Adalah Case Review: The Israeli Supreme Court's Decision in the Citizenship and Family Unification Law Case

HCJ 466/07 *MK Zahava Gal-On (Meretz-Yahad) et al v. Attorney General et al*
(decision delivered on 11 January 2012)

On 11 January 2012, the Israeli Supreme Court delivered its ruling on the constitutionality of the Citizenship and Entry into Israel Law (Temporary Order) – 2003 (hereinafter: The "Citizenship Law") as it was amended in 2007. The law prohibits the granting of any residency or citizenship status for the purpose of family unification to Palestinians from the Occupied Palestinian Territory (OPT) or from states defined as "enemy states": Iran, Iraq, Lebanon and Syria.

Adalah, together with other human rights organizations and Members of Knesset, approached the Supreme Court to cancel the law. Adalah argued that this law, together with the 2006 court decision on this issue, affects not only the thousands of families that are forced to separate, but also reflects the deteriorating legal status of Arab citizens of Israel. In Adalah's view, the law constitutes one of the most extreme measures in a series of governmental and Knesset actions aimed at undermining the rights of Palestinian citizens of Israel as well as Palestinians from the OPT.

This case review briefly discusses the legal developments concerning this law until the court's decision delivered in January 2012, and presents Adalah's analysis of the law since its enactment in 2003.

1. The enactment of the Citizenship Law in 2003

On 31 July 2003, the Knesset enacted the Citizenship Law, which prohibits the granting of any residency or citizenship status to Palestinians from the 1967 OPT who are married to Israeli citizens. The Law affects thousands of families comprised of tens of thousands of individuals. The Knesset enacted the law as a temporary order for one year, but has continued to extend its validity until today. United Nations human rights treaty bodies, the European Parliament, international human rights organizations, academics and the international media have all severely criticized the law.

On 27 July 2005, as a result of petitions submitted by Adalah and other human rights organizations against the law's constitutionality, the Knesset approved minor amendments. The law now allows granting residency status for children under the age of 14, and stay permits for children between the ages of 14-18. It enables women above the age of 25 and men above the age of 35 to enter Israel for the purpose of family unification with temporary permits. It authorizes the Minister of Interior to grant status for Palestinians based on humanitarian considerations, which are to be examined by a humanitarian committee, although the law explicitly excludes from the definition of "humanitarian" the presence of a child or spouse living in Israel. It permits the entry of Palestinians to Israel for the purpose of working in Israel (non-family unification cases), and it allows granting a status in Israel for Palestinians who "identify with the state and have acted to promote its goals". All of these exceptions apply solely to Palestinians from the West Bank, and do not apply to others, including residents of Gaza. Adalah's position is

that these exceptions do not diminish the discriminatory nature of the law, and that in the case of some amendments, in fact inflict further violations of constitutional rights.

2. Adalah's first petition to the Supreme Court and the State's response:

Adalah, two other human rights organizations (the Association for Civil Rights in Israel (ACRI), and Hamoked – Center for the Defence of the Individual), families affected by the law, and Members of Knesset all submitted petitions in July 2003 to the Supreme Court challenging the constitutionality of the Citizenship Law. The petitioners argued that the law violates the right to family life and the right to equality of Arab citizens of Israel.[1]

Before the court, the State of Israel defended the restrictions on the basis of security considerations, claiming that Palestinians from the OPT are security threats to Israel. The State alleged that the blanket ban on family unification protects Israel and Israelis, since the State lacks the means to conduct individual security checks of each applicant. The State based its arguments on its right as a sovereign entity to police its borders and permit or deny the entry of any foreigner into its territory based on its discretion.

3. The Supreme Court's decision in 2006:

On 14 May 2006, in a split decision of 6-5, the Supreme Court issued a 263-page judgment in which it dismissed the petitions, effectively approving the most racist legislation in the history of the State of Israel. Five justices ruled that the law is constitutional, while five others ruled that the law is unconstitutional. Justice Edmund Levy ruled that the law is unconstitutional, but decided to dismiss the petitions, in order to give the state nine months to present a solution that would mitigate the law's unconstitutionality. Therefore, while the petitions were dismissed, the Citizenship Law was deemed unconstitutional by ***six*** justices.

4. The 2007 amendment to the law:

In March 2007, the Knesset passed an amendment to the Citizenship Law. Instead of following Justice Levy's recommendation to amend the law and alleviate its restrictions, the amendment further extended the restrictions. The new law expands the scope of the existing law and the duration of its applicability. The new law not only prevents citizens of Israel married to Palestinian residents of the OPT from living together as a family in Israel, but also adds residents or citizens of Iran, Iraq, Syria or Lebanon to the ban. The ban also applies to "anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out," according to security reports presented to the government, thus leaving the list of countries open. The 2007 amendment to the Citizenship Law revives the World War II "enemy alien doctrine," whereby persons belonging to certain nationalities or ethnicities are assumed to be enemy aliens solely based on their belonging.

[1] HCJ 7052/03, Adalah – The Legal Center for Arab Minority Rights in Israel v. the Minister of the Interior (2006). The petitions were submitted by MK Zehava Galon, the Association for Civil Rights in Israel, Hamoked – Center for the Defence of the Individual, Adalah, and several individual petitioners whose rights for family unification were violated by the Citizenship Law.

5. Adalah's petition against the 2007 law:

As a response, Adalah and other human rights organizations (ACRI and Hamoked), families affected from the law, and MKs submitted their second petition challenging the constitutionality of the Citizenship Law. Adalah argued that the new amendment is unconstitutional since it mainly affects Palestinian Arab citizens of Israel and infringes on their constitutional rights to equality and to family life in Israel. The law restricts their freedom to choose their spouses and live together with their children inside Israel.

Adalah also argued that the new law constitutes racial discrimination, as it bars certain individuals from family unification solely on the basis of their national and ethnic belonging, with no ability to dispute the presumption that all residents and citizens from "prohibited" areas are a threat to Israel's security. The law violates international law by preventing an indigenous and national minority, Palestinians in Israel, from maintaining close ties with their families, people, and nation, other Palestinians and Arabs. A blanket ban on the ability of Palestinian citizens of Israel to marry spouses from their people and nation residing outside of Israel and have children infringes their right to dignity, as the prohibition is applied solely on the basis of spouses' national and ethnic background.

Adalah further argued in the petition that the new law prevents Arab citizens of Israel from having contact with their families and members of the Arab nation and the Palestinian people, *which is an extremely dangerous matter* as Arabs in Israel are not an immigrant group but an indigenous national minority. In addition, preventing Arab citizens from maintaining family life with members of their people and nation is in breach of the principles of international law. To support this argument, Adalah submitted three legal expert opinions examining case law from the United Kingdom, South Africa, and the European Court of Human Rights, which all concluded that the Israeli Citizenship Law violated the right to family life, and was discriminatory and unconstitutional.

6. The Supreme Court's decision in 2012:

On 11 January 2012, the Supreme Court published its ruling. Again the court was split 6-5, however, this time, a majority of six justices dismissed the petitions and ruled that the law is constitutional. The majority opinion included Deputy Chief Justice E. Rivlin and Justices A. Grunis, M. Naor, E. Rubinstein, H. Meltzer and N. Handel. The minority opinion was joined by Chief Justice D. Beinisch, and Justices E. E. Levy, and Justices E. Arbel, S. Jubran and E. Hayut.

a. The Majority Opinion:

The majority opinion agreed that the constitutional right to family life derives from the right to human dignity. However, the justices ruled that this does not necessarily entail that there is a right to exercise the right to family life in Israel. The court also ruled that even if there was a violation of constitutional rights, including the right to equality, it is a proportional violation that meets the requirements of the "limitation clause".[2] The majority ruled that the restrictions imposed by the law were proportional due to the exceptions granted by the law.

[2] The "limitation clause" provides several conditions upon the fulfillment of which a statute can constitutionally deviate from the provisions of the Basic Law: Human Dignity and Liberty.

Justice Grunis, the new Chief Justice of the Supreme Court as of March 2012, began his ruling by stating that "Human rights are not a recipe for national suicide". He held that weighing the benefits of the law against its damages should take into consideration the possibility of error. In his view, if it becomes clear in the future that those who advocate revoking the law erred in underestimating the danger, the injury to human life would be impossible to rectify. On the other hand, if those who believe that the law should not be revoked are in error, the damage resulting from their error is the inability of citizens to establish families with Palestinians, or separation between Israeli and Palestinian partners. This lesser damage to family life must be weighed against the certain damage to the lives and limbs of Israelis.

Deputy Chief Justice Rivlin found that the violation is intended for a worthy purpose and is not excessive.

Justice Naor noted that the impact of the law has been mitigated with the passage of time. The number of families that married before the government decision and the law who do not meet the age requirements stipulated in the law has greatly decreased, and those who married after the government decision and the law did so while aware of the legal situation. In her ruling, Justice Naor devoted a separate chapter pertaining to minors who are residents of East Jerusalem. In this matter, she found there is no fear (and subject to a security or criminal indictment) of separating minors from their parents or even those who were previously minors (and are now adults) from their parents.

Justice Rubinstein ruled that although discrimination is also generally examined in terms of its consequences, the argument of discrimination cannot be applied to a case of an Israeli citizen choosing to engage in spousal relations with a resident of a hostile state (or state-like entity).

Justice Handel ruled that the infringement of the constitutional right of a group of Israeli spouses is harsh due to the historical, geographic and cultural connection between the Arabs of Israel and the residents of the region. However, this infringement is not ranked highly on the hierarchy of constitutional rights. The state is entitled to define immigration laws and the citizen cannot dictate the state's immigration policy according to the spouse he chooses.

Justice Meltzer stated that the legislation is the lesser of two evils, and that it is better to take precautions than to harbor regrets. He emphasized that alternative tools, such as conducting individual security checks of those seeking to enter Israel to marry, do not provide a solution for overall security challenges as a whole. As a note, Judge Meltzer's "better be safe than sorry" argument abandons any attempt to create a balance between human rights and public interest, and is countered by Justice Levy's decision, as described below.

b. The Minority Opinion:

A minority of five justices held that the constitutional right to family life of the Israeli spouse also extends to exercising the right to live and to raise a family in Israel. The justification for the violation of the right does not meet the conditions of the limitation clause, which define the criteria for deviating from human rights that are enshrined in the Basic Law: Human Dignity and Liberty, particularly its proportionality component. The

minority justices also determined that the law violates the constitutional right to equality in a way that does not meet the conditions of the limitation clause.

Justice Levy rebuffed the exclusive security approach of the majority, or the "better safe than sorry" argument, stating that "the same sayings are also outrageous because they are false, and founded upon the intensification of fear, shared by many, that compliance with the human rights of the Arab minority involves an outright existential threat to Israel. If I thought for a second that the result I suggested in my opinion would entail within it an existential threat to Israel and its residents, I would have joined with no hesitation to the recommendation to dismiss the petitions. However, the situation is quite different, primarily because the emphasis on human rights under the present circumstances, can also reside together with maintaining the security of Israel. And there is no need to emphasize that… the legislature is not exempt, even where there is a risk, to completely avoid taking this risk when this avoidance comes at the expense of the individual's fundamental rights."[3] Justice Levy also emphasized that the legislature missed the opportunity it was given by the court's previous ruling in 2006 to amend the law so that it would meet the constitutionality test. In his view, the recent amendment did not reduce the sweeping arrangement stipulated in the law, and even expanded it. In his current ruling in 2012, unlike his stance in the previous decision, Justice Levy argued that the Citizenship Law does not meet even the first stage of the constitutionality test, particularly in corresponding to the values of the State of Israel as a Jewish and democratic state. A law that severely violates a protected right or does not allow space for its existence is numb to that right and, therefore, is unworthy. The Citizenship Law is such a law, according to Justice Levy.

Chief Justice Beinisch reiterated the position she expressed in the 2006 ruling on the Citizenship Law and found that the amended law is unconstitutional. In her opinion, the law had expanded the presumption of danger, and that no effort was made to include in the law an individual review of the danger posed by the spouse, his family or his immediate surroundings. The legislation also failed to adopt other measures that would mitigate the damage, including, for example, a mechanism for reversing the presumption of danger by transferring the burden to the person seeking family unification in order to prove that he poses no security threat.

Justice Arbel held that there is a more proportional alternative that includes three main components: an individual review, as thorough as circumstances allow; conditioning the processing of the family unification request on the fact that the foreign partner is not residing illegally in Israel and will not reside in Israel until receiving an entry permit; and a requirement to declare loyalty to the State of Israel and its laws, abandoning loyalty to any other state or state-like entity. In her view, this alternative renders the measures adopted in the existing law disproportionate.

Justice Jubran ruled that the law severely and disproportionately violates the constitutional rights to family life and equality. He emphasized the fact that the law is applied in practice on Arab citizens of the state. He also ruled that the complete denial of the possibility of receiving status for the partner who is a resident of the region, without any indication that he poses a security threat, is indicative of an illegal distinction. The amendment to the law,

[3] HCJ 466/07, MK Zahava Gal-On (Meretz-Yahad) *et al* v. Attorney General *et al*. para. 47 of Justice Levy's opinion.

and the passage of time since the previous ruling, have intensified and deepened the violation of the constitutional rights.

Justice Hayut held that since the collective prohibition stipulated in the law remains, and since the residents of the region who are spouses of Arab citizens of Israel are not given an opportunity to prove, on an individual basis, that they do not pose a security threat, and since the collective criteria that restrict family unification between the Arabs of Israel and spouses who reside in the region were expanded in the framework of the revised law, there still exists a disproportional violation of the right to family life and equality. Justice Hayut also noted that the disproportional violation of the right to equality created by the law, which effectively erases the unique identity of the individuals who make up this group, are liable to generate the appearance of unacceptable "ethnic labeling", and that should be avoided.

The court's decision is a backward step from its 2006 ruling and the general jurisprudence. Although the court dismissed the petitions in 2006, the majority of justices decided that the law was unconstitutional, ruling that the right to family encompasses the right to live with the family in Israel. Thus, the 2012 decision that family life in Israel is not within the scope of the constitutional right to family life is a regression in the court's jurisprudence.

By ruling that the right to family life does ***not*** include the right to live in Israel, the court's decision also ignores the order prohibiting citizens of Israel from entering and living in the West Bank, Gaza and other "enemy states". Pursuant to another law enacted in 2008, Israeli citizens who do so risk losing their citizenship. Under this law, the Minister of the Interior is authorized to revoke Israeli citizenship based on the grounds of "disloyalty", which include living in "enemy states".

The regression in the court's jurisprudence is due in large part by changes in the political makeup of the court and the rightward shift in the Israeli government. The current Netanyahu-Lieberman government, in office since 2009, has passed a series of laws that discriminate against Arab citizens of Israel. A majority of government ministers regard Arab citizens as "disloyal", a "fifth column" and "demographic threat". The current government has launched a scathing attack on the activist role of the Supreme Court and has attempted to limit its powers of judicial review.

Adalah's analysis of the decision:

1. ***The court made insufficient reference to the scanty data on security involvement and the demographic discourse:*** The majority justices did not give sufficient weight to the slim and weak data provided by the State with regards to the involvement of Palestinians who entered Israel for the purpose of family unification in security threats to the state. According to data provided by the State during the hearings, between 2001 and April 2010, 54 persons of the over 130,000 who had received status in Israel through family unification procedures were either "directly involved in terrorist attacks" or were prevented from carrying out such attacks at the last minute. However, the State failed to provide any details about the nature of the involvement of these 54 persons in the reported attacks or attempted attacks. Nor did it provide any information on how many of them had been arrested, detained, released, indicted, convicted or sentenced for these activities or detail the gravity of their alleged actions. The state also did not provide the court with any

data about applicants for family unification or regarding the involvement of persons from "enemy states" in any security matters, which strongly suggests that there is no factual basis for the sweeping ban on family unification with non-Jewish nationals from these states. Furthermore, previous information supplied by the State casts serious doubts on these general claims. Following a request for detailed information submitted by Adalah in December 2008, the state responded that among the 54 persons, just ***7*** persons who had received status in Israel through family unification procedures had been indicted for security-related offenses, and that ***2*** of these individuals had already completed their sentences, which suggests that the offenses were relatively minor.

Further, while the law prohibits the entry to Israel of Palestinians for family unification, it does permit the entry of Palestinian from the West Bank to Israel for the purpose of work. According to official data provided by the Knesset's Research Center, in 2008 more than 21,600 Palestinians from the West Bank were allowed to work in Israel and an additional 5,500 Palestinians were granted work permits in 2011.

Thus, it is clear that the Citizenship Law has little to do with security. The purpose of the law is demographic. The demographic discourse, which is gaining strength among the Israeli public, is directed against Arab citizens. According to this racist discourse, the very existence of Arabs in Israel, rather than their actions, constitutes an existential threat to the State. The policy of demographic separation is reflected most visibly in the Separation Wall, as well as in the denial of the Palestinians' freedom of movement, the ease with which Palestinians in Jerusalem are stripped of their residency rights, and in various legislative bills that make it easier to abrogate the citizenship and residency of Arab citizens in Israel.

2. ***The Citizenship Law is among the most racist laws in Israel:*** The Supreme Court upheld one of the most racist laws in Israel. The law is explicitly directed against Arab citizens of Israel solely on the basis of their national belonging. It creates a third track to naturalization in the State of Israel. The first and highest track is for Jewish people, who can gain citizenship immediately and automatically under the Law of Return (1950). The second track is for foreigners, to whom the graduated naturalization procedure applies, allowing them to obtain Israeli residency or citizenship status over a years-long period from the date of submitting the application. The third and lowest track is for the spouses of Arabs citizens who are from the OPT, Iran, Iraq, Syria or Lebanon. Adalah stressed that the creation of these tracks, which is based on the nationality of the applicant, constitutes racial discrimination and contradicts the principle of equality.

3. ***Disregard for additional harms imposed by the law****:* The majority opinion did not consider all the harms that result from the ban imposed by the law. Even those who meet the exceptions provided by the law are not entitled for citizenship status, but are only granted temporary permits to reside in Israel. Such status does not qualify individuals for health insurance, social security benefits, an employment permit or a driving license in Israel; this status is even less than a tourist visa. These restrictions affect the family as a unit and not only the Palestinian spouse, creating a situation that generates more violations of basic rights.

4. ***Inaccurate interpretation of the comparative caselaw*:** Justices Rubinstein and Meltzer cite European Court of Human Rights' (ECtHR) caselaw to support the narrow scope of the right to family life. The justices often cited the interpretation provided by the ECtHR with regard to Article 8 of the European Convention on Human Rights: "Article 8 cannot be considered to impose on a state a general obligation to authorize family reunion in its territory".[4] However, the European Court of Human Rights has also held that while it is true that "Article 8 cannot be considered as imposing a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country,"[5] "in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest."[6]

   The reference given by the Supreme Court justices to the European caselaw does not emphasize the 'margin of appreciation' that Member States have when determining security safeguards in immigration procedures, where the discretion must be 'justified and proportional.' This position was clarified in an expert opinion provided by the Open Society Justice Initiative, which Adalah submitted to the Supreme Court in this case.[7] The expert opinion summarizes the analysis of the right to family unification in the European legal system, as follows:

   > "In sum, European institutions have concluded that depriving people of the right to family reunification is equal to interference with family life. Moreover, the right of family reunification is widely considered as a positive right, in cases where States have the obligation to facilitate it as indicated in this expert opinion…"[8]

   Justice Meltzer cited the *European Parliament v. Council of the European Union*[9] case in which the European Parliament argued that Directive 2003/86/EC,[10] adopted by the Council of the European Union, infringes on fundamental rights. The Directive determines the conditions for the exercise of the right to family reunification.[11] However, this reference ignores the fact that the Directive relates only to nationals of non-member States residing lawfully in the territory of the Member States, and not to their own citizens. Justice Rubinstein cites *Z. and T. v. The United Kingdom,*[12] however, the circumstances of that case, as the other caselaw cited by the majority justices, differ immensely from the Israeli Citizenship Law. While the challenged law before the Israeli Supreme Court related to infringements of constitutional rights of citizens of Israel for equality and family life, in the case of *Z. and T.*, the ECtHR ruled based on the fact that the applicants' family members were *immigrants,* granted asylum by the UK. Other

[4] Makuc v. Slovenia, 26828/06 (2007).
[5] Haghighi v. The Netherlands, 38165/07 (2009), *available at* http://www.unhcr.org/refworld/pdfid/4a0a822b2.pdf.
[6] *Id.*
[7] *Available at* http://www.soros.org/initiatives/justice/litigation/adalah/expert-opinion-20081124.pdf.
[8] *Ibid.*
[9] Case C-540/03, European Parliament v. Council of the European Union, 2006 E.C.R. I-5769.
[10] *Available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML.
[11] *Id*, para. 66.
[12] 27034/05 (2006). *Available at*, http://www.unhcr.org/refworld/pdfid/45ccab042.pdf.

caselaw cited by the court referred to facts relating to both spouses requesting family unification being non-citizens of Member States.

5. ***Non-Compliance with international law and UN human rights committees' recommendations*:** The majority opinion does not comply with standards of international law. The court did not provide appropriate weight to Adalah's arguments relating to Article 4 of the International Covenant on Civil and Political Rights (ICCPR), signed and ratified by Israel, which stipulates that: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, **provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin**." This article was interpreted as mainly providing protection for persons belonging to minorities. In its General Comment No. 29 of 2001, the Human Rights Committee noted:

> "The Committee is of the opinion that the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances. This is reflected in the prohibition against genocide in international law, in the inclusion of a non-discrimination clause in article 4 itself (para. 1), as well as in the non-derogable nature of article 18."[13]

In addition, the majority opinion does not comply with several recommendations to revoke this law issued since 2003 and on many occasions by the UN Committee on the Elimination of Racial Discrimination (CERD). In these recommendations, the Committee urged Israel to revoke this law for contradicting international human rights law that Israel had committed to, as well as for violating the rights of the Arab citizens of Israel for equality and family life.[14]

6. ***Ignoring the right of the Arab minority to maintain family life with members of their people:*** The Citizenship Law ignores the rights of Arab citizens of the state to conduct family life in the State of Israel with members of their own people, the Palestinian people, or with members of their own nation. This restriction violates international law, including the directives of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 2(5) of this UN declaration states**:**

> "Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties".

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[13] *CCPR/C/21/Rev.1/Add.11, General Comment No. 29*

[14] See: CERD/C/ISR/CO/13, available at: http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/25b04cc5637c586bc1257307005263ce?Opendocument; CERD/C/65Dec.2 available at: http://www.adalah.org/features/famuni/CERD2004.pdf; and CERD/C/63/Misc.11/Rev.1 available at: http://www.adalah.org/eng/intladvocacy/CERDDecisionfamilyunificationaugust2003Israel11.pdf

7. ***Suspension of the rule of law***: The court's decision suspends constitutional law for Arab citizens of the state, insofar as the principle of non-discrimination and the right to equality no longer apply to them. The Citizenship Law reinstates what international human rights law abolished long ago, namely, the "enemy alien" doctrine. Under this doctrine, every Palestinian is viewed as a security threat solely based on his national belonging. The United States acted similarly toward American citizens of Japanese origin during World War II. The US Supreme Court used this doctrine in its ruling in the much-criticized case of *Hirbayashi v. US.* [15] In this case, the court approved the use of the concept of "enemy aliens" as an index for determining a security threat. A short time later, the US Supreme Court issued the *Korematsu*[16] ruling, which upheld the constitutionality of the internment of American citizens of Japanese descent due to security and military considerations, again based on the doctrine of "enemy aliens". Following World War II, international law changed from a position grounded in the principle of state sovereignty to a position that allowed the restriction of a state's sovereignty in favor of human rights. After the War, strong criticism was expressed, even in the US, of the state's policy toward citizens of Japanese descent. Fifty years later, in 1988, the US Congress passed the Civil Liberties Act, which recognized the injustice caused to American citizens of Japanese descent during the War and included a public apology to them for the injustice they had suffered.

   This law, together with the January 2012 Supreme Court decision, should also be examined beside the many laws that have recently been enacted by the Knesset which directly or indirectly discriminate against the Arab citizens of Israel. These laws include provisions enabling community towns in Israel to reject Arab citizens' applications for residence based on "social and cultural unsuitability"; revoking citizenship for individuals living in the OPT or Arab countries defined as "enemy states" based on "disloyalty"; cutting budgets of state-funded institutions that hold events to commemorate the Nakba, the Palestinian collective narrative of 1948; retroactively legalizing individual settlements or farms created on Arab Bedouin-owned land in the Naqab (Negev) while ordering the demolition of houses in unrecognized Arab Bedouin villages; enabling the privatization of state land mostly confiscated from Palestinian owners; and prohibiting the sale of property to foreigners, except to Jews to whom the Law of Return applies. In addition to these new laws, the rights of Arab citizens' to freedom of political expression is also being limited by attempts to disqualify Arab political parties from running in the Knesset elections because of their calling for equality for all Israeli citizens, allegedly a contradiction of the definition of Israel as a Jewish and democratic state. These new laws are the true threat to equality and democracy in Israel.

[15] *Hirbayashi v. U.S.*, 320 U.S. 81 (1943).
[16] *Korematsu v. U.S.*, 323 U.S. 241 (1944).