Excerpts of the Supreme Court Decision translated from the original Hebrew by Adalah

(Israeli Supreme Court) Request for Appeal 3094/11, *Abu al-Qi'an, et al. v. The State of Israel*

(Decision delivered 5 May 2015)

Majority Opinion

Deputy President E. Rubinstein (joined by Justice Hendel)

1. […] The Petitioners, members of the Bedouin "Abu al-Qi'an" tribe (hereinafter: the tribe, the al-Qi'an tribe) have been living for 60 years in the unrecognized village of "Atir/Umm al-Hiran" (hereinafter: the village) named after the two areas that comprise it, which we shall address. These proceedings concern the Respondent's [the state – Adalah] demand to evict the Petitioners from the land it owns and to establish, at the same time, the town of Hiran on the site in line with the master plans, which regulate the area as will be specified below.

2. […] The sensitive issue underlying the request, which has public importance, concerns the settlement of the scattered Bedouin population on state lands in the Negev [Naqab – Adalah]. [This issue] has in the past decades frequently occupied the authorities and Israeli society. Moreover, although the Petitioners in this appeal are two families, numbering 13 members, all of whom are residents of the village in question, the eviction has an impact on hundreds of residents, a matter which must not be taken lightly. Nevertheless, as I will specify, after examining the matter, my opinion is that this appeal must not be accepted. Firstly, this request focuses on claims related to planning, the natural and proper place of which is not in this procedure. [This request] constitutes an indirect assault on statutory decisions made by the authorities, which had been deliberated in depth. Secondly, above and beyond what is necessary, I believe that under the circumstances of the matter before us, it cannot be maintained that the Respondent did not act reasonably and proportionately, and in a manner that, at the end of the day, does not constitute an infringement of the rights of the Petitioners, despite their allegations in this regard.

Background and Earlier Processes

The Abu al-Qi-an Tribe and the Village of Atir/Umm al-Hieran

3. The Petitioners belong, as aforesaid, to the Abu al-Qi'an Bedouin tribe. The parties dispute the tribe's history in the years prior to its settlement on the land, which is the focus of the case at hand. However, according to all, the members of the tribe moved to the vicinity of Wadi Yatir in 1956 by order of the [Israeli] Negev military governor, and there divided into two areas: the area of Atir where Petitioner 1 and his family reside, and the area of Umm al-Hiran where Petitioner 2 and his family live. It must be noted here that in the Respondent's view the two neighborhoods do not comprise one village, but are two separate locations which have different settlement patterns (without taking a stand regarding this, and for the sake of convenience, I chose to designate both areas as "the village"). The number of tribe members is in dispute: According to the Petitioners, it is approximately 1000 people, and according to the Respondent, it is approximately 750 people. The

distance between the two sites is also in dispute: According to the Petitioners it is one kilometer, while the Respondent estimates it at two or more kilometers. There is no dispute that most members of the tribe moved to the Bedouin town of Hura and that the remainder, including the Petitioners, are a minority. In any case, there is no dispute that the village's houses are situated on land owned by the Respondent, which was registered in its name on 9 May 1978, at the conclusion of the regulation procedures pursuant to Land Rights Ordinance [New Version] 5729 – 1969. In addition, all of the buildings in the two locations were built without permits and in violation of the law, and demolition orders issued against them in 2003 are still in force[1] […] The village is not connected to basic infrastructures and its residents do not receive social, health and education services. The Bedouin town, Hura, which is recognized by the authorities, is located approximately 5 kilometers south-west of the village, and offers its residents and residents of the area all of the above community services. As will be specified, since the 1980s, the Respondent has held negotiations with the villagers in order to evacuate them to Hura in exchange for a plot in the town, and indeed most moved there. The Respondent, even at this time, is offering the Petitioners a plot in Hura in exchange for their evacuation of the village, in addition to assistance in the development of the plot and connection to infrastructures, as well as financial compensation […]

Planning Procedures relating to the Village

4. […] **The Umm al-Hiran area** – The decision to establish the new town of Hiran was based on Government Decision No. 2265 of 21 July 2002. In this framework, it was announced that 14 new settlements will be established in the northern Negev, based on the conclusions of the "Beer Sheva Metropolitan" steering committee […] The settlement plan covers an area that is entirely owned by the Respondent and designates approximately 50 buildings in the Umm al-Hiran area for demolition[2] […]

The Atir area - This area is regulated within the framework of the "Yatir Forest Plan" 11/03/264, which concerns forest and agricultural lands in the area, and includes the determination of their designation and the activities permitted in them in accordance with the principles outlined in the National Master Plan (TAM"A) 22. In the framework of this plan, the houses of members of the tribe situated in the area are earmarked for demolition, due to the area's classification as a "proposed metropolitan recreational and forest park" zone;[3]
[…]

[1] This footnote is not in the decision. Adalah, on behalf of the residents, is continuing to attempt to stop the implementation of these home demolition orders before the Kiryat Gat Magistrates' Court (as of May 2015). Kiryat Gat Magistrates' Court Criminal Action 2136/09, *The State of Israel v. Sabri Abu al Qian, et al.*

[2] This footnote is not in the decision. On 5 June 2012, the National Council for Planning and Building (NCPB) rejected objections filed by the residents of Atir-Umm el-Hiran, Adalah, and Bimkom to the Master Plan for Metropolitan Beer el-Sabe (Beer Sheva). See press release.

[3] This footnote is not in the decision. In October 2014, the National Council for Planning and Building rejected the appeal submitted by Adalah and Bimkom in 2013 against the Yatir Forest Plan. The human rights organizations emphasized in the appeal that the plan privileged recreational parks over the constitutional rights of Atir's residents to their homes.

The Petitioners' Request for Appeal

8. […] It was contended that the decision to evict the Petitioners is an administrative decision and, as such, must be examined from the aspects of constitutional and administrative law, particularly in view of the fact that it lacks a relevant factual basis, as it was taken for the purpose of establishing a Jewish town in the area. The Petitioners, essentially, argued once more that they are permitted residents on the land, and that their investment in it constitutes a form of payment. In this context, it was claimed that the illegality of the buildings does not detract from the above, as the members of the tribe were moved to the area by the authorities and were left with no option but to prepare the site themselves for habitation. The Petitioners also argued that the Respondent's decision to evict them must be examined in relation to the principles governing the release of the State from a contractual tie. And accordingly, it must justify this release by reason of public needs. It was additionally argued that even if the permission granted the Petitioners to use the land is revocable, the Respondent must not be allowed to revoke it on grounds of justice, as the Petitioners have resided in the area for many years by demand of the authorities, and their eviction will cause them significant psychological and economic harm.

9. Finally, the Petitioners claimed that their eviction for the purpose of the establishment of Hiran constitutes illegal discrimination and violates their right to equality, property and dignity. It was argued that the Respondent should have included their houses in the town's plan, and that its decision breaches the equality required in the allocation of land resources and does not take into account their indigenous rights. The Petitioners claim that the violation of their right to property is based on their investment in the land. Their claim of violation of their right to dignity is based on the unique fabric of life they created in the village over the years. It was further alleged that these violations are not in keeping with the tests of the limitations clause, as the eviction is not for a proper purpose, that the Respondent's decision does not meet the tests of proportionality, as long as the purpose of the eviction is the development of the land for residence, a purpose which can be realized without the eviction. Further, the eviction is the most harmful means, particularly in view of the possibility of legalizing the buildings in the village in the framework of the master plans.

The Respondent's Response to the Request

10. […] In general it was argued that in all that relates to the Petitioner's eviction, the Respondent acted with consideration and proportionality in a manner that does not amount to a deviation from proper administrative action or involve a breach of rights. [This Respondent's acts] starting with the permission it granted [to the villagers] to reside free of charge on the land, through the negotiations it conducted with the members of the tribe, and concluding with the housing solution it offered the villagers then and also at the present time. It was particularly claimed that the Respondent's land ownership is not in dispute, and that the Petitioners' assertion that permission was bought for a price is unfounded as they did not prove their alleged [land] rights in Wadi Zubaleh. As regards to the classification of the permission granted, it was claimed that it was given free of charge and may be revoked at any time, and that the investment made by the Petitioners in the area - which was unlawful and undertaken without the Respondent's approval – does not render the permission irrevocable. The Respondent again noted that as early as the 1980s, it held negotiations with members of the tribe concerning their evacuation from the land, and that the Petitioners' claims, that the authorities gave them a promise in relation to the land, or that their conduct created an impression that they will be able to remain in the area for an unlimited period of time, are

groundless. Regarding this, it added that the assistance the tribe received from the authorities was given through good will, and does not constitute an agreement to permanently reside in the area. It was further contended that the Petitioners had a long time to prepare for the evacuation, and that they were offered an alternative residential solution in Hura. [With this] it was possible to avoid any alleged harm and that, in view of this solution, the Petitioners' claims concerning their being left homeless are without foundation. Finally, the Petitioners' claims regarding the infringement on basic rights and the lack of good faith are groundless as the Respondent is acting to establish settlements for the scattered Bedouin population – including Hura – that will be connected to basic infrastructures and recognized by the social services in place of unrecognized villages such as Atir/Umm al-Hieran. The Respondent's actions do not constitute discrimination, particularly in view of its willingness to provide the aforementioned alternative housing solution to the Petitioners.
[…]

The Respondent's Response of 14.1.2014

15. In the Response, it was stated […] that the settlement plan designates the area for the establishment of a town for the general public and, therefore, it is not possible to legalize Umm al-Hieran in its framework. The Respondent also argued that the Atir and Umm al-Hieran neighborhoods do not in any way comprise one village but are two separate enclaves that have different settlement characteristics. The researcher [for the plan] explicitly noted that the Umm al–Hieran area is not suitable in terms of planning for the establishment of a Bedouin township, as opposed to her recommendation regarding Atir. In this context, the Respondent stated that the recommendation of the researcher [who acted on behalf of the state] regarding the site of Atir was not to recognize it as a settlement, or to establish a settlement on it, but to determine it as an area where it will be feasible to plan a settlement in the future. The final decision of the district committee not to adopt this recommendation stemmed from pragmatic planning considerations and a broad perspective, particularly due to the need to continue to reinforce the status of Hura and to exploit the vast resources invested in it by constructing neighborhoods for the village's residents.[4] It was further claimed that the Respondent never stated that the town of Hiran is not designated for Bedouin citizens, but that it is a town planned for the general public in which anyone can live, as opposed to a settlement planned specifically for the scattered Bedouin population.

The Petitioners' Supplementary Argument of 6.3.2014

16. With respect to the Umm al-Hieran area, the Petitioners claimed that the eviction decision was taken in order to settle a different population on this site, and that their national affiliation [as Jewish citizens] is the basis for this decision. The Respondent's statements, according to which the new town is not suitable for Bedouins, although they are permitted to live in it, were presented in support of this claim. Regarding Atir, it was argued that the designation of the area as a forest for pasture does not justify the eviction of its residents, and that the Respondent did not at all consider the option of legalizing the neighborhood in the framework of the plan […]

[4] This footnote is not in the decision. In a rare move, the National Council for Planning and Building (NCPB) met in Jerusalem on 16 November 2010, as requested by Prime Minister Benyamin Netanyahu's office, to reconsider its decision from 20 July 2010 to recognize the Arab Bedouin unrecognized villages of Atir-Umm al-Hieran and Tel Arad located in the Naqab (Negev). The NCPB committee members complied with the request of the Prime Minister's Office and retracted the special investigator's recommendation to recognize the villages. See press release.

Review Hearing of 10.6.2014

17. [...] At the beginning of the hearing, we asked the counsel for the Respondent whether it is it possible to include the Petitioners' homes in the town's master plan, and in this way to reach a practical solution. We were told that the plan's level of detail does not currently allow any deviation. The counsel for the Petitioners argued that although this is a detailed master plan, it is possible to make changes in it even at this time, if the respondent allowed it, and that public interest requires, first and foremost, considering the integration of the existing structures into the plan for the area. One must not rely on the fact that detailed plans have been prepared as the implementation of the plan in its current form is not, allegedly, for a proper purpose. At the conclusion of the hearing, we instructed the Respondent to submit its view regarding the option of integrating the Petitioners' houses into the plan for Hiran, after the parties hold a joint meeting on the subject.

Petitioners' Response and Updating Notice of 16.11.2014

19. In the Petitioners' response, it was stated that their representatives offered to approach professional parties in order to prepare an alternative plan that would make it possible to establish a new town that would include the village's houses. [It also stated] that the Respondent, on its part, did not propose alternatives to the Petitioners' eviction and also made it clear that there is no possibility of establishing a Bedouin neighborhood in Hiran. Subsequently it was argued that the eviction of the Petitioners, who have lived in the area as permitted residents for approximately 60 years for the purpose of establishing a town in Umm al-Hieran that will be devoid of Bedouins, and the designation of the area of Atir as a forest park, must not be allowed. It was contended that the members of the tribe were recognized as permitted residents on the land thus creating a distinction between them and other members of the scattered Bedouin population who are considered trespassers, and that the Respondent's attempts to appeal against this determination must be rejected […]

Decision

20. [..] As specified in detail, the Respondent is the owner of the land in dispute, which was registered in its name in the framework of the regulation procedures. The Petitioners did not acquire a right to the land but resided on it as permitted residents free of charge, and the Respondent lawfully revoked this arrangement. Under these circumstances, there is no justification for intervening in the previous courts' decisions. As stated, in view of the general issue in the background of the petition - and as we are deliberating the evacuation of many people from their current place of residence - I saw fit to propose granting permission to appeal and to relate in detail to the Petitioners' claims. There is no denying that the matter in question is linked to the general issue of the arrangements with the Bedouins in the Negev, which is in public dispute and on the agenda of the government and the Knesset. This is the reason the courtroom was filled not only with Bedouins from the Negev, but also with Knesset members, mostly from among the Arab population. Indeed the issue of land in the Negev, and the rights of the State on the one hand and those of the Bedouins on the other, is one of the most difficult challenges the government faces, leading to charged emotions and political debates. But as had already been said here, our decision is limited to the case at hand. Although we are not blind and our ears are not deaf to public issues. These generally go beyond this case and enter the realm of debate on the situation in the Negev, which, on the one hand, raises the matter of the massive, growing illegal building that no traveler on

Negev roads can fail to notice, and on the other hand, the numerous attempts to regulate it through negotiation, as will be described below. In brief, we will say that it is clear that the question under discussion concerning the eviction of persons who had resided in the location for many years is not a matter of expulsion or abandonment, as the proposed evacuation includes various offers of relocation options, building, compensation, and residential locations, whether in the town of Hura where most residents of the illegal villages under discussion moved, or in the future town of Hiran under "general" purchasing conditions, apparently in conjunction with compensation for past building expenses, although this was illegal, because it was done long ago [...]

22. [...] In summary: The case before us is distinctly characterized by the above-described complexity. We are deliberating the matter of a Bedouin tribe that six decades ago moved, by order of the authorities, to the area in dispute. The members of the tribe did not acquire ownership rights to the land under our property laws, although they resided on it by permission and built massively without permits, contrary to the law. Most members of the tribe moved to Hura – a regulated Bedouin settlement which is connected to infrastructures - and the others have been ordered to vacate their houses, and were given the possibility of moving to Hura in the framework of the comprehensive solution formulated by the authorities, and as part of a plan to establish a town for the general public in the area.

[…]

35. Did the Respondent act fairly? I should point out the duty of fairness is the foremost of all obligations imposed on the Authority, and other specific duties are derived from it. […] I believe – and this is the principal matter of the case at hand – that it should not be stated that the Respondent did not act fairly and in good faith with regard to the Petitioners' evacuation. Firstly, the Respondent has held negotiations with members of the tribe, since the 1980s concerning their evacuation from the village in exchange for a plot in the settlement of Hura. Already at that time, the Authority revealed its intention to evict them, although at that stage this was not yet announced in a government decision and was not included in specific planning procedures. Over the years, several neighborhoods were built in the town of Hura for the purpose of absorbing the members of the tribe. As aforementioned, the settlement of Hura is recognized by the authorities, connected to basic infrastructures, and offers its residents and the residents of the vicinity community services. At this time, the Respondent is also offering the Petitioners the possibility of moving to Hura, where they are entitled to receive a new plot and additional benefits. Indeed, as a trustee of public lands, the Respondent must act for the benefit of the general public – both for the Bedouin population and for other populations. Additionally– from the aspect of transparency – the Respondent acted openly and published its decisions as required by law. It appears that the Respondent's actions in regard to this matter were based on a relevant, normative, factual foundation including, *inter alia*, a government decision to establish Hiran, the fact that the Petitioners have no rights to the land and that illegal construction that took place on it, the existence of an immediate, available solution in the form of relocating to the town of Hura, and the existence of negotiations to achieve these goals which began in the 1980s […]

36. Furthermore, it appears that the eviction decision is not flawed by unreasonableness. This is not a matter of an arbitrary decision but one that was part of a process, which came in the wake of a government decision and within the context of the wider process of regulating settlement in the

Negev by the owner of the land. The evacuation decision does not exceed, under the circumstances of our case, the reasonable balances between general public interests and those of the residents of the village, and beneficial conditions were granted to those who wish to move to Hura, in order to make it possible to establish a town for the general public. It appears that the planning processes regarding Hiran are not flawed by unreasonableness. Although, as mentioned earlier, it is possible that it would have been appropriate, at the beginning, to take the village houses into account in the planning of the town both because the eviction demand - but not the planning procedures themselves - was originally based on the claim that the Petitioners are trespassers on the land, although in practice they were permitted residents, and due to statements made by the planning bodies that there was no fundamental planning obstacle to including the Petitioners' homes in the town's master plan. Additionally, the policy adopted by the government regarding this issue in recent years in fact reveals an attempt to legalize – where possible and under the appropriate circumstances – existing buildings of the scattered Bedouin population in the framework of the planning of settlement in the Negev (see paragraph 39). However, this does not detract from the fact that both the evacuation decision and the planning procedures are apparently not flawed by unreasonableness in light of their content, and after having passed all the relevant legal stages.

37. The following concerns the Petitioners' claims regarding the violation of the principle of equality, including the claim of discrimination in the allocation of land to the Bedouin population. The Respondent, as an administrative authority, is committed to the principle of equality including in the allocation of state lands. The authority is a trustee of these lands and must take into account public considerations in their planning and distribution. The planned town does not prevent members of the scattered Bedouin population from living in it, but it is planned as a town for the general public and not as a Bedouin settlement, with all that this implies from the aspect of planning. Anyone who wishes to live in Hiran is permitted to do so, subject to the law and the conditions set in it. Although it stands to reason, and was also stated in the State's responses and the planning bodies' decisions, the majority of the population that will wish to live in this town is Jewish. Accordingly, the specific plan includes the construction of institutions designated for the religious Jewish public such as a Mikveh and a synagogue. However, this does not prevent members of the scattered Bedouin population from residing in the town and does not prevent bestowing a "different national character" upon educational institutions and/or religious institutions in the town in the future, when it becomes clear that this is necessary, all in light of the dynamics of the settlement in the area […] We will [also] recall the possibility of receiving a plot and additional benefits in the settlement of Hura where the overwhelming majority of the tribe chose to live […]

38. The Petitioners claimed a violation of their right to property and, in their view, it would have been appropriate to legalize their houses in the framework of the town's planning. Indeed, the Petitioners resided in the area, with the Respondent's permission for many years, and are not, as originally claimed by the Respondents, trespassers in this locality as in other areas. Naturally, a question is raised regarding the weight this must be given. In any case, it is not possible to say that their mere presence in the area and the construction of houses on it entitles them to a property right to the land. Their houses were built illegally without a permit and, obviously, the Authority must not be forced to legalize illegal construction. Moreover, the protection of the rule of law and the prevention of the encouragement of building delinquency constitutes a legitimate planning consideration […] Although – and this also emerges from the State's announcement of 5 October 2014 – as regards the scattered Bedouin population, and in light of the special circumstances that came about, particularly as many of them were moved to their place of residence by the authorities, it is possible that this consideration supports the regulation of illegal construction. This is subject to

a broad vision concerning population distribution on Negev lands, and the Beer Sheva Metropolitan Master Plan, and takes into account the needs of all of the populations […]

In our case, the Respondent opposes the legalization of the Petitioners' houses, for reasons that are based on broad planning considerations. It is not possible to force it to do so, particularly as [the petitioners'] have no rights to the land. Furthermore, even if the Petitioners had rights to the land, this would not detract from the powers that the planning authorities have – of course subject to the law and the Authority's administrative obligations – in keeping with the legal practice that the use of property is subject to planning […]

39. Again: it has not gone unnoticed that the eviction demand was originally based on the claim of illegal trespassing on the land, when in fact the Petitioners were non-paying permitted residents. Therefore, it was claimed that the eviction decision was made in the absence of a factual basis. In this regard, it was noted in the Appeals Committee's decision, that there is a fundamental obstacle to legalizing the construction in the locality as it is illegal, and that the residence of the Petitioners in the area as permitted residents does not constitute an approval of their illegal building in the area. [Further] it does not hinder the Respondent's right to vacate the property. However, I do not rule out the possibility that, in the beginning, this could have had an influence on planning considerations raising the possibility of including the Petitioners' houses in the town's plan. Regarding this, it must be indicated that the government's decision to establish the town and the planning procedures that followed in its wake were approved several years prior to the Goldberg Report which recommended, *inter alia,* to include and legalize the houses of the scattered Bedouin population in the framework of the planning of the Negev region plan where possible according to planning and other considerations: "in principle, it is proposed to recognize, when possible, each one of the unrecognized villages populated by a minimum number of residents, to be determined, and which has municipal capacity, and on the unequivocal condition that this recognition will not be in contradiction of the District Master Plan" (Paragraph 110 of the report). This principle is also expressed in the Begin Report. Nonetheless, these matters are subject to broad considerations that are assessed by the authorities, and in our matter it must be remembered that most members of the tribe settled in Hura, and that illegal construction has grown over the years […]

40. In this context, it should be emphasized in conclusion that the Petitioners' eviction does not leave them in a hopeless situation, although this does not in any way belittle the hardship involved in evacuating an individual from his long-term residence. They may move to Hura, under beneficial conditions, and thus the claim concerning the infringement of property rights is eliminated. Approximately two thirds of the members of the tribe did this. At this time, after the approval on 2 May 2005 of Israel Lands Administration decision No. 1028 concerning the increase in the rate of compensation granted to the members of the scattered Bedouin population in exchange for their leaving the unrecognized villages, those Petitioners who will move to Hura will be entitled to better conditions than those granted to members of the tribe who moved in the 1980s and 1990s. Alternatively, the Petitioners, like any other citizen, may purchase a plot in the town of Hiran when it is established, according to the conditions applying to all. Furthermore, based on the Respondent's notice of 5 October 2014, a village resident who purchases a plot in Hiran, may be entitled to receive compensation for the demolition of his home – subject to the approval of the Compromise Committee – a benefit generally granted to members of the scattered Bedouin population who move to a Bedouin village. In addition, in our view, it would be appropriate if the Respondent considered, in a suitable and fair manner, the possibility that villagers who prove that they belong to the "historic core" of those who came to Umm al-Hieran as permitted residents will

receive a certain benefit in the framework of marketing tenders for the new town of Hiran. This will be viewed as an indication that the authorities are aware that some of the interested parties are permitted residents and not trespassers […] Even it be said that the Respondent's decisions in our case infringe on the Petitioners; rights, and in general this is not the situation, they are, apparently, not flawed by disproportionality. In general, it is possible to state that the purpose of the Respondent's actions is to establish the town of Hiran. It appears that the means it employed for this end do not, under the circumstances, exceed the Limitations Clause and the boundaries of proportionality. It appears that the means chosen by the Authority (after other options were considered and rejected) achieve their aim, and that there is no other means at this time, relating to our matter, whose harm would be slighter. [Further] from a normative aspect (i.e. the narrow test of proportionality), the purpose the respondent seeks to achieve – the establishment of the town of Hiran and the strengthening of the Bedouin settlement of Hura– is sufficiently important to justify the alleged harms involved in its achievement.

The appeal is denied.

Justice D. Barak-Erez (Minority Opinion)

[…]

3. [..] I will note that I find considerable reason in the approach of my colleague, the Vice-President, according to which from the outset, it was possible to attempt to include the Petitioners' homes in the master plan for the new town, given that they are permitted residents who have lived in the area for decades, and in consideration of the fact that the Appeals Committee's decision reveals that there was no planning obstacle to do so. In practice, this was not done, and lessons should be drawn from this in regard to other planning processes. However, as indicated, this is not the case at hand. The issue that was brought before us involves the Petitioners' eviction, and I will focus on it.
[…]

8. The relevant considerations that apply to the eviction of those who reside on public land by permission must be further examined. I believe that these considerations, sadly, include, *inter alia*, a response to the following questions: What reasons underlie the decision to evacuate permitted residents? Were the conditions of the permission breached? What is the degree of the harm caused to the permitted residents and what is the extent of their reliance on the permission they received? Is the eviction due to new plans for the land, and where do the planning procedures stand? Are permitted residents entitled to compensation for their evacuation? Further questions arise if the eviction is due to new planning procedures for the area, and in circumstances under which permitted residents are entitled to compensation for their eviction: Does the new plan allow compensation in the form of continued residency in the area in the framework of the residences planned in it? Does the compensation plan take into account the preferences of the permitted residents and the ties they formed to the locality and to the community created in it? It is superfluous to state that responsibility for balancing between the various considerations was granted to the Authority. Moreover, a proper balance between considerations may change from case to case […]

12. My colleague examines the question of the reasonableness of the decision to evacuate the Petitioners from their area of residence emphasizing two considerations: the policy concerning the regulation of the settlement of Bedouins in the Negev, and the fact that the evacuation of the

Petitioners is accompanied by an seemingly fair compensation plan in the form of allocation of plots in another Bedouin settlement in the Negev (including the allocation of plots to all the adult men in keeping with requirements for an age threshold). In light of these two facts, my colleague believes that the decision that was taken is reasonable. My opinion is different. Indeed, there is no doubt that this is relevant data. However, in the framework of the decision on the evacuation, and particularly the compensation format it involves, the State did not consider an additional, important, critical point – the fact that the Petitioners have been permitted residents on this site for decades. In this regard, the State relied on erroneous information according to which the Petitioners are trespassers. Worse still: the State did not reconsider its decision when the true facts were uncovered. It did not at all consider the ties the permitted residents developed to their place of residence, the extent of their reliance on the Authority, and the degree of harm that will be caused to them after decades of residing in the area. These considerations are significant from the aspect of the property laws, which recognize that the revocation of permission after decades-long residence is no light matter. They are also significant from the aspect of public law, which oversees the duty of fairness and the obligations that derive from it, including the obligation to take into account all of the relevant considerations, and to base administrative decisions on a correct factual basis.

13. Against this background, I believe that it is appropriate to examine the matter before us taking into account its unique characteristics: the fact that there is no claim of trespassing by those concerned who were permitted residents and settled in the area in accordance with the State's directives, i.e. they are not tacit permitted residents, but had received explicit permission to settle on the site. Precisely because of considerations concerning the protection of public land from trespassers, I believe that the State must act fairly in its examination of those against whom no claim of trespassing was raised.

The Appropriate Remedy

14. In practice, there is no dispute in the matter before us that the Petitioners are entitled to receive compensation for their eviction from the land, as the State is offering them such compensation. Moreover, my colleague also recognizes the Petitioners' special characteristics and asks that they be treated with fairness. He also adds, at the end of his ruling, a recommendation to consider granting whoever so wishes a certain benefit in the framework of the marketing tenders for the new town of Hiran. This is as it should be but, in my view, this does not suffice […]

15. When it became clear that the Petitioners are permitted residents and not trespassers, the authorities should have reconsidered the format of the evacuation and the compensation that will be granted to the residents in the framework of the evacuation procedures. They did not do, but rather they persevered with a decision that was based, from the outset, on an erroneous factual basis and on faulty considerations that were based on it. The conclusion reached by my colleague does not explicitly express the fact that that the decision concerning the evacuation, and particularly the compensation involved in it, violated the rules of public law and that, therefore, the court must not to allow it to be implemented in its original format without further reconsideration. This conclusion is also appropriate in light of this Court's traditional rulings that ensured that a claim submitted against residents demanding their dispossession from a property will be rejected should it become evident that in actual fact they are permitted residents. […] Thus, as already noted by the courts that previously deliberated on the case, there was no cause for submitting the claim in the form that it was filed. As a result, both from the aspect of legal procedures and from that of fundamental public law, it is not possible to avoid the conclusion that the manner in which the claim

was submitted was flawed, and that it was subsequently conducted without the reconsideration of the matter by the authorities.

16. Therefore, I believe that the authorities must re-examine the format of the compensation that will be granted to the Petitioners in the framework of their evacuation, taking into account, *inter alia*, that the Petitioners are permitted residents that have lived in the area for approximately sixty years, and the state's firm assertion that the new town will not have a unique character and will be open to everyone, including the Petitioners themselves if they so wish. Thus, for example, the State may consider the possibility of offering the Petitioners (and other residents of the area who will prove that they have been permitted residents in the area for many years) additional options for compensation other than moving to Hura, including the possibility of receiving a plot in the new town of Hiran […]. Additionally, the State must also consider the date of the evacuation, taking into account that delaying it until the implementation of the Hiran plan may open the way to an alternative form of compensation by means of the granting a plot in the town and building on it in accordance with the new plan […]
[…]

18. […] It is also impossible to accept the flaws in the authorities' conduct in all that regards the eviction decision and the compensation it involves. I believe that there should be a practical expression - as opposed to only a recommendation – of the principles outlined by my colleague in his ruling. Therefore, should my opinion be heard, we should accept the appeal and instruct the State to reconsider the compensation that will granted to the Petitioners in the framework of the evacuation procedures, while examining the possibility of preserving their ties to their area of residence, as stated in paragraph 16 above.