At the Supreme Court **HCJ 1634/23**

In the matter of:

HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger (RA)
Represented by counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.
29B Keren Hayesod Street, Jerusalem 9418818
Tel: 02-6222808; Fax: 03-5214947**;** mail@lb-law.net

The Petitioner

v.

1. **Minister of Interior**
   Represented by counsel from the State Attorney's Office,
   29 Salah-a-Din Street, Jerusalem 91010
   Tel: 02-6466590; Fax: 02-6467011

2. **Israel Knesset**
   Represented by the legal department
   The Knesset Building – Ben Gurion Campus, Jerusalem
   Tel: 02-6408479, Fax: 02-6753495

The Respondents

Petition for Order *Nisi*

Petition for order *nisi* is hereby filed which is directed at the Respondents ordering them to appear and show cause:

Why it shall not be held that the Amendment 30 to the Entry into Israel Law, 5712-1952 which was incorporated as Section 11(a) in the Law bearing the caption "Revocation of Permanent Residency Status due to Breach of Allegiance" (hereinafter: the "**Amendment to the Law**") – is null and void.

A. Preface

> The connection between the residents of East Jerusalem and their place of residence is very strong, as they have been living in this area for decades. Many of them were born and raised in East Jerusalem like their parents and sometimes even their grandparents. Moreover, the elderly of them (including Petitioners 1 and 8) have been residing in East Jerusalem since before the law, jurisdiction and administration of the state of Israel were applied thereto. Hence, the residents of East Jerusalem are not immigrants or children of immigrants who arrived to Israel from a different country and received status pursuant to a certain decision made by the Minister of Interior in his discretion. Most of them were born here and their permanent residency status was given to them constructively, as explained in Awad (HCJ 7803-06 **Abu Arafeh v. Minister of Interior** September 13, 2017).

1. The residents of East Jerusalem are indigenous residents that the state has decided consciously and at its own initiative to annex the area in which they have been living for ages and turn them into Israeli residents. Now, the same state wishes to disposes them of their land and home and to leave them without permanent status in the world.

2. There is an inherent difficulty, as we shall show, to obligate the indigenous residents of East Jerusalem, which was occupied by the state, to maintain a duty of allegiance to the occupying state. The state itself decided to give them residency rather than citizenship based on the premise acknowledging the complexity of their civil situation as a result of the annexation of their place of residence and their own annexation along with it. In addition, defenses in the local law and the international law are available to them preventing any infringement of their status. Obviously, no legitimacy is herein given to the infliction of harm or to violent acts, but these acts should be adjudicated on the criminal

level for which it is intended and the residents should not be left without a permanent status.

3. In AAP 8277/17 **Zayud v. Ministry of the Interior** (July 21, 2022) (hereinafter: "**Zayud**") it was held that the declarative purpose stands at the heart of the revocation of a person's status on the basis of breach of allegiance. This element is not applicable to permanent residents. It was further held in **Zayud** that human beings cannot be left without a permanent status in the world disconnected from their home, family, community, all of which is caused by the Amendment to the Law.

4. The law allowing the revocation of status by virtue of breach of allegiance of indigenous permanent residents – is not constitutional, is contrary to the fundamental principles of the system and disproportionately violates basic rights.

B. The Parties

5. **The Petitioner**, HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger, Registered Association, has taken upon itself to assist Palestinians residents of the occupied territories whose rights were violated by the state of Israel, including Palestinians who are permanent residents and to whom the Law applies directly. The Petitioner represents residents whose status was revoked by Respondent 1 by virtue of Section 11(a) of the Entry into Israel Law enabling the revocation of status of permanent residents based on the argument that they have breached the state's trust.

6. **Respondent 1**, the Minister of Interior (hereinafter: **Respondent 1** or **Minister of Interior**) is the minister who acted to promote the legislation of the Law, exercises and is responsible for the implementation of the Amendment to the Law.

7. **Respondent 2**, Israel Knesset (hereinafter: **Respondent 2**) promoted jointly and severally with Respondent 1 the legislation of the Law and voted on its approval in its plenum on March 7, 2018.

C. Background – the Amendment to the Law and the Previous Proceedings

8. We shall briefly describe the background to Amendment 30 to the Entry into Israel Law – the enactment of Section 11A, in which Respondent 2 revokes in an unlawful and unconstitutional manner the status of East Jerusalem residents who in his opinion breached the duty of allegiance owed by them to the state.

9. In the beginning of 2018 a memorandum of the Entry into Israel Law, 5778-2018 was published containing the initial version of the amendment to law which is the subject matter of this petition. Following the memorandum comments were forwarded on behalf of the Petitioner and other human rights organizations.

Exhibit P/1 Memorandum of the Law

Exhibit P/2 Comments to the Memorandum

10. On March 7, 2018 Amendment No. 30 to the Entry into Israel Law, 5712 – 1952 was passed by the Knesset which was incorporated into the Law as Section 11(a) bearing the caption "Revocation of Permanent Residency Status due to Breach of Allegiance" (above and below: the "**Amendment to the Law**").

11. The language of the Amendment to the Law (published in the book of laws 2698 (March 11, 2018) is as follows:

> 11A. (a) Without detracting from the provisions of Section 11(A)(2), the Minister of Interior may cancel a permanent residency status given under this law (in this section – status), among other things, if it has been proven to the Minister's satisfaction that the status holder performed a deed which involves breach of allegiance to the State of Israel, and provided that with regards to a person about whom one of the following circumstances exist – the said status shall not be cancelled unless the Minister of Justice agrees and after consultation with the committee established under Section 11(H) of the Citizenship Law, 5712-1952:
>
> (1) At the time the deed was done, over 15 years had passed since the date the person received the status;
>
> (2) Upon birth, one of the person's parents held a permanent residency status
>
> (b) In the event the Minister of Interior decides to cancel the status under the provisions of the section and sees that after the cancelation the person would remain without a permanent residency status outside Israel, without the ability to acquire the right to permanent residency outside Israel or without citizenship, the Minister shall give that person a visa to reside in Israel shortly after the status cancelation decision; with regards to this subsection, it is assumed that a person who resides on a permanent basis outside Israel, will not remain without a permanent residency status outside Israel, without the ability to acquire the right to permanent residency outside Israel or without citizenship.
>
> (c) In the event that a person whose status was canceled under this section, files an administrative petition to the Court for Administrative Affairs against the Minister of Interior's decision, the Minister will allow that person's entry into Israel until the proceedings emanating from the Minister's decision are fully reviewed, unless the Minister realizes that the person's entry to Israel poses a real threat to the security of the state or the safety of the public.
>
> (d) In this section, "breach of allegiance to the State of Israel" – is one of the following:

(1) An act of terror as defined in the Counter-Terrorism Law, 5776-2016, aiding or soliciting such an act, or taking an active part in a terrorist organization or a designated terrorist organization as defined in said law;
(2) An act which constitutes treason under Sections 97-99 of the Penal Law, 5737-1977, or aggravated espionage under Section 113(b) of said law."

12. To understand the general and broad definition of an act of terror, an act of terror is defined in the Counter-Terrorism Law as follows:

> "Act of Terror" – an act which constitutes an offense, or a threat to commit such an act, which meets all of the following:
>
> (1) It was carried out with a political, religious, nationalist or ideological motive;
>
> (2) It was carried out with the intention of provoking fear or panic among the public or with the intention of compelling a government or other governmental authority, including a government or other governmental authority of a foreign country, or a public international organization, to do or to abstain from doing any act;
>
> (3) The act committed or threatened to be committed, involved one of the following, or posed an actual risk of one of the following:
>
> (a) Serious harm to a person's body or freedom;
>
> (b) Serious harm to public health or safety;
>
> (c) Serious harm to property, when in the circumstances in which it was caused there was an actual possibility that it would cause the serious harm mentioned in sub-paragraphs (a) or (b) and that was carried out with the intention of causing such harm;
>
> (d) Serious harm to religious objects; here, "religious objects" means a place of worship or burial and holy objects;
>
> (e) Serious harm to infrastructures, systems or essential services, or their severe disruption, or serious harm to the State's economy or the environment; …

13. The above amendment was made following the judgment in HCJ 7803-06 **Abu Arafeh v. Minister of Interior** (September 13, 2017) (hereinafter: "**Abu Arafeh**"), where it was held that the general provision which was set in Section 11(a)(2) of the Entry into Israel Law whereby:

> The Minister of Interior may, at his discretion – revoke a residency status given according to this law

did not allow in its existing version to revoke the residency of East Jerusalem residents on the grounds of breach of allegiance. As aforesaid, following the **Abu Arafeh** judgment Section 11A(a) was added, in the above version.

14. The Petitioner was and is of the opinion that the Amendment to the Law is immoral, unlawful, contrary to international law and international humanitarian law and should be nullified. It therefore applied in the matter of permanent residents that the state wished to revoke their status and demanded the cancellation of the decision and the Amendment to the Law by virtue of which their residency had been revoked. This matter was discussed in HCJ 367/19 **Abu Arafeh v. Minister of Interior** (October 26, 2020) which was consolidated with HCJ 396/19, HCJ 405/19, HCJ 6047/19 and HCJ 6049/19 (all of which were filed by the Petitioner).

15. Simultaneously with the above petitions, the proceeding in AAP 8277-17 **Zayud v. Minister of Interior** (July 21, 2022) which was consolidated with AAP 7932/18 **Minister of Interior et al. v. Mafarjeh** (hereinafter: "**Zayud**") was conducted, discussing the lawfulness of Section 11(b)(2) of the Citizenship Law, 5712-1952, stating that the court for administrative affairs may, at the request of the Minister of Interior, revoke the Israeli **citizenship** of a person on the grounds of breach of allegiance. Due to the similarity between the subjects, both of which concern revocation of status on the grounds of "breach of allegiance", and the implications of the proceeding in **Zayud** on the revocation of permanent residency as a result of breach of allegiance, the court suggested to delete the constitutional petitions which were filed against the Amendment to the Law:

> **Due to the fact that in any event following the judgment which shall be given in the appeals** (AAP 8277-17 **Zayud** and AAP 7932-18 **Mafarjeh** – A.L.) – **the parties shall be required to refer to it and to its implications on the issues which are the subject matter of the petitions at hand**.
>
> The counsels for the parties accepted the court's suggestion and therefore the petitions were deleted, reserving the rights and arguments of all parties with respect to the constitutional issues, it being clarified that the individual questions are within the jurisdiction of the court for administrative affairs, which shall discuss them after the constitutional issues are resolved.

16. On July 21, 2022 the judgment in **Zayud** was given. In view of the holdings in the **Zayud** judgment, pertaining to the revocation of citizenship on the grounds of breach of allegiance, and the relevancy to the Amendment to the Law, and in view of the judgment in HCJ 367/19, the Petitioner turned again to the Respondents and demanded the cancellation of the Amendment to the Law. The Petitioner argued in its letter that permanent residents belonging to the indigenous population of East Jerusalem do not owe a duty of allegiance to the state of Israel and Israel is prevented from obligating them to be faithful to the state. Therefore, a duty of allegiance cannot be breached by these residents and they cannot be penalized for breach of allegiance. It was further argued, among other things, that the revocation of the status of permanent residents belonging to

the indigenous population of East Jerusalem by virtue of Section 11A of the Entry into Israel Law does not meet the conditions set forth in the limitation clause and therefore is unconstitutional, the law does not serve an appropriate purpose, the law does not befit the values of the state, the harm caused by the law is excessive and the law does not include an explicit and detailed authorization consisting of standards and criteria as required.

Exhibit P/3 Demand to revoke the amendment of Section 11(a) dated September 12, 2022.

17. Despite several reminders which were sent in that regard and despite the fact that a new Knesset has long been elected and a new government was sworn in, which are even acting to legislate additional laws on this issue, no pertinent response has been received to the demand to date. Hence the petition.

Exhibit P/4 Reminders to the demand to revoke the amendment of Section 11(a)

Exhibit P/5 Interim responses from the Knesset and the Attorney General notifying that that the request is being handled.

18. It should be noted that the petitioners in HaMoked's petitions which were deleted in HCJ 367/19 **Haled Abu Arafeh**, HCJ 396/19 '**Abed Dweit**, HCJ 405/19 **Billal Abu Ghanem,** HCJ 6047/19 **Iskhak Arafeh** and HCJ 6049/19 **Munir Rajabi** as well as Salah Hammouri the appellant in AAP 1124/22 **Hammouri v. Ministry of the Interior** (November 29, 2022) are waiting according to the outline which was established in HCJ 367/19.

19. Shortly before this petition was filed and after it was drafted, a legislative act was approved by the Knesset allowing the revocation of citizenship and residency of persons who were convicted of a terror offense and received payment from the Palestinian Authority. The petition at hand is not concerned with this legislation, but it demonstrates the erosion and encroachment on human rights which must be stopped at its inception.

D. <u>The Legal Status of East Jerusalem and its Indigenous Population</u>

20. Before we discuss the constitutionality of the Amendment to the Law, we wish to present the main points relating to the indigenous residents of East Jerusalem, hundreds of thousands of residents without citizenship, that the Amendment to the Law is intended to or may apply primarily to them.

21. In June 1967 Israel occupied the West Bank. Subsequently the government decided, and this was approved by the Knesset on June 27, 1967, to amend the Law and Administration Ordinance by adding Section 11B thereto stating that "the law, jurisdiction and administration of the State shall extend to any area of the Land of Israel designated by the Government by order". On the following day the Law and Administration Order (No. 1) 5727-1967 was established applying the amendment to East Jerusalem.

22. According to Israeli domestic law, Israeli law applies in the area of East Jerusalem. However, the territory of the state and its area of sovereignty are determined by international law rather than by state law. Therefore, the legal status of East Jerusalem and the status of its residents are composed of different layers. According to international law the area is regarded as an occupied territory under belligerent occupation and its

inhabitants are defined as protected persons, who are entitled to protections by virtue of international humanitarian law, the Fourth Geneva Convention of 1949 and The Hague Regulations (1907). The position of international law was expressed in the advisory opinion of the International Court of Justice (ICJ) from 2004 on the separation fence.[1]

23. After the annexation of East Jerusalem, including its indigenous residents, Israel conducted a census. Any person registered in the census received a permanent residency status. Subsequently, permanent residency status was also given to persons who demonstrated that they had lived in the annexed territory prior to 1967 and continuously since, even if not registered in the census (AAA 10811/04 **Surahi v. Ministry of Interior**, IsrSC 59(6) 411 (2005)). "Any person registered in the census which was conducted in 1967 is deemed to have received a permanent residency status" (HCJ 282/88 **Awad v. Itzhak Shamir – Prime Minister and Minister of Interior**, IsrSC 42(2) 424, page 431 (hereinafter: "**Awad**").

24. The circumstances by which East Jerusalem residents were granted permanent residency status are described in a study published by the Jerusalem Institute for Policy Research and its primary sources, particularly in the transcripts of government meetings held before the annexation of Jerusalem in June 1967 (Amnon Ramon, "From Grave Concerns to Enthusiastic and Widespread Annexation: The Israeli Regime's Moves toward the 'Unification of Jerusalem' (June 1967)" **Exploring Jerusalem through the Generations: Material and Opinion** 365 (2015).

25. On June 1967, the "Ministerial Committee for the Regulation of the Status of Unified Jerusalem" held a meeting on the nature of the legislation giving effect to the "Unification of Jerusalem", in which the ministers argued about the number of Arab residents living in the territories annexed to the city (**Ramon**, page 385). Ultimately, the fate of the indigenous population of East Jerusalem was decided by the Ministerial Committee on Jerusalem Affairs which convened on June 21, 1967. During the session, GOC Central Command Uzi Narkis raised the question of who will be a citizen in East Jerusalem. Justice Minister Shapira answered that "**services should be given to all residents**", but "**according to existing law, there is no automatic citizenship**." Attorney General Ben-Zeev stated that "**we will work on the premise that those who stay [in East Jerusalem] will be residents**. They will have active and passive voting rights to the municipality" (**Ramon**, page 392).

26. The indigenous population of East Jerusalem had obviously resided therein before their territory was annexed by Israel in 1967 making it into part of the territory of the state of Israel. These residents were subjects of the Kingdom of Jordan, before that subjects of Mandatory "Palestine" and before that subjects of the Ottoman Empire. East Jerusalem has been their home and native land for generations.

27. Throughout the years this population has been recognized as having a special status, distinct from immigrants who arrived to the state of Israel and holding a civil status

[1] Legal consequences of the construction of a wall in the OPT, Advisory opinion (ICJ) July 9, 2004 par. 75-78

elsewhere. They were recognized as an indigenous population. The following are the words of the court in AAP 3268/14 **Akram 'Abed al-Hak v. Minister of Interior** (March 14, 2017) (hereinafter: "**al-Hak**"):

> […] the special status of the residents of East Jerusalem as indigenous residents – contrary to persons who acquired the right to permanent residency by virtue of a visa after immigrating to Israel […]

28. It has already been held in Awad, in paragraph 9, that the permanent status was given to them, similar to the status of citizenship in 1948, by merit and not by grace:

> The power of revocation vested with the Minister of Interior does not turn the permanent residency into residency by grace, The permanent residency is a legal right and only pertinent considerations can invoke the power of the Minister of Interior.

29. Moreover, the vast majority of the residents of East Jerusalem have no status elsewhere in the world. This means that following the revocation of their residency they become stateless persons having no status in the entire world, and consequently also homeless people.

30. The fact that the residents of East Jerusalem did not acquire their status in immigration procedures and in most cases do not have another country of citizenship other than Israel – is a fact that should be taken into account and given a special and substantial weight, see AAP 5829-05 **Dari v. Ministry of the Interior** (September 20, 2007), and AAP 3268-14 **Abed al-Hak v. Minister of Interior** (March 14, 2017; AAP 5037/08 **Halil v. Minister of Interior** (December 19, 2017).

E. <u>The Permanent Residency of the Residents of East Jerusalem does not depend on the Duty of Allegiance</u>

31. In HCJ 7803-06 **Abu Arafeh v. Minister of Interior** (September 13, 2017) (hereinafter: "**Abu Arafeh**") the Supreme Court pointed out that the question arises whether a resident owes a duty of allegiance to the state and if the answer is positive what is the scope of this duty. It is clear that this duty is not the same as the duty of a citizen. The Honorable Justice Vogelman presented the difficulties in the matter:

> Respondent's position whereby he is entitled to revoke the permanent residency permit of East Jerusalem residents on the basis of breach of the duty of allegiance, raises complex, sensitive and controversial questions, both in terms of the cause underlying the status revocation decision and in terms of the persons bearing the duty of allegiance (given the unique predicament of East Jerusalem residents). In terms of cause, **the question arises whether the individual owes a duty of allegiance to the state; and to the extent the answer is positive – what is the scope of said duty, what actions will be regarded as breaches thereof and what sanction should be imposed for any such breach**. Further, any sanctions for the breach of said duty must be verified as complying

> with the requirement for proportionality. In terms of the persons bearing the duty, **the question arises whether permanent residents – as opposed to citizens – owe a duty of allegiance to the state; the matter should be examined specifically with respect to residents of East Jerusalem with consideration for their special circumstances** (paragraph 57 of the judgment of Honorable Justice Vogelman in Abu Arafeh) (emphases added, A. L.)

32. The population of East Jerusalem was registered in the Israeli population registry and given permanent residency permits with the full knowledge that these were enemy subjects, who at the end of a fierce war and as a result thereof, found themselves under Israeli rule. In this sense, granting permanent residency was effectively a declaration of an existing situation and its formalization within the new territorial framework (given that any other alternative would have meant mass deportation of tens of thousands of residents from their land, the territory of East Jerusalem which had been occupied and annexed). No one expected the individuals forming part of this population to swear allegiance to the State of Israel and no one demanded them to do so to this day, during 55 years of Israeli rule. The status was given to said residents against their will and not by choice. So long as they maintain a connection to the annexed territory, their status should not be revoked and they should be immune from deportation.

33. The fact that the indigenous population of East Jerusalem was given permanent residency status without being required to pledge allegiance to the State of Israel is also consistent with the principles of international law and international humanitarian law, according to which East Jerusalem is occupied territory and its residents, the natives of the country, are "protected persons" entitled to protections under international humanitarian law, and cannot be obligated to pledge allegiance to the occupying power. According to the Hague Convention respecting the Laws and Customs of War on Land of 1907 (hereinafter: the **Hague Regulations**) and the regulations annexed thereto and the Fourth Geneva Convention of 1949. According to Article 45 of The Hague Regulations, which form part of international humanitarian law and constitute "customary law", protected persons have no duty of allegiance to the occupying power and it is forbidden to force the population residing in the occupied territory to swear allegiance to the occupying power. Article 45 states as follows:

> It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power.

34. To illustrate the fact that the Government of Israel was aware of the question of allegiance of the indigenous population of East Jerusalem, we note that in the meeting of the Ministerial Committee on Jerusalem Affairs held on June 21, 1967, in which the fate of this population was decided, the mayor of Jerusalem at the time, Teddy Kollek, argued inter alia that including Arab residents in the City Council would impact the ability to conduct meetings on sensitive issues such as looting in East Jerusalem, and **that there was concern that "foreign hostile entities" would be informed**. The Minister of Justice at the time emphasized that "problematic" council members would be replaced by the Minister of Interior. In addition, the Head of the Jerusalem District at the Israel Security Agency sent Mayor Kollek detailed biographies of members of the city council under

Jordanian rule. These included detailed character profiles and disqualified some council members from holding office in the united city's council for security reasons (Ramon, pages-394-5).

35. Minister of Defense at the time, Moshe Dayan, also made it clear that the annexation of East Jerusalem with its residents was made over the objection of the residents to the Israeli regime:

> With respect to the first signs of dissent in the West Bank and East Jerusalem […] the Arabs do not want the unification of Jerusalem […] but we are not there because they want it […] we are not there if or because they do or do not want it, but because it is critical for our security. Jerusalem is not Eden and the administration of it is not conditioned on the Arabs' cooperation […] If the Arabs do not cooperate, we shall be regret it, but it will have no effect whatsoever on the unification of Jerusalem" (M. Meizels "Dayan: We have a 32 Historical Responsibility to establish Israel's Permanent Borders", **Maariv** (August 10, 1967)).

36. Over the years Israel created a clear separation in budgets and policies between the territories of the state and East Jerusalem. Due to government policy there is a deep divide between the Jewish neighborhoods and the Palestinian neighborhoods which are discriminated against systematically and deliberately in all areas including education, health, planning and building and wellbeing in general. The state makes it difficult for the residents to obtain citizenship and encourages their connection to the Palestinian Authority.

37. Throughout the years the status of some 14,800 residents was massively revoked based on the argument that the status has expired. Freedom of information data which were provided to HaMoked can be seen in the following link. It should be noted that dozens of additional cases were added to these data in 2021 and 2022.

https://hamoked.org.il/files/2021/1664862.pdf

38. Also notorious is the Population Authority bureau which is responsible for regulating the status of the residents of Jerusalem, processing family unification procedures with their spouses, registering and regulating the status of their children. Throughout the years the access to the bureau was almost completely blocked, both physically (HCJ 4892/99 **Jaber et al. v. Ministry of the Interior et al**., HCJ 2783/03 **Jabara et al. v. Minister of Interior et al**., HCJ 176/12 **Al-Batash et al. v. Senior Division Manager, Population Authority** (June 10, 2013), HCJ 1326/17 Haled Abu 'Odeh et al. **v. Director of Department of Bureaus, Population and Immigration Authority** (September 26, 2019)) and materially, in view of the fact that the bureau's procedures were not published and underwent constant changes (HCJ 7139/02 **Abbas-Batza v. Minister of Interior** (April 1, 2003), AP (Jerusalem) 530/07 **Association for Civil Rights in Israel v. Ministry of the Interior** (December 5, 2007), AP (Jerusalem) 727/06 **Noffal v. Minister of Interior** (May 22, 2011), AAP 4014/11 **Abu Eid v. Minister of Interior** (January 1, 2014) subjecting the residents to excessive and undue burden (HCJ 2792/17 **Dalal v. Minister**

of Interior (April 12, 2018), HCJ 3163/18 **Salman v. Population and Immigration Authority** (June 9, 2022)). These multi-systemic barriers, alongside the heavy poverty suffered by this sector, have also adversely affected the status of the residents, left their children without status and violated their basic rights.

39. According to the data of the Jerusalem Institute for Policy Research of 2017, 77.5% of all Palestinian residents in Jerusalem and 82% of all Palestinian children in Jerusalem lived below the poverty line (compared to 24.7% of its Jewish residents and 36% of the Jewish children in the city) [2]. According to the data of the Jerusalem Institute for Policy Research for 2020[3] poverty rates among the residents of East Jerusalem amount to 61% (compared to 32% of its Jewish residents). Poverty rates in the district of Jerusalem, 80% of whose residents reside in the city of Jerusalem, are the highest of all districts in Israel.

40. Despite the distress, only 5 social services bureaus operate in East Jerusalem, compared to 21 in the west side of the city[4]. In addition, as of 2018 only about 44% of the residents of East Jerusalem were connected to the water and sewage system in a formal and regulated manner[5] and there is a shortage of family health stations (as of 2021 the number of family health stations in East Jerusalem amounted to about one fourth of the number of family health stations in the west part of the city).[6]

41. The State Comptroller Report for 2019 refers to the substantial shortage of public buildings and sports & leisure facilities in East Jerusalem. According to the report the authorities provide insufficient services to children at risk in East Jerusalem. The report also criticizes the insufficient budgeting of the social and welfare services operating in East Jerusalem. According to the report the dropout rate of students in East Jerusalem between the 9th and 12th grades (between the years 2015-2018) amounted to 26.5% compared to the national average which amounted to 5.4%. The State Comptroller's report noted that the state authorities fail in the realization of the right of East Jerusalem children to free education.[7]

42. About 30% of the Palestinian children in East Jerusalem are not enrolled in a regular educational framework, or there is no information about the educational framework they attend[8]. There is a shortage of thousands of classrooms in East Jerusalem. In addition, it emerges from the Ir Amim report on East Jerusalem for 2020 that although 40,000 toddlers between the ages of 0-4 live in East Jerusalem, only 4 day care centers and 28 publicly funded nurseries operate there, compared to 118 day care centers and 440 nurseries in the west part of the city.[9]

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[2] Jerusalem Institute for Policy Research, Statistical Annual Report for 2019. As of 2018, the National Insurance Institute reported of difficulties in sampling the data from East Jerusalem and it therefore seems that the data of 2017 reflect in the closest way possible the poverty in East Jerusalem

[3] Statistical report of Jerusalem Institute, 2022, page 70.

[4] East Jerusalem – Key Data, Ir Amim, January 2021

[5] East Jerusalem – Facts and Data 2021, Association for Civil Rights in Israel

[6] East Jerusalem – Key Data, Ir Amim, January 2021

[7] State Comptroller, Special Audit Report: Developing and Strengthening the Status of Jerusalem – Second Part, Jerusalem, June 2019 page 341

[8] East Jerusalem: Facts and Data 2021, Association for Civil Rights in Israel

[9] East Jerusalem Education Report, Academic Year 2021-2022, Ir Amim, August 2022

43. On the failures of the city authorities in exercising the right to education, see for instance, HCJ 6183/16 **Parents Organization for the Educational System in Jerusalem v. Ministry of Education** (January 4, 2023).

44. Although 38% of the residents of Jerusalem are Palestinians, only about 15% of the areas of East Jerusalem and in fact 8.5% of the area of Jerusalem as a whole, are designated for their residential use and even within said areas the permitted building percentages are particularly low. Public buildings which are designated to Palestinians in East Jerusalem constitute only 2.6% of the land in east part of the city.[10]

See State Comptroller Report - Developing and Strengthening the Status of Jerusalem – Second Part – State Comptroller Report foe 2019 with respect to the city of Jerusalem: https://www.mevaker.gov.il/sites/DigitalLibrary/Documents/2019-Jerusalem-Full.pdf

For the statistical annual report of the Jerusalem Institute for Policy Research of 2019 see: https://jerusaleminstitute.org.il/publications/facts-and-trends-2022 /

For the report of the Association for Civil Rights in Israel – East Jerusalem: Facts and Data, May 2021 see:
https://www.acri.org.il/post/__607/

Exhibit P/6 East Jerusalem Education Report (2019) – Ir Amim

Exhibit P/7 East Jerusalem – Key Data (2021) – Ir Amim

45. In the Oslo Accords, Israel recognized the special status of the residents and their connection to the Palestinian Authority and agreed to enable the residents to elect and be elected in the elections for the Palestinian Legislative Council and President of the Palestinian Authority (HCJ 298/96 **Peleg v. Government of Israel** (January 14, 1996). A notice on behalf of the acting prime minister, Ehud Olmert dated January 17, 2006, stated as follows:

> I wish to remind that in 1996 and in 2005 elections were held in Jerusalem. The responsible approach which I have supported in 1996 and in 2005 said that while we do not cede our authority and sovereignty in all parts of Jerusalem, we certainly have an interest in preserving the connection of the residents of East Jerusalem to a Palestinian state and not to the state of Israel.

46. It emerges from all of the above that the permanent residency status of the members of the indigenous population of East Jerusalem was given to them in special historic circumstances, being the native population of this land, despite the fact that Israel annexed their territory, did not and does not regard them as regular residents and has ever since been acting in a manner which enhances the segregation and separation between these residents and the state of Israel and its institutions, and openly discriminates against them in the rendering of services. It is for good reason that the State of Israel did not expect

[10] East Jerusalem – Major Data, Ir Amim, January 2021

allegiance from this population, and has even acknowledged their affinity with the Palestinian Authority.

F. Residents and particularly native residents should not be left without status

E.1. Leaving persons without status is prohibited according to Zayud

47. The amendment to the law makes it possible to leave the native residents of Jerusalem, who from the outset are stateless, without any nationality, status or affinity with any place - temporary in the world at best and in the first stage, which cannot be guaranteed as is well known.

48. And note well, Section 11(a) is unconstitutional and is totally unlawful also with respect to persons holding an additional citizenship or are "held" according to the law as having the possibility of holding another citizenship by virtue of their absence from Israel. The section allows revocation of status in the place in which the person was born and raised, their displacement from their family members, their community, the landscape of their childhood, exile and alienation. At the same time, it is a particularly devastating step for those who have no status and connection to any other place. A person who receives a temporary status in such circumstances, is left hanging in the air, a stateless person without any nationality anywhere in the world.

49. In **Zayud** the court distinguished between those who, following the revocation of their citizenship, will remain totally stateless and those having an additional citizenship, and therefore will not be left without status as a result of this step. The court attributed to the first situation an excessive and particularly severe adverse impact, and therefore held that such a situation should not be allowed, a situation the excess harm of which shall not be cured by a temporary stay permit, even under the promise of Respondent 1 that this status shall not be revoked. The harm embedded in a temporary status and its far-reaching consequences, to the point of losing any status and deportation, were discussed by the Honorable Deputy President (retired) Hendel in **Zayud**:

> It should be emphasized that in my view the violation of rights caused as a result of the fact that a temporary status is granted, which is shaky and unstable, is not only symbolic but may also have practical effects and the harm caused thereby is greater than is required, contrary to the provisions of Section 8 of the Basic Law: Human Dignity and Liberty. A permanent status on the other hand, includes the right to stay, reside, work and make a living and move on a permanent basis in Israel; "in fact, the main difference between a citizen and a permanent resident is the right to elect and be elected to the Knesset, which is granted only to a citizen… as well as the right to receive an Israeli passport."… The importance of the point whereby the citizen who cannot be deported receives a permanent status rather than a temporary status does not relate only to the question of whether it prevents a situation in which they shall remain stateless (having no citizenship). The purpose of the permanent status is to prevent a situation whereby they become homeless. Namely, a temporary status may lead to a situation in which a person is deported

when it is unclear whether they shall receive status in another country even for residency purposes.

50. President Hayut in **Zayud** also discusses the unique harm caused in a situation in which a person is left without status:

> In the case at hand, it can be said that the **nature of the violation of the right** changes according to the answer to the question of whether a person whose citizenship was revoked on the grounds of breach of allegiance holds another citizenship other than their Israeli citizenship. Accordingly, for a person who does not hold another citizenship, the revocation of their Israeli citizenship means that they shall be left without **any** citizenship. Such a person loses their status in the political and international community; they are left without a state to protect them; and they are in fact left at the mercy of the state in which they stay (**Aleinikoff**, pages 1482-1480 and the references there; **Rahaf,** pages 70-71). The above, also under the assumption that they shall be given a stay permit according to the provisions of Section 11(b)(2) of the Law, in a manner enabling them to stay in the country and receive the rights granted by it to residents. It is therefore for good reason that this violation is regarded as a particularly severe violation by this court (**Alra'i**, page 22) (*Ibid*., paragraph 41).

51. In paragraph 82 of her judgment in **Zayud** the Honorable President Hayut explains the inherent difficulty embedded in a temporary status particularly for a person who does not have another citizenship, as follows:

> On the other hand, the violation of the rights of a person whose citizenship shall be revoked and who shall be left without any citizenship shall be much more severe if the status which she be given to them in lieu of the citizenship shall be a temporary stay permit rather than permanent status. The status of permanent residency provides a sense of stability to the resident (accordingly, for instance, they permanently hold an Israeli identification card according to Section 24 of the Population Registration Law, 5725-1965). This stability is important, particularly when we are concerned with a person who has no other citizenship. On the other hand, a temporary stay permit is a temporary status by definition, and despite the fact that at this time a governmental promise is given that the continued validity of this status shall be guaranteed so long as said person does not hold another citizenship, the holder thereof is still required to act for its extension from time to time and the reality of their life shall in fact be devoid of a permanent connection to any state in the world.

52. Also appropriate in this context are the words of the Honorable Justice Barak-Erez:

> The denial of citizenship directly affects a person's ability to maintain stable and free family and community relations in a specific territory, since citizenship embodies in the strongest way the right to live in a state

> and not to "restlessly move and wander on earth" like Cain at his time. […] (Paragraph 12)

And see also paragraphs 16 and 17 of the judgment of the Honorable Justice Barak-Erez.

53. In paragraph 11 of his judgment in **Zayud**, the Honorable Justice Vogelman holds that the status of permanent residency is also insufficient for a person whose citizenship is revoked and is left without status:

> The status of permanent residency was not established in connection with the complex situation in which it is given as a residual status to a person whose citizenship was revoked. Accordingly, it does not provide a solution to the uniqueness and full complexity of a situation in which the citizenship of a person who does not have another citizenship was revoked. This situation requires a different balancing than the general balancing established by the Entry into Israel Law in the framework of which substantial weight should be given to the need to secure the stability of the status of said person. Therefore, the permanent residency status established in the Entry into Israel Law cannot sufficiently satisfy the proportionality test since it does not remove the concern that a person whose citizenship was revoked shall remain devoid of any status.

54. In **Zayud** the court has indeed discussed a revocation of citizenship, but these things apply even more forcefully to a person who from the outset has been always been living without citizenship holding only the status of permanent residency. The rationales recognizing the severe, disproportionate and unconstitutional harm caused by this step forcefully apply in the matter of permanent residents.

E.2. Leaving persons without status is prohibited by the law and by international law

55. The state of Israel ratified the Convention relating to the Status of Stateless Persons (Treaty Series 8, page 245), which had already been signed by it in 1954, according to which persons should not be left without status. The Amendment to the Law is in conflict with this convention.

56. Article 8 of the Convention on the Reduction of Statelessness of 1961 provides that citizenship should not be revoked where a person is left without any other citizenship. The Respondents admitted with respect to the revocation of citizenship of persons who shall remain stateless, *inter alia* in HCJ 2757/96 **Alra'i v. Minister of Interior**, IsrSC 50(2) 18 (1996) that "to our knowledge this format has no parallel in the legal systems known to us". The above statement applies even more forcefully to a person who is only a resident.

57. And see also: Article 24(3) of the International Covenant on Civil and Political Rights of 1966; Article 7(1) of the Convention on the Rights of the Child, Treaty Series 31, 222 (opened for signature in 1989)); included in regional conventions (Article 4(a) of the European Convention on Nationality of 1997 (hereinafter: the **European Convention on Nationality**); Article 20 of the American Convention on Human Rights of 1978).

58. In **Zayud** the Honorable Justice Barak-Erez refers to the significance of international law:

> Hence, international law requires that great caution shall be exercised before the right to nationality is violated. In particular, it clearly objects to the adoption of arrangements that allow the deprivation of citizenship which leaves a person completely stateless. This position is based on the basic recognition of the negative consequences arising from lack of affinity to a particular country, without derogating from the great complexity associated therewith. This is, in my opinion, an important interpretive starting point which should be taken into account - but we must not stop here. (Paragraph 35 of the judgment of the Honorable Justice Barak-Erez in **Zayud**).

59. Legislation allowing the revocation of the status of a protected permanent resident constitutes a brazen breach of the law and the international legal norms undertaken by the state of Israel.

G. <u>The Amendment to the Law Violates Fundamental Rights</u>

G.1. General – residency as a condition for human dignity

60. The Amendment to the Law poses a potential threat to permanent residency status of the indigenous residents of East Jerusalem. This status underlies and is the seed giving rise to a collection of rights and interests that permanent residency facilitates.

61. The right to permanent nationality, to a stable status connecting a person to their homeland is a basic right integrated with a person's basic rights for dignity and liberty. Permanent residency facilitates equality before the law, political participation, continuous right to health and employment and accessibility to emergency services and socio-economic resources. In the absence of nationality the mere physical existence of a person in the world is in conflict with domestic state laws or may very easily find itself in this situation. Hence, nationality is a fundamental and material component of human identity and human dignity.

62. Section 5 of the Basic Law: Human Dignity and Liberty prohibits limiting a person's liberty. In the absence of status a person becomes an illegal alien anywhere in the world and as such is exposed to arrest, incarceration, deportation and recurring detentions. Section 2 of the Basic Law: Human Dignity and Liberty prohibits violating a person's life, body and dignity.

63. Hence, as shown above, a situation in which a person has no permanent status anywhere in the world is an unlawful situation which violates a person's dignity.

64. The Honorable Justice Vogelman described the deep violation of basic rights caused as a result of revocation of nationality in **Abu Arafeh**, pursuant to which the Law was enacted:

> There is almost no right which is not violated when a person, a native residing in the country for a considerable period of time is deported from their home following the revocation of their permanent residency status:

> the right to dignity, the right to liberty and the right to family life (paragraph 68)

65. The Honorable Justice Hendel has also referred to this matter in paragraph 16 of his judgment in **Abu Arafeh** and wrote:

> The revocation of residency exposes the holders of this status to the risk of deportation from Israel (see section 13(a) of the Entry Law), with all ensuing consequences – and entails the loss of different socioeconomic, employment and political benefits. It therefore violates their dignity and liberties. While it is true that permanent residents are not citizens, the Basic Law: Human Dignity and Liberty has taught us that, "there shall be no violation of the life, body or dignity of any person as such" – all the more so in the case of a permanent resident who has a substantial connection to the land.

66. Similarly, the Honorable Deputy President Joubran in paragraph 5 of his judgment in **Abu Arafeh** notes:

> Under the circumstances of the petition at hand, there is no dispute that the decision of the Minister of Interior violates fundamental rights requiring special protection (compare: 12 paragraphs 46-49 of the opinion of my colleague Justice U. Vogelman; paragraph 16 of the opinion of my colleague Justice N. Hendel). (Paragraph 5 of the judgment of the Honorable Deputy President as then titled, Justice Joubran, in **Abu Arafeh**).

67. Hence, the honorable court has pointed at the violation of the core of fundamental rights which violates human dignity, liberty and body as a result of depriving a person of the ability to continue living in their homeland and home, amongst their family, community, culture, the place whose language they speak and in which their entire world and anything which is dear to them is rooted. This is also the case if formally said person has status elsewhere or has another place to go to, with which they do not necessarily have any meaningful connections. Revocation of status also means deportation, loss of one's home, family, identity and sense of belonging.

G.2. Violation of the constitutional right to family life

68. Permanent residency enables maintenance and exercise of the constitutional right to family life in Israel and its revocation critically violates said right. For this matter see HCJ 7052/03 **Adalah - The Legal Center for Arab Minority Rights in Israel v. Minister of Interior** (May 14, 2006):

> The right to marry and to have family life, including the right of a minor to be with their parents, is the basis for the existence of society. The family unit is the basic unit of human society, and society and the state are built on it. It is not surprising, therefore, that the right to family life has been recognized by the international community as a basic right.

> This is also the law in Israel (Paragraph 47 of the judgment of the Honorable Justice Cheshin).

69. It was similarly held in HCJ 466/07 **Galon et al. v. Attorney General et al**. that the right to family life is a constitutional right, situated at the heart of the term human dignity (Ibid. paragraph 8 of the judgment of the Honorable Justice E.E. Levy).

70. Things to that effect were written by the Honorable Justice Barak-Erez in paragraph 14 of her judgment in **Zayud**:

> Distancing a person from their place of residence and displacing them entails a severe violation of their dignity and ability to exist as a social creature. The above, given the fact that a person's place of residence is not only a roof over their head but also raise social, family and identity issues (M. Stravropoulou, *The Right Not To Be Displaced,* 9 AM. U .J. INT'L L. & POL'Y 689, 717 (1994)).

The Honorable Justice Barak-Erez continues and subsequently states there as follows:

> Accordingly, to the extent that any person whose citizenship was revoked was living until now in Israel together with their family members, the revocation of the citizenship may violate their right to family life in their place of residence (see in this context my words in Abu Arafeh, paragraph 19 of my judgment. On the constitutional status of the right to family life in our legal system …

71. Following this, the Honorable Justice Barak-Erez clarifies that an alternative status does not cure the severe violation. The things which were said in that matter with respect to the revocation of citizenship apply even more forcefully and according to all of the circumstances to residents.

G.3. Violation of Equality

72. The Amendment to the Law is intended to be used against a certain Palestinian population and not against any other group. The above emerges from the explanatory notes to the Law in which the residents of East Jerusalem were expressly designated as the target of the legislation, and from statements made by public officials about the Law and its purpose as shall be explained in more detail below in the chapter discussing the purpose of the Law. Hence, the right to equality entrenched in the Basic Law: Human Dignity and Liberty as part of the right to dignity, is violated (see, for instance, HCJ 1113/99 **Adalah v. Minister for Religious Affairs**, IsrSC 54(2) 164).

73. Shai Lavi[11] notes with respect to the amendment to the Citizenship Law which also enabled revocation of status due to breach of allegiance, that the amendment to the law abandoned the general definition of "breach of allegiance", directed the new definition at Arab citizens

[11] *Punishment and the Revocation of Citizenship in the United Kingdom, United States, and Israel*, New Criminal Law Review: An International and Interdisciplinary Journal Vol. 13(2), 404, 419 (2011)

and was designed to facilitate the revocation of their citizenship (p. 418). The new arrangement which was adopted conforms to a large extent with an ethno-national model – marking the citizens who do not belong to the dominant ethno-national group as persons whose allegiance is in doubt.

74. The fact that the Law does not expressly state that it is limited to a specific group neither adds nor detracts in this case. To the extent that its purpose is not clear, the honorable court is referred to the words of the Honorable Justice Rubinstein in HCJ 466/77 **Galon v. The Attorney General** (January 11, 2012) in paragraph 24 of his judgment:

> However, I agree that the question of discrimination should not be examined only according to the language of the law, but also according to its actual impact; for the purpose of "determining the existence of discrimination the final result should be examined as it is reflected in the social reality" (HCJ 104/87 **Nevo v. The National Labor Court**, IsrSC 44(4) 749, 754 – Justice Bach; HCJ 4948/03 **Alhanati v. Minister of Finance** (not published).

75. The state of Israel is a party to the International Convention on the Elimination of all Forms of Racial Discrimination (Treaty Series 25, 457, ratified in 1979). According to Article 5 of this convention the states parties to the Convention are obliged to prevent and eliminate racial discrimination and secure the right of any person to equality before the law, regardless of their race, nationality or ethnic origin.

76. The discrimination embedded in the Law also constitutes a brazen breach of the state's obligation, entrenched in Article 2(1) of the Covenant on Civil and Political Rights:

> …to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

77. The Amendment to the Law's violation of universal human rights and guarantees for due process does not become proportionate and justified when it is limited to one group which is discriminated against. The contrary is true. When the law only adversely affects the "other", the violation of fundamental rights is much more severe. Special severity should be attributed to discrimination on the basis of race or nationality (see, HCJ 6698/95 **Ka'adan v. Israel Land Administration**, IsrSC 54(1) 258).

78. The failure to comply with these demands for allegiance is the basis for discrimination and imposition of limitations, as noted by the scholar Tamar Hostovsky-Brandes in "Loyalty, Citizenship and Social Solidarity" **Conditioned Citizenship – on Citizenship, Equality and Offensive Legislation** 31, 33 (Yosef Jabarin and Sarah Ozacky-Lazar Editors, 2016):

> "… in the social and political reality in Israel the requirement to be loyal to the state is precisely frequently directed at the state's Arab citizens…

> On the individual level, subjecting rights to acts of allegiance may serve as a cover for the violation of equality arguing that the violation does not arise from prohibited discrimination, such as, for instance, discrimination which is based on nationality, race or religion, but rather from the individual's personal choice not to abide by an obligation presented as a general and legitimate obligation. On the collective level, identifying the state with the Jewish nationality, leads to a situation whereby failure to identify with the national narratives or identifying with alternative or conflicting narratives is perceived as a breach of allegiance to the state and therefore unlawful. In both cases the use of the term 'allegiance' serves to justify revocation of rights or imposition of limitations by presenting them as violations which are not based on "prohibited discriminations" but rather on obligations which are presented as general and neutral and on the individual decision not to fulfill them.

G.4. Violation of freedom of movement

79. The right to freedom of movement is entrenched in the Basic Law: Human Dignity and Liberty and in international human rights law, *inter alia*, in Article 12(2) of the International Covenant on Civil and Political Rights (1966) which was signed by Israel in 1966 and was ratified in 1991, in Article 13 of the Universal Declaration on Human Rights (1948), in Article 2 of the Fourth Protocol of the European Convention on Human Rights ECHR, Article 22(2) of the American Convention on Human Rights (1969) IACHR and Article 12(2) of the African Commission on Human and People's Rights (AfCHR) as well as Article 35 of the Fourth Geneva Convention (1949).

80. And indeed the freedom of movement of Palestinians in the territories has also been recognized as a fundamental right in the Supreme Court's judgments. In HCJ 9593/05 **Morar v. Commander of IDF Forces in Judea and Samaria** (June 26, 2006), the Honorable Justice Beinisch holds that:

> Freedom of movement is one of the most fundamental human rights. We have noted that in our legal system freedom movement was recognized as an independent right as well as a derivative right arising from the right to liberty. Some even argue that this right derives from human dignity. Freedom of movement is also recognized as a fundamental right in international law and is entrenched in a host of international conventions.

81. In the absence of a permanent status, the freedom of movement of the residents is also adversely affected. Their ability to move within the area as well as their ability to maintain their status if they leave the country for a certain period of time, is impinged.

G.5. Violation of the child's best interest

82. The Amendment to the Law also violates the best interest of the children of the permanent residents. Those whose status will be revoked when they are still minors and those whose

parents' residency shall be revoked. In this state of affairs the children are at risk of losing their homes and families, to be torn from their parents or to live with parents with an inferior status, which hangs on nothing, without any stability and certainty. Children born to a parent whose status was revoked, may consequently also be deprived of status in their homeland, in a family and community which lives for generations in this place and which in the vast majority of cases has no real affinity to another place.

83. In addition, the Amendment to the Law also enables revocation of the residency of minors without any special qualification or protection. It is not a theoretical matter. In the past notice was given by the Minister of Interior of an intention to revoke the residency of a minor who was involved in stone throwing which caused the death of an Israeli, Alexander Levlovitch, in 2015.

84. In any decision affecting children, it is incumbent on the state to consider their best interest as a primary consideration. In Israeli jurisprudence the principle of the child's best interest is a fundamental and well rooted principle. In CA 2266/93 **A v. A**, IsrSC 49(1) 221, it was held by Justice Shamgar that the state should interfere to protect children's rights.

85. It seems that there is no need to mention that the principle of the child's best interest "is the paramount and most crucial consideration" (HCJ 5227/97 **David v. The Great Rabbinical Court**, IsrSC 55(1) 453, 460). Other considerations "...will be secondary considerations, and they shall all bow to the consideration of the child best interest" (CFH 7015/94 **Attorney General v. A,** IsrSC 50(1) 48, 119). The words of the Honorable Justice Or in CA 3077/90 **A v. A** IsrSC 49(2) 578.

G.6. Violation of the right to health and bodily integrity

86. Leaving people without status in their land entails the revocation of the entirety of their rights in their home and family arena including the right to have access to health service which is available to residents. See LCA 4905/98 **Gamzo v. Yeshayahu** (March 27, 2001). See also Gai Mundlak, Social – Economic Rights in the New Constitutional Discourse, Labor Annual Review 7, page 65).

87. The right to protect one's life and body includes the right to bodily integrity, health and medical treatment. The right to health of any person as such, is a fundamental constitutional social right. As stated by the Honorable President Barak:

> Human dignity includes, as we have seen, protection of minimal human existence (HCJ 161/94 **Atari v. State of Israel** (March 1, 1994).

88. The International Covenant on Economic, Social and Cultural Rights (1966) Treaty Series 1037, which was ratified by Israel in 1991, establishes in Article 12 the obligation to protect the right to health and "The creation of conditions which would assure to all medical service and medical attention in the event of sickness". We should add to that that according the norms of Jewish law, every person is created in the image of God

and the principle of the preservation of human life (*Pikuach Nefesh*) should be maintained.[12]

89. Hence, the legislation severely violates the right to health and bodily integrity.

H. <u>The Constitutional Examination</u>

H.1 General

90. The Petitioner is aware of the fact that the honorable court will not easily invalidate a law passed by the Knesset. Nevertheless, it is an extreme, unconstitutional law, leading to extreme consequences. A stain on the laws of Israel so long as it remains there.

91. Appropriate for this matter are the words of the Honorable Justice Arbel in HCJ 7146/12 **Adam et al. v. The Knesset** (September 16m 2013) paragraph 67:

> … this court may not disregard a violation of human rights which does not meet the requirements of the limitation clause explicitly established in the Basic Laws. The court is entrusted with the duty to ensure that the legislative work of the Knesset does not violate to an extent greater than is required human rights which are entrenched in the Basic Laws, and it may not avoid doing this work. It must therefore do it while balancing in a sensitive and conscious manner between the principles of majority rule and separation of powers and protecting human rights and the fundamental values underlying Israeli system of government.

92. The cumulative violation of human rights caused by the Amendment to the Law should be considered. Therefore, even if it is held that the violation of one of the rights in and of itself does not cross the threshold of unconstitutionality, the accumulation of the violations certainly brings us to this threshold (see on this matter MCrimApp 8823/07 **A. v. State of Israel** (February 11, 2010)).[13]

93. When the Knesset requests, through a political process, a move whose connection to democracy, as a regime which should also protect the rights of the individual and the minority, is merely formal, a move whose declared purpose is far from its true purpose – to so severely violate human rights and fundamental principles of the system, there is room to exercise judicial scrutiny over its actions. The scrutiny is even more crucial when the harm is caused to subjects who are unable to vote for the Knesset and have no representation or "voice" among elected officials. Appropriate are the words said in MCrimApp **A. v. State of Israel** (February 11, 2010):

> The principled concept of Israeli jurisprudence is that constitutional provisions should be adhered to even when faced with the threat of

[12] HCJ 201/09 **Doctors for Human Rights v. Prime Minister** (January 19, 2009) Paragraph 6 of the judgment of Justice Rubinstein

[13] For a comprehensive discussion of the doctrine of cumulative violation see "Blondheim and Mordechai, Towards the Doctrine of the Cumulative Effect: Aggregation in Judicial Constitutional Scrutiny, **Mishpatim 44** (5774) 569

> terror. Indeed, "this is the fate of democracy - it does not regard all means as acceptable, and not all of the ways taken by its enemies are open before it. A democracy must sometimes fight with one hand tied behind its back (President A. Barak, HCJ 5100/94 **Public Committee Against Torture v. Israel Government**, IsrSC 53(4) 817, paragraph 39 (1999)). However this is the secret of the power of a democratic regime which firmly insists on its principles and fundamental values even when its counter-party does not hold similar principles (see also HCJ 769/02 **Public Committee Against Torture v. Israel Government** (not yet published, December 14, 2006)).

94. Respecting human rights also in emergency situations strengthens the forces defending and protecting public safety. This is the "credo" of the court in the state of Israel as stated by the Honorable President Barak in HCJ 7052/03 **Adalah - The Legal Center for Arab Minority Rights in Israel v. Minister of Defence et al.** (May 14, 2006) paragraphs 20-21:

> The Basic Laws do not recognize two sets of laws, one that applies in times of peace and the other that applies in times of war. They do not contain provisions according to which constitutional human rights recede in times of war… Israeli constitutional law has a consistent approach to human rights in periods of relative calm and in periods of increased fighting. We do not recognize a clear distinction between the two. We do not have balancing laws that are unique to times of war…
>
> Moreover, it is not possible to draw a clear distinction between the status of human rights in times of war and their status in times of peace. The dividing line between terror and calm is a fine one. This is the case everywhere. It is certainly the case in Israel. It is not possible to maintain it over time. We must treat human rights seriously both in times of war and in times of calm. We must free ourselves from the naïve belief that when terror ends we will be able to set the clock back. Indeed, if we fail in our task in times of war and terror, we will not be able to carry out our task properly in times of peace and calm. From this perspective, a mistake made by the judiciary in a time of emergency is more serious than a mistake of the legislature and the executive branch in a time of emergency. The reason for this is that the mistake of the judiciary will accompany democracy after the threat of terror has already passed, and shall remain in the case law of the court as a magnet for the development of new and problematic rulings. This is not the case with mistakes made by the other powers. These will be cancelled and usually no-one will remember them…

95. In the case at hand, the constitutional examination, according to the Basic Law: Human Dignity and Liberty must lead to the conclusion that the Law does not meet the conditions of the limitation clause established in Section 8 of the Basic Law. The law was not enacted for a proper purpose, it does not befit the values of the state of Israel and does not meet the tests of proportionality, and should therefore be invalidated.

96. It should also be noted that the validity of laws clause, Section 10 of the Basic Law: Human Dignity and Liberty, does not apply in the case at hand. The validity of laws provision does not apply to a new amendment of an existing law. It should be examined whether the law as amended meets the conditions of the limitation clause established in Section 8 of the Basic Law: Human Dignity and Liberty (see, CA 6821-93 **Bank Hamizrachi v. Migdal**, IsrSC 49(4) 221, 262 (1995). It was indeed held in **Zayud** that this section does not apply in these circumstances and that judicial scrutiny may not be prevented by virtue thereof. See for instance paragraph 28 of the judgment of the Honorable President Hayut.

H.2. The Law was not enacted for a proper purpose

97. The "proper purpose" test is composed of three sub-tests, as described in HCJ 466/07 **Galon v. Attorney General** (January 11, 2012) by the Honorable Justice E.E. Levy in paragraph 22 of his judgment:

> A law must surpass three hurdles, one after the other, for its concrete purpose to be deemed proper: [a] it should be aimed at attaining social goals, namely, serve a real public interest. This requirement may be referred to as the interest test; [b] this interest should be important enough to justify a violation of a protected fundamental right, considering the nature of the right and the intensity of its violation… this is the necessity test… [c] the law must befit a constitutional regime which protects human rights. This is the sensitivity to the right test."

98. A proper purpose is a purpose as noted by the Honorable President Barak in HCJ 6427/02 **The Movement for Quality Government in Israel v. The Knesset**, IsrSC 61(1) 619, in paragraph 52 of his judgment:

> We are of the opinion that the purpose of a law violating human rights is proper if it is designed to realize social objectives which conform with the values of the state in general, and which are sensitive to the place of human rights in the social system as a whole.

99. On the purpose of the Amendment to the Law one can learn from the explanatory notes to Government Bill 1204 (February 26, 2018) which state as follows:

> The proposed amendment draws a distinction between immigrants who arrive in Israel and are granted status therein and persons whose circumstances are much more complicated, such as East Jerusalem residents, who have been residing in the city for many years under the status of permanent residency. With respect to immigrants who receive permanent residency status, it is proposed that the Minister of Interior would be able to revoke their status if it was obtained on the basis of false information, if there is a threat to public order or safety (…) and due to breach of allegiance to the State of Israel. With respect to permanent residents whose circumstances are more complex, such as East Jerusalem residents, it is proposed that the Minister of Interior

would have the power to revoke the status solely due to breach of allegiance or if the status was given on the basis of false information.

Exhibit P/8 Government Bill 1204

100. The explanatory notes of the Law clarify that the purpose of the Law is not to protect public order and safety. In fact, the legislator emphasizes that it does not authorize the Respondent to revoke the permanent residency status of permanent residents belonging to the indigenous population of East Jerusalem for these reasons. The declared purpose of the legislator in enacting the Law was to entrench in law Respondent's power to revoke the residency of persons belonging to the indigenous population of East Jerusalem as a sanction. In addition, it emerges from the publications surrounding the enactment of the Law that another, covert purpose existed, the desire to satisfy certain communities and revenge.

101. Contrary to **Abu Arafeh**, where the majority justices were of the opinion that the purpose of the Law in its previous version as it appears in Section 11(a)(2) of the Entry into Israel Law, was to protect public order and safety (see inter alia **Abu Arafeh**, paragraph 28 of the judgment of the Honorable Justice Hendel; paragraph 4 of the judgment of Deputy President, as then titled, the Honorable Justice Rubinstein; paragraph 13 of the judgment of the Honorable Justice Melcer; and paragraphs 45, 66 and 68 of the judgment of the Honorable Justice Vogelman), the explanatory notes of the Law unequivocally clarify that the purpose of the Law is not to protect public order and safety.

102. In fact, the legislator emphasizes that it **does not** authorize the Respondent to revoke the permanent residency status of permanent residents belonging to the indigenous population of East Jerusalem for these reasons. We saw that unlike the legislation concerning citizens and the declared purpose which was established in that regard, this purpose does not apply to the case at hand since the status of permanent residency does not embody, *ab initio*, a declaration regarding the connection between the individual and the state – a connection which is associated, as was held in **Zayud**, with the high status of citizenship. We shall elaborate.

103. The state argued in the past and this is also manifest in the broad standards for implementation of the Law which were distributed on September 10, 2020, that the arrangement has three purposes, a declarative purpose, a security-deterring purpose and a security-preventive purpose.

Exhibit P/9 "Handling and Review of applications for the revocation of permanent residency on the grounds of breach of allegiance" document as presented in HCJ 367-19.

104. In **Zayud** it was held that the declarative purpose, which was held to be the main purpose of the arrangement for the revocation of **citizenship** on the grounds of breach of allegiance (see paragraph 50 of the opinion of the Honorable President Hayut in **Zayud**) can satisfy the limitation clause. However, the other two security purposes are problematic and raise difficulties. The Supreme Court did not hold that the deterring purpose or the preventive purpose can be accepted as justifying, in and of themselves, revocation of citizenship. Accordingly, in paragraph 56 of her judgment, the Honorable President writes as follows:

> In these circumstances I did not find it necessary to resolve the question of whether the deterring purpose is a proper purpose in the context of revocation of citizenship.

And subsequently in paragraph 109

> In the proceedings before this court it was clarified that this is not the main purpose of the arrangement and that its main purpose, which can be regarded as a proper purpose, is the declarative purpose.

And the Honorable Justice Hendel writs with respect to the deterring purpose in paragraph 5 of his judgment that it:

> raises difficulties in and of itself, both vis-à-vis the measure chosen to realize it…

105. With respect to the deterring purpose it was held by the Honorable Justice Hayut that the existence of any such purpose is in doubt, and that even if the Law has an ancillary "deterring effect", the arrangement should not be examined in light of this purpose (**Zayud**, paragraph 58).

106. It is also clear that there is no security-deterring benefit in the revocation of residency since the Amendment to the Law provides that upon the revocation of the permanent residency the resident shall remain in Israel with a stay permit. In **Zayud**, it was noted by Justice Hayut in paragraph 57 of her judgment that in view of the fact that the person remains in Israel the revocation of citizenship has no deterring effect, and the same applies to the revocation of permanent residency. And in the words of the President:

> With respect to a person residing in Israel and not holding another citizenship, an obligation is anyway imposed by the Law to give them a stay permit. Accordingly, they continue to stay in the country notwithstanding the revocation of their citizenship. Hence, the revocation of the citizenship in such circumstances has no preventive effect.

107. We are therefore left with the declarative purpose as the main purpose which was accepted in **Zayud**. This purpose clearly does not exist in the circumstances of permanent residents.

108. The above is clarified in the judgment of the Honorable Justice Hendel in **Zayud**, who defines the declarative purpose as follows:

> Anyone who has brazenly breached their basic duty of allegiance to the state – and such are severe acts of terror or espionage – **does not deserve to belong to its political community…** (Paragraph 3, emphasis added – A.L.)

109. The Honorable President Hayut notes in Paragraph 82 of her judgment in **Zayud** that:

> The main declarative benefit **arises from the mere revocation of citizenship which reflects the close and unique connection** (of citizenship – A.L.) **between the individual and the state** (emphases added – A.L.)

110. We saw above, that Israel is not interested and does not require the residents of East Jerusalem to pledge allegiance and be part of the political community as a condition for permanent residency and it even does not enable the residents to be part of the political community. The state of Israel annexed residents of an enemy state and did not expect them to become Israeli residents similar to those within the Green Line, and it does not treat them as such. Therefore, since it was held in **Zayud** that the declarative purpose is the main purpose of the demand to be loyal to the state, it cannot be argued that it is a proper purpose in the context of the residents of East Jerusalem, who are not citizens. As described in **Zayud**, the status of a person who breached the duty of allegiance is "downgraded" to the status of permanent residency.

111. It should also be emphasized that the legislative process reviewed above shows that the decision whereby the status of an indigenous resident should not be revoked, unlike with respect to an immigrant, on a security basis, but rather on the grounds of breach of allegiance, was a conscious decision. In fact, the broad language of the Law (like the criteria which were separately outlined) does not enable to distinguish between these two categories – the one which should not apply to permanent residents as was expressly determined and the one entrenched in the Law.

112. As seen above, the residents of East Jerusalem received their status when the area in which they were living was occupied from an enemy state. Allegiance was not expected of them as it is expected of the citizens of the state and they are required to pledge allegiance to the state only if they wish to be nationalized. Over the years the policy was to treat them as a third wheel, to brazenly discriminate against them and acknowledge their connection and affinity with the territories, while separating them from the other residents of Israel, including the Jewish residents of Jerusalem. Hence, it cannot be argued that the Law which enables to revoke their status for a purpose which is mainly declarative (as it emerges from the court's holdings in **Zayud**) was enacted for a proper purpose.

113. And it should be reminded, citizenship reflects *inter alia* the strong connection between the individual and the state:

> With respect to the connection between the individual and the state, the institution of citizenship reflects the strongest connection possible between them (Amnon Rubinstein and Barak Medina The Constitutional Law of the State of Israel Volume B – Government Authorities and Citizenship 1071 (2005) (hereinafter: Rubinstein and Medina); Yaffa Zilbershats "Citizenship: What is it and What will it be?" Mehkarei Mishpat 16 55, 55 (2000) (hereinafter: Zilbershats "What is Citizenship")).
> (Paragraph 32 of the judgment of the Honorable President Hayut in **Zayud**).

Hence, the causal and declarative connection in the context of the revocation of citizenship in such circumstances was established in **Zayud**. Such a connection obviously does not exist in the context of residency (and see **Awad**, concerning the connection of permanent residency).

114. It emerges from the above that the main purpose of the legislator in enacting the Law was to entrench in law Respondent's power to revoke the residency of persons belonging to the indigenous population of East Jerusalem **as a sanction**.

115. There is no dispute that state authorities are entitled, even obligated to take action against any person who undermines national security as well as the safety and security of its residents. However, a penalty in the form of revoking the permanent residency of East Jerusalem residents, who are also entitled to protections under international law and humanitarian law, is not a proper purpose **under immigration and status laws**. The authorities have criminal proceedings and many other means of enforcement available to them. Authorizing the Respondent, who is a political figure, to impose such a draconian sanction of revocation of residency status, with its critical consequences, has no proper purpose, all the more so when the matter concerns indigenous people whose status was given to them as a result of annexation.

H.3. The Law does not befit the values of the state

116. A further reason why the Law does not comply with the limitation clause is that the Law does not befit the values of the state of Israel.

117. The state of Israel is founded on democratic values which include respect for human rights as stated in HCJ 794/98 **Obeid v. Minister of Defence**, IsrSC 55(5) 769, 775:

> The State of Israel is a State of law; the State of Israel is a democracy that respects human rights, and gives serious weight to humanitarian considerations. We take these considerations into account because compassion and humanity are ingrained in our character as a Jewish and democratic State; we take these considerations into account, because we appreciate and honor the dignity of any person, even if they are amongst our enemies. We are aware that such an approach seemingly gives an "advantage" to terror organizations lacking any humanity. But this is a transient "advantage". Our moral approach, the humanity in our position, the rule of law that guides us – these are all important components of our security and our strength. At the end of the day, this is our own advantage."

118. Prof. Aharon Barak writes in his book **Interpretation in the Law** that "the values of a democratic state can be learnt from the general and particular approach of the international conventions concerning human rights" which as we have seen, adamantly object to the practice of revocation of residency, particularly of native residents (see, Aharon Barak, **Interpretation in the Law**, Third Volume (1994) page 354).

119. As is known, the position of the honorable court is that in case of conflict between domestic Israeli law and international law, domestic law prevails. Nevertheless, the approach taken

in Israeli jurisprudence is to strive, as much as possible, for congruency between domestic and international law, based on the presumption that the legislator strives to enact domestic legislation that is consistent with international law, and that statutes should be interpreted accordingly. The Honorable Justice Barak-Erez writes as follows in paragraphs 15-17 of her judgment in **Abu Arafeh**:

> Beyond the hearing focusing on Israeli law as such, I am of the opinion that this is one of the cases where weight should be given to the interpretation of the Law in a manner consistent with international law.
>
> I am of the opinion that where a provision of a general and comprehensive nature is under review, and its interpretation is the subject of genuine debate, special weight should be given to the norms of international law.
>
> Therefore, several norms recognized by international law, as well as their underlying principles, should be considered, to the extent that these norms do not directly obligate the State of Israel.

120. In paragraph 25 of her judgment in **Zayud**, the Honorable Justice Barak-Erez referred to the weight which should be given to the provisions of international law:

> My position is that "where a provision of a general and comprehensive nature is under review, and its interpretation is the subject of genuine debate, special weight should be given to the norms of international law" (see **Abu Arafeh**, paragraph 16 of my judgment).

121. The Amendment to the Law which is challenged in this petition is in conflict with the obligations of the state to protect human rights as well as with its obligations according to international customary law and its obligations according to conventions some of which were ratified by it and others were signed by the state which undertook to act in their spirit, as specified below.

122. Prof. Eyal Benvenisti stressed that there is room to interpret the basic laws in view of the international undertakings of the state of Israel, and specifically in view of the International Covenant on Civil and Political Rights, on the basis of both the "presumption of consistency" and the possible argument that the two basic laws of 1992 were adopted for the purpose of upholding the provisions of the convention:

> More specifically, the international standards on human rights can help in interpreting Israel's two Basic Laws concerning human rights. In addition to the general arguments for compatibility described above, one could argue that the Basic laws have been enacted in fulfillment of the duty under Article 2(2) of the 1966 Covenant "to adopt such legislative or other measures that may be necessary to give effect to the rights recognized in the **[**1966 Covenant]". …

> Therefore, in interpreting the rights under the Basic Laws, as well as the limitations on those rights, international standards, first and foremost those enunciated in the 1966 Covenant, are of particular significances. Note that this claim not only imports international standards to Israeli human rights law, but also elevates these standards to the level of entrenched law, thereby possibly restricting the competence of the Knesset to derogate from them, and influencing the interpretation of other laws that impinge on human rights."
>
> Eyal Benvenisti, *The Influence of International Human Rights Law on the* Israeli *Legal System: Present and Future*, 28 ISRAEL LAW REVIEW 136, 148-150 (1994)

123. In his book on Constitutional Interpretation Prof. Aharon Barak also alludes to the principle according to which the provisions of the basic laws should be interpreted (and not only the provisions of legislation) pursuant to the "presumption of consistency". As opposed to comparative law, which serves as an "inspiration" in the interpretation of basic laws, international law receives a "special interpretive status" based on the assumption that the basic laws do not stand in conflict with the international commitments of Israel.

> A special interpretive status [in the interpretation of the basic laws, A.L.] should be given to international conventions on human rights to which Israel is a party. These conventions reflect the objectives of the international community and have affected the formulation of the domestic law. The need to take these conventions into account arises from our desire to be equal members of the international community, and from the assumption that domestic law does not contradict international law.

Aharon Barak, **Interpretation in the Law, Third Volume – Constitutional Interpretation** (1994), page 237.

124. International law is also used by the court to examine whether the law was enacted for a proper purpose (see, for instance, HCJ 7146/12 **Adam et al. v. The Knesset** (September 16, 2013) paragraph 91 of the judgment of the Honorable Justice Arbel).

125. Article 14 of the International Covenant on Civil and Political Rights of 1966 (signed by Israel on December 19, 1966 and ratified by it on October 3, 1991) provides as follows:

> No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

The Amendment to the Law creates a new and unique sanction for permanent residents belonging to the indigenous population of East Jerusalem in addition to criminal charges which may be filed against them. The sanction is based on a theoretical philosophical argument with respect to residents who have never pledged allegiance to the state that had occupied their natural territory and annexed it to its territory, without granting them

citizenship, but subject to a legal obligation to enable them to continue to live on their land, in their country. Indeed, this Law does not form part of the criminal procedure but is totally based on criminal law since the new sanction created by it is based on offences established by the Counter Terrorism Law, 5776-2016. Hence, the Law contradicts the state's undertakings according to this covenant.

126. The Amendment to the Law is also in conflict with Article 31 of the Convention Relating to the Status of Stateless Persons (signed by Israel on October 1, 1954 and ratified on December 23, 1958). Said Article also imposes limitations on the deportation of persons who are not citizens. There is no doubt that the limitations set out in the Convention apply to the indigenous residents of East Jerusalem. The fact that the Law disregards the limitations of which the Respondents were aware before the enactment of the Law renders it inconsistent with the values of the State of Israel and therefore unconstitutional.

127. In addition, while it is true that East Jerusalem was annexed to Israel and that Israeli law was applied to the city and its residents, under international humanitarian law, the original population of East Jerusalem, the indigenous people of the city and the land, are "protected persons" entitled to protections afforded by international humanitarian law, including the Hague Regulations respecting the Laws and Customs of War on Land and its Annexes (1907) and the Fourth Geneva Convention of 1949.

128. Thus, although ordinarily, the legislator is presumed to be striving for internal legislation consistent with international law, with respect to the Amendment to the Law, it is clear that said presumption is refuted. The state is aware of the provisions of international customary law applicable to it as well as of the conventions by which it is bound whether because it ratified them or because it signed them and undertook to act according to their spirit, and knowingly acts contrary to said conventions.

129. Hence, in their conduct, the Respondents knowingly enacted a law conceived and born in sin, inconsistent with the values of the State of Israel as a Jewish and **democratic** state, a member of the family of nations, bound by international "customary law" and international conventions for the protection of human rights which it ratified, conventions the spirit of which it undertook to follow and the provisions of which it undertook to uphold.

130. The Respondents cannot knowingly enact a law that conflicts with international and humanitarian law and argue, after the fact, that domestic law trumps international law and international humanitarian law.

H.4. The Law is not proportionate – the harm caused by the Amendment to Law is greater than is required

131. The Law does not meet the three tests of proportionality: the rational connection between the means which violates the right and the purpose, the least injurious measure test and the proportionality test in the [narrow] sense, as presented for instance by President Barak in HCJ 1715/97 **Israel Investment Managers Association v. Minister of Finance,** IsrSC 51(4) 367, 385.

132. The proportionality tests also apply vis-à-vis the security consideration, the applicability of which is in doubt (see, HCJ 2056/04 **Beit Sourik Village Council et al., v. Government of Israel et al**., TakDC 2004(2), 3035; HCJ 3477/95 **Ben-Atiya v. Minister of Education, Culture and Sports**, IsrSC 49(5) 1; HCJ 4644/00 **Taffora Tavori Ltd. v. The Second Authority for Television and Radio**, IsrSC 44(4) 178 (2000); HCJ 2355/98 **Israel Stamka v. Minister of Interior**, IsrSC 53(2) 728 (1999)).

133. The harm embedded in the Law is severe and disproportionate.

First, as specified above, the Law, the declared purpose of which is to authorize Respondent 1 to impose sanctions on the population of East Jerusalem, has no underlying purpose, let alone a proper purpose. Criminal law, as aforesaid, is the main avenue for penalizing offenders, and once penalized under criminal law, there is no room to penalize them further for the same acts for which they were penalized in the criminal proceeding.

Second, considering the fact that the official purpose of the Law is precisely and solely to impose an additional sanction on any person considered by Respondent 1 for revocation of permanent residency - and assuming that it is not merely an act of revenge - it is clear that the harm inflicted by the Law outweighs the benefit gained by using the draconian powers it seeks to grant Respondent 1. The severe, blatant impingement on fundamental human rights is undisputed, as was held in **Abu Arafeh** cited above and in **Zayud** in which revocation of citizenship was discussed.

134. The fact that the harm inflicted by the Law is greater than necessary is also evinced by the State's position in **Abu Arafeh**, as stated in paragraph 19 of the judgment of the Honorable Justice Hendel:

> It should be emphasized that the material before us shows that the state does not deny its obligation to exercise the power of revocation in "a very limited manner," being aware of the severe ramifications that such a step has on permanent residents. On the substantive level, it was clarified that the authority will be exercised only when the duty of allegiance to the state, at its most basic level, is breached or following "extreme harm" to national security and state sovereignty...

135. Despite the state's undertaking before the honorable court in **Abu Arafeh** that it shall impose the sanction of revocation of status in "a very limited manner", only when "the duty of allegiance to the state, at its most basic level, is breached" and only "**as a last resort**", it is already clear that the Law breaches this obligation. The above emerges from both the language of the law and the decisions made by the Minister of Interior after the Law had passed with respect to permanent residents represented by the petitioner and the criteria which were published.

136. In addition, the fact that residency is revoked by way of an administrative decision and that an application to the court for this purpose is not required, is yet another factor adding to the illegality of the procedure, the above contrary to the revocation of citizenship on the grounds of breach of allegiance in which "the decision to revoke citizenship is not made by the political bodies or by any administrative body but rather by a judicial instance" (see paragraph 75 of the opinion of the Honorable President Hayut in **Zayud**).

When residency is revoked, the resident is the one that should apply to the court, satisfy the burdens and bear the costs involved in the application initiated by them and is in an inferior position opposite the authority, both in terms of information and resources, in a manner which reduces their chances to cancel the decision which are slim to begin with.

137. Also appropriate for this matter are the words of the Honorable Justice Barak-Erez in paragraph 31 of her judgment in **Zayud**, discussing the impact of the manner of implementation of this procedure on its policy, emphasizing the protections which exist in the revocation of citizenship procedure which requires the approval of the court – unlike the revocation of residency procedure which is invoked by the executive authority.

138. It emerges from all of the above that the Law does not comply with all three proportionality tests. The Law does not comply with the required rational connection test since the **measure** chosen by the legislator to promote – **a sanction** – does not promote any purpose – objective – that it purports to promote, particularly in view of the fact that sanctions under the criminal law are in any event imposed on the subject matter of the decision. The Law also fails to comply with the second proportionality test, according to which the **least injurious option among several possible alternatives** which may achieve the goal should be chosen. The fact that the Law concerns persons, who are in any event subjected to severe sanctions, negates by definition the possibility that the legislator chose the least injurious option to realize the purpose of the Law – which as aforesaid is entirely unclear.

139. And we saw that the declarative purpose does not apply to permanent residents, that the deterring purpose has not been proven and that this purpose and the deterring purpose cannot stand on their own.

140. Furthermore. Finally, the Law also fails to satisfy the third proportionality test also known as the proportionality test in its narrow sense. This test requires proof that the benefit in attaining the purpose sought by the injurious law is greater than the damage caused by using the injurious measure set out therein. However, as clarified above, the Petitioner maintains that the fact that the case herein concerns the imposition of further sanctions on persons who are already subjected to severe sanctions in the framework of criminal proceedings proves that the Law has no purpose or benefit, let alone an appropriate purpose. On the other hand, the harm caused by the Law, which is knowingly inconsistent with international law and international humanitarian law, to the values of the state as a democratic state, and to the person who is the subject of the decision, is unbearable.

141. We have also seen that the revocation of residency with respect to a person having no other status was held in Zayud as disproportionate, and the above applies even more forcefully to the case at hand (see, for instance, **Zayud**, paragraphs 80 and 86 of the judgment of President Hayut, paragraph 1 of the judgment of the Honorable Deputy to the President Hendel, paragraph 17 of the judgment of the Honorable Justice Barak-Erez, see and compare paragraph 10 of the judgment of the Honorable Justice Vogelman, and the judgment of the Honorable Justice Baron).

I. <u>The Criteria are broad, are not set out in law and do not provide the required protection against the harm</u>

142. In **Abu Arafeh**, the court referred to the requirement that a legislative act that authorizes a violation of fundamental rights contain a clear, unequivocal, explicit and detailed authorization, that the standards for the parameters permitting the violation encapsulated in the power be established by primary legislation and that the criteria for exercising this power be established by secondary legislation. See in particular paragraph 38 of the opinion of the opinion of the Honorable Justice Barak-Erez (and paragraph 54 of the opinion of the Honorable Justice Vogelman in **Abu Arafeh**). The Honorable Justice Barak-Erez writes as follows:

> These difficulties require, at least, that the issue be regulated by legislation in an explicit and detailed manner. Presumably, should the Knesset decide to regulate the matter, it will take into account the specified considerations and produce a detailed arrangement consisting of principles, causes and standards designed to determine in what cases and under what circumstances the authority to revoke permanent residency should be exercised. Needless to point out, if such legislation is passed – similar to other countries – each and every decision made thereunder will have to independently meet the lawful tests under administrative and constitutional law – on its merits, and I obviously express no position on this issue…

143. And the Honorable Justice Vogelman writes in paragraph 52 of his judgment in **Abu Arafeh** that:

> Alongside the requirement for explicit authorization, our jurisprudence has expressed the view that when an act that violates fundamental rights is in question, the presence of an explicit, yet vague, general and sweeping legal power is insufficient, and a clear authorization "establishing general standards for the material parameters of the permitted violation in secondary legislation" should be demonstrated. In this context, it was held that "the level of detail the authorization requires will be derived from the magnitude of the violation of the protected right, from the nature of the matter and the context of things"…

144. Following the criticism leveled by the Supreme Court Justices in **Abu Arafeh** on the ambiguity of the conditions for the revocation of status, after the enactment of the Law while the matter was pending, a document was compiled in the Ministry of Justice specifying criteria for the revocation citizenship and residency, captioned "Handling and Examining Applications for the Revocation of Permanent Status on the grounds of Breach of Allegiance".

145. At the outset it should be said that in view of the unconstitutionality of the Law, no secondary legislation or procedure can empower the authority to violate rights by virtue of an unconstitutional law. In addition, the document does not provide a proper response to the statements made in **Abu Arafeh** at least in view of the fact that it is neither primary

nor secondary legislation enacted by the Knesset. It has already been held in paragraph 53 of the judgment of the Honorable Justice Vogelman in **Abu Arafeh** that:

> The importance of regulating an administrative power to violate fundamental rights and the criteria for exercising it **in legislation** also derive from the principle of the rule of law, which demands that any legislative act be "clear, definite and comprehensible such that members of the public are able to manage their affairs accordingly" (HCJ 2740/96 Shansi v. Diamond Supervisor, Ministry of Trade and Industry, IsrSC 51(4) 481, 520 (1997)); and from the duty of governmental fairness, which includes the obligation to warn individuals prior to any governmental act involving a violation of their rights, and give them the opportunity to direct their conduct so as to protect their rights… (Emphasis added – A.L.)

146. To the crux of the matter, it shall be briefly stated that the criteria and standards document which as aforesaid is neither primary nor secondary legislation, refers in its beginning in a unified manner to the revocation of citizenship and residency. According to the document, the purposes of the two arrangements are the same, declarative, deterrent and preventive. In stark contrast to the statement regarding a limited exercise of the power, the document itself allows and leaves a very broad discretion to the authority to impinge on permanent status. It leaves things vague and does not soften the severe harm inherent in the Amendment to the Law, but only exacerbates it and reveals its purpose and the intention to extensively apply it - in a way that illustrates the illegality of the arrangement.

J. <u>Absence of Procedural Protections</u>

147. Contrary to revocation of citizenship, the revocation of residency does not involve the court in its positive part and determines that the Minister of Interior may revoke residency if it has been proven to his/her satisfaction that the permanent resident had breached the duty of allegiance. The absence of the court's prior protection only exacerbates the illegality.

148. The Honorable Justice Barak-Erez discusses the importance of the procedure, which also affects the proportionality of the arrangement, writing in paragraph 31 of her opinion in **Zayud** the following, which also apply to the procedure of the revocation of residency:

> Revocation of citizenship must be done in the framework of due process according to objective standards and pursuant to the law (see: Article 8(4) of the Convention relating to the Status of Stateless People). Hence, it is for good reason that laws relating to the revocation of citizenship must include an appropriate arrangement setting out not only the grounds for the revocation but also guarantees securing that the procedure is exercised in a fair and proper manner. The above is consistent with the detailed provisions of Amendment No. 9 concerning a court hearing in an application for revocation of citizenship, which as a general rule should be held in the presence of the person who is the subject matter of the application and in the presence of their attorney.

149. In this matter it is interesting to compare with the draft Citizenship Law (Amendment No. 9), mentioned in paragraph 75 of the opinion of President Hayut in **Zayud**, where it was written that the revocation of such an important right should be done in a judicial rather than in an administrative procedure, as stated by the Honorable President in paragraph 87 of her judgment:

> The violation of the right to citizenship caused by the arrangement is indeed severe – particularly if following its revocation the person whose citizenship is revoked remains stateless – but it cannot be severed from its circumstances and from the provisions of the arrangement as a whole which limit its scope and satisfy the requirements of proportionality. Concretely, in this context the internal balances which were established in the arrangement for the revocation of citizenship in the framework of Amendment No. 9 should be noted (paragraph 75 above), and primarily the provision granting the power to revoke citizenship to a judicial instance…

150. It was further held in **Zayud** that as a general rule conducting the proceedings within the framework of the criminal proceedings should be preferred, as the latter enables granting weight to the criminal penalty in the context of making the decision and when the panel is familiar with and delved into the evidence and can therefore apply the necessary balances in this context as well. With respect to the revocation of the status of permanent residents, the same route of having the proceeding conducted within the criminal proceedings, which according to the court should be given clear preference, is not at all available. In the case at hand, fundamental rights are crucially violated without the need to press charges for the suspicions directed against the person whose rights are violated and notwithstanding the presumption of innocence.

151. Due to the closeness between the right to citizenship and the right to residency of the residents of East Jerusalem, it is unclear how the revocation of residency in administrative proceedings rather than in judicial proceedings can be justified. Clearly, Respondent 1 must not be allowed to revoke the permanent residency of a person in an administrative decision. The difficulty intensifies in view of the fact that revocation of citizenship leads to a situation of residency, while revocation of residency may lead to a situation of actual deportation – absence of any country to which a person belongs. For this reason also the Law should be invalidated.

K. <u>Conclusion</u>

152. The residents of East Jerusalem are indigenous residents, whom Israel annexed into its territory contrary to international law. These residents have never been required, and there is no lawful way to obligate them to be loyal to the state of Israel as a condition for their residency. The revocation of residency on the grounds of an alleged breach of allegiance does not serve an appropriate purpose and a declarative purpose should not be attributed thereto. The revocation of residency is yet another sanction which violates the core of fundamental human rights. It is disproportionate and does not comply with the tests of the limitation clause.

153. The honorable court is therefore requested to issue an *order nisi* as requested in the beginning of the petition, and after receiving Respondents' response, render it absolute.

154. The honorable court is also requested to order the Respondents to pay trial costs and legal fees to the Petitioner.

Today: February 27, 2023

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