against fictitious marriages is, therefore, proper. However, the question that arises is, notwithstanding all the above, the means that the authority uses - that is, the demand that the foreign man or woman leave the country until

it is determined that the marriage was real or that it was fictitious - is a means that violates the demand that it be "to an extent no greater than required." In our opinion, the means employed by the Ministry of the Interior do not stand in proper proportion to the purpose - a purpose that itself is proper - that the ministry seeks to achieve; the magnitude improperly exceeds the magnitude necessary to achieve the purpose; and in damage-benefit terms, its damage is greater than its benefit.

Pages 777-778 of the judgment.

89. The Cabinet Decision must also meet the rational-relationship test. The Cabinet Decision places a collective suspicion on the Petitioners and others in their situation, as if they use the gradual process to attain rights to which they are not entitled. This collective and vague suspicion does not meet this test. In *Stamka*, the Honorable Justice Heshin related to an issue similar to the one presently before the Honorable Court, holding that:

> Furthermore, the Ministry of the Interior did not provide us with any relevant statistics, neither regarding the number of fictitious marriages nor 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 relationship between the means and the purpose? Is it a proper rational relationship where the nine suffer because of the one? In addition, according to the Ministry of the Interior, the Ministry checks the authenticity of the marriage relationship while one of the spouses is in the country and the other is abroad, or while the two are abroad. It seems to me that examination of the spousal connection while one of the spouses is abroad and the other in Israel is harder than an examination of the connection while both are in Israel. It is not a remote possibility that there are certain advantages in making the examination while the spouses are separated from each other; but it is difficult not to be under the impression that, when both are present in Israel, the ability to make the examination and the reliability of the examination are substantially greater than the alternative of one being here and the other there, and is certainly greater than the alternative in which both of them are staying outside the country. One of the significant indicators [used] in testing the authenticity of a marriage - not the sole sign - is the maintenance of a joint place of residence and a joint household over time. How can the Ministry of the Interior check these points if one of the spouses is not even in Israel? Indeed, the clear impression given is that the lax supervision of the Ministry of the Interior was one of the principal factors - maybe the main factor - that led to the birth of the new policy; and to instead of increasing the efficiency of the supervision, the Ministry of the Interior chose the easy path of demanding that the foreign spouse leave the country.
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> Page 779 of the judgment.

Similarly, in *Ben-Atiya*, the Honorable Justice Kedmi nullified the decision of the Minister of Education not to implement a certain study curriculum in schools where there was a suspicion of "cases in which the purity of the examinations was severely prejudiced," holding:

> The occurrence of cases - a relatively large number - in which the integrity of the examinations was prejudiced indicates there was laxness in the supervision; the way to cope with this phenomenon is to increase the efficiency of the supervision and to properly punish the persons involved, and not by harming the students in the "next class," the educational institution, and its teachers.
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> HCJ 3477/95, *Ben Atiya v. Minister of Education and Culture, P.D.* 49 (5) 1, 8.

90. Furthermore, the violation of fundamental rights must meet the test of proportionality also within the meaning of the *means that causes the minimal amount of harm required.* The Honorable Justice Dorner demanded this in *Tenufa Personnel Services*, where she held:

> As regards the test on choosing the means that harm the right to the minimal extent required, which is not, as mentioned, an absolute test, the selection of the means will be influenced by the right violated. When an especially important fundamental right is involved, greater care must be given in choosing means that violate it minimally, even when the mean involved entails substantial cost.
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> HCJ 450/97, *Tenufa Personnel Services and Holdings v. Eli Yishai,* P.D. 52 (2) 433, 452.

91. The Cabinet Decision includes means that cause extremely grave injury, such as preventing submission of applications for spouses of Israeli citizens to obtain a status in Israel, refusing to approve pending applications, demanding that the spouse leave the country until a decision is rendered, and refusing to upgrade status where the applications have already been approved. These means are not the kind of means whose harm is minimal. Undoubtedly, the rights that are violated in the matters presently under review - the right to family life, dignity, and privacy - are fundamental rights of special importance, and the degree of violation of those rights resulting from the Cabinet Decision is extremely grave. On this point, the comments of the Honorable Justice Heshin in *Stamka* are appropriate:

> A vivid imagination is not required to know and understand the severity of the injury to spouses in real marriages, while they are ordered to leave the country or separate for a period of months… On this aspect, the Respondents say, "Quite the opposite. If the spousal connection is so great, a not especially long period of separation, or a joint trip by the couple to the land of origin of the foreign spouse, will not detract one whit from the connection, where the connection is real." 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?… And we should not disregard the financial problems entailed in the forced separation of the couple. In their brief, the petitioners described for us some of the obstacles facing spouses in cases where one of them was required to leave the country: economic limitations entailed in leaving the country and staying abroad; employment limitations; health limitations. Indeed, it is hard not to form the impression that this decree which obligates the spouse to go abroad is an extremely heavy burden. The respondents did not properly take into account the right of the individual to marry, and the grave harm to family life that results from the policy they adopted.
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> Pages 780-781 of the judgment.

92. A decision that violates constitutional rights must also meet the *proportionality test in the narrow meaning*, i.e., the correlation of the benefit generated by the violation in comparison with the resulting harm. However, the means set forth in the Cabinet Decision, including preventing submission of applications for spouses of Israeli citizens to obtain a status in Israel, refusing to approve pending applications, demanding that the spouse leave the country until a decision is rendered, and refusing to upgrade status where the applications have already been approved. All these means result in injury that is greater than the benefit they generate. It should be emphasized that the Respondents have, and had prior to making the Cabinet Decision, many powerful tools to examine the applications and applicants, and if they are not sufficient, they are capable of increasing control and enforcement, without taking the extreme mesures contained in the Cabinet Decision.

See *Stamka*, p. 782.

93. The Cabinet Decision is also disproportionate because it is *unreasonable, arbitrary, and sweeping*: by blocking, in practice, any possibility to submit applications to obtain a status in Israel for the Palestinian spouses of Israeli citizens; by holding that all pending applications will be frozen, i.e., will be refused, by requiring that the citizen's spouse must leave the county until a decision is rendered on the matter; and by holding that decisions that have already been approved "will not be upgraded." It completely restricts the discretion of the administrative authority and is thus patently unreasonable because it is disproportionate and because it does not give proper weight to relevant considerations.

    On the requirement that administrative decisions be reasonable, see:
    HCJ 4267/93, *AMITI - Citizens for Proper Administration and Integrity v. Prime Minister of Israel,* P.D. 47 (5) 441, 462;
    HCJ 935/89, *Ganor v. Attorney General,* P.D. 44 (2) 485;
    HCJ 376/81, *Lugasi v. Minister of Communications,* P.D. 36 (2) 449, 460;
    HCJ 389/80, *Yellow Pages Ltd. v. Broadcasting Authority,* P.D. 35 (1) 421;
    HCJ 840/79, *Israeli Contractors and Builders Center v. Government of Israel,* P.D. 34 (3) 729, 746-747.

    On restricting administrative discretion, see:
    HCJ 2709/91, *Hefziba Construction Company v. Israel Lands Administration,* P.D. 45 (4) 428;
    HCJ 92/83, *Nagar v. Director of Insurance of Persons Injured in Work Accidents Division,* P.D. 39 (1) 341;
    HCJ 10/79, *Horman v. Mayor of Tel Aviv - Yafo,* P.D. 33 (3) 60.

94. The Cabinet Decision is disproportionate also because *it is not based on data* indicating that the Petitioners and/or others in their situation constitute any risk that justifies the extreme means set forth in it. In *Stamka*, the Honorable Justice Heshin related to the respondents' reliance on the mere contentions regarding fictitious marriages, as follows:

    > In the absence of meaningful data on the amount of fictitious marriages, the question automatically arises whether the current resolute policy is justified. 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? And maybe the respondents are making mountains out of a molehill? 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… In establishing the policy that they determined - and in the manner that they determined it - the respondents transgressed this fundamental rule of the conduct of the administrative act.
    >
    > Page 775 of the judgment.

    See also:
    HCJ 987/94, *Euronet Gold Lines (1992) Ltd., et. al. v. Minister of Communications, et. al.,* P.D. 48 (5) 412, 423-426;
    HCJ 297/82, *Berger et al. v. Minister of the Interior,* P.D. 37 (3) 29, 48-49;
    Y. Zamir, *Administrative Authority* (Vol. 2) (Nevo Publishing Co., 1996) pp. 733-735.

95. The Cabinet Decision is also disproportionate because it *does not provide for exceptions.* An administrative decision must include the possibility of exceptions; if it does not, it is

unreasonably rigid. To this matter, too, the Honorable Justice Heshin related in *Stamka*, where he criticized the respondents policy, which was less severe than the policy presently under review:

> We did not hear about exceptions being set forth in the policy, and a policy that lacks exceptions is like a machine with ball-bearings and no oil to grease it. Just as the latter will not operate and will quickly burn, the same is true of the policy. We have a couple dwelling in Israel for four years and they have three children, the male - an Israeli citizen - is a public employee, and the wife a senior industrial and management engineer in an industrial plant. Is there anyone who would seriously say that they must wait more than a year until the Minister of the Interior commences to hear the application of the woman - a non-Jew - to the right to citizenship?
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> Page 794 of the judgment.

96. It should be emphasized that some of the Petitioners have been waiting for many years for a hearing on their applications for citizenship. For example, Petitioner 4 has been waiting for about ten years, Petitioner 12 for some seven years, Petitioner 14 for some seven years, Petitioner 26 for about seven years, Petitioner 30 for about seven years, Petitioner 43 for about eight years, and Petitioner 52 for approximately four years. Exceptional and grave personal circumstances are to be found among the Petitioners, such as the matter of Petitioner 39, who is a widow with two infants, and that of Petitioner 55, a divorcee with two infant children whose life is in real danger.

The Cabinet Decision Violates the Right To Be Heard

97. The Cabinet Decision violates the right to be heard as regards all its provisions relating to the interim period. The persons affected are those who wish to submit applications to obtain a status in Israel and would be forbidden to do so by the Cabinet Decision, such as Petitioner 55; those whose applications were pending and now will be denied, such as Petitioners 19, 23, 26, 30, 35, 39, 43, and 52; and those whose status will not be upgraded, such as Petitioners 2, 4, 9, 12, and 14.

98. In *Stamka,* the Honorable Justice Heshin related to this issue:

> It goes without saying that spouses are entitled to have the Ministry of the Interior official hear everything they have to say, and that a decision will not be reached in their matter until they are given a fair opportunity to present their whole case. If, following review, the Ministry of the Interior concludes that the couple's marriage was fictitious, it would then be possible to expel the foreigner from the country, subject to his right to oppose the expulsion in court.
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> Page 783 of the judgment.

99. The Petitioners will argue that the magnitude and scope of the hearing process and judicial review are a function of the violation of the fundamental constitutional rights. The more sweeping the power, the more the use of it violates exercise of fundamental rights, the more extensive and comprehensive the scope of the hearing process should be, and the greater the requirement to grant an opportunity to respond to it and investigate its authenticity, as is seen from the comments of the Honorable Justice Zamir:

> The severity of the anticipated violation is liable to influence the level of the required hearing. It may be said, as a matter of judicial policy that, the greater the expected violation, not only does the importance of being heard increase, but also the level of the hearing.… Also, it may be said that the level of the hearing rises as the nature of the administrative procedure approaches that of a judicial proceeding. For example, it may be

that, in an administrative proceeding of a judicial nature, it would be proper to enable questioning of the witness who provided information to the administrative authority.

Y. Zamir, *Administrative Authority,* (Vol. 2) (Nevo Publishing Co., 1996) p. 813.

100. More than once, Supreme Court caselaw emphasized the importance of the right to be heard before a decision is reached that is liable to violate a citizen's fundamental rights:

The comments of the injured will be heard prior to a decision being reached in his matter.

HCJ 654/78, *Gingold v. National Labor Court,* P.D. 35 (2) 649, 655.

See also:
HCJ 5973/92, *The Association for Civil Rights in Israel, et. al. v. Minister of Defense, et. al.,* P.D. 47 (1) 267, 285;
HCJ 358/88, *The Association for Civil Rights in Israel v. Commanding Officer, Central Command,* P.D. 43 (2) 529. 540;
HCJ 656/80, *Abu Romi v. Minister of Health,* P.D. 35 (3) 185, 188-189;
HCJ 492/80, *Shkarzi v. Beersheva Police Department,* P.D. 35 (2) 739;
Civ. App. 530/78, *Mifromal Yerushalayim Ltd. v. Director of Customs and Excise, et. al.,* P.D. 35 (2) 169;
HCJ 3/58, *Berman v. Minister of the Interior,* P.D. 12 (3) 1493, 1508.

The Cabinet Decision is applied retroactively, thus prejudicing the reliance interest

101. The Cabinet Decision applies, *inter alia,* to applications that have already been submitted, including applications that have been approved in principle, some of which were already in the process of implementation. Applying the Cabinet Decision to these applications means applying it retroactively and severely prejudicing the Petitioners' reliance interest.

102. Applying a statute retroactively, and even more so an administrative decision, requires authority. In the words of the Honorable Justice Vitkin:

Generally, retroactive legislation is problematic. As for sovereign legislation, no principle forbids retroactive legislation, however, the rule is that, if another intention is not apparent, either express or general, it is assumed that the legislature intended its statutes to be in effect henceforth. The same is true of secondary legislation … which needs to disclose the intention of the competent authority to enact secondary legislation retroactively, the question also arises from where the competent authority is able to attribute such power to its secondary legislation.

Civ. App. 10/55, *El Al Ltd. v. Municipality of Tel Aviv-Yafo,* P.D. 10, 1586, 1589.

103. Even in situations in which retroactive legislation is allowed, it must meet the test of reasonableness.

HCJ 4679/90, *Zidan v. Minister of Labor and Social Welfare*, P.D. 47 (2) 147;
HCJ 21/51, *Binenbaum, et. al. v. Municipality of Tel Aviv,* P.D. 6 (1) 375, 385;
Y. Zamir, *Administrative Authority* (Vol. 2) (Nevo Publishing Co., 1996) p. 968.

104. In the circumstances of the present case, applying the Cabinet Decision retroactively is not only unreasonable, as shown above, it also severely prejudices the reliance interest of the Petitioners regarding their most fundamental rights.

HCJ 4383/91, *Shpakman, et. al. v. Municipality of Herzliya,* P.D. 46 (1) 447;

HCJ 142/86, *"Dashon" Cooperative Settlement v. Minister of Agriculture,* P.D. 40 (4) 523;
HCJ 135/75, *Sci-tex Corporation Ltd. v. Minister of Trade,* P.D. 30 (1) 673.

The Cabinet Decision Was Not Published

105. The Cabinet Decision was not published, even though its implementation began immediately (at adoption). The Petitioners will argue that the Cabinet Decision is a regulation of a legislative nature because it establishes a general legal norm directed at an indefinite portion of the public. Therefore, it must be published.

Criminal App. 213/56, *Attorney General v. Alexandrovich,* P.D. 11, 695, 701.

106. However, even if it is held that the Cabinet Decision is not a regulation of a legislative nature, but is an administrative instruction, it must still be published. This is so because it violates individuals' rights, as ruled by the Honorable Justice Heshin in *Stamka*:

> The expulsion policy is executed in the light of day, but its basic elements and details - including its exceptions - have never been published in an orderly manner, as proper administration dictates. This being the case, not only is it unsatisfactory, it borders on illegality. Indeed, this policy that the Ministry of the Interior established for itself - in and of itself - is not a regulation of a legislative nature that requires publication in *Reshumot* [the Israeli official reporter] in accordance with Section 17 of the Interpretation Ordinance; however, we have held some time ago, and have repeatedly held, that internal directives that affect a right of the individual - which is the case of the policy under review - "a prior and necessary condition of its establishment and application … is that they be brought … to the attention of those interested, whether by publishing them in public or by other means… The origin of this duty of publication, we held, "is required because of the nature of the matter and is derived from the principle of the rule of law"… and where it involves such a profound violation of a right of the individual - the right of the spouse of an Israeli to continue to live in Israel with the person that she chose to live with in marriage - I am certain that the Ministry of the Interior is obliged to publish its policy and make it accessible to everyone who wants to read and study it.
>
> Page 768 of the judgment.

See also:
HCJ 1689/94, *Harari, et. al. v. Minister of the Interior,* P.D. 51 (1) 15, 19-20;
Y. Zamir, *Administrative Authority* (Vol. 2) (Nevo Publishing Co., 1996) p. 923-933.

The Duty to Exercise the Power

107. The administrative authority must exercise the power given it, and it is not allowed to decide not to exercise its power until the anticipated change in legislation. The case law is clear on this point, and the comments of the Honorable Justice Netanyahu in *Maor* are appropriate:

> The argument that - according to the circumstances - formulation of the new policy and initiation of the legislative procedures, requires that the poer not be exercised to set a new time, cannot be sustained. The authority must act… in accordance with the existing legal situation, and it is not allowed to refrain from using its power because of a change in policy, which entails the passing of a stature, which has not yet been given binding legal effect.
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> HCJ 679/84, *Maor et al. v. Minister of Transportation et al.,* P.D. 39 (2) 825, 829.

See also:

HCJ 3872/93, *Mitral Ltd. v. Prime Minister, et. al.,* P.D. 47 (2) 485, 496;
B. Bracha, *Administrative Discretion* (Vol. 2) (1996) pp. 36-39.

108. The Cabinet Decision in effect states that Respondents 2 and 3 must refrain from exercising their power. It is, therefore, extremely unreasonable and void.

The failure to grant a status to Petitioner 35 breaches the duty to facilitate the naturalization of stateless persons

109. International law requires states to do everything possible to reduce the situation of statelessness. Article 32 of the Convention Relating to the Status of Stateless Persons, of 1954, which Israel signed on 1 October 1954 and which it ratified on 23 December 1958, states:

> The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

110. Petitioner 35 is a stateless person, as described in sections 33-36 above. Applying the Cabinet Decision to her will result in the refusal of her application for a status in Israel, which will violate the Respondents' duty to reduce the situation of statelessness.

Conclusion

111. The Petitioners have provided the Honorable Court with abundant evidence proving that the Cabinet Decision flagrantly discriminates against them and the Arab citizens of Israel. They further showed that this discrimination, being based on nationality, violates the ost fundamental and humanitarian constitutional right - the right of an individual to maintain family life with his or her spouse and/or minor children as they choose - and also other constitutional rights, such as the right to dignity, the right to equality, and the right to privacy. The Petitioners also provided the Honorable Court with clear evidence that the Cabinet did not have the authority to make the decision, that the Cabinet Decision is discriminatory, arbitrary, and sweeping, and that it lacks criteria and is disproportionate. It was also shown that the Cabinet Decision contravenes the Basic Law: Human Dignity and Liberty, the Citizenship Law (1952), the rule that was established by the Honorable Court in *Stamka*, and the state's commitment to the Honorable Court in '*Issa*, and that the Cabinet Decision violates the right to be heard and is applied retroactively.

For the aforesaid reasons, the Honorable Court is requested to issue the *order nisi* as requested, to grant a temporary injunction, and to hear the petition on an urgent basis, and, after receiving the responses of the Respondents, to make the injunction permanent.

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