At the Jerusalem District Court **AP 57730-02-13**
Sitting as a Court for Administrative Affairs
Justice

In the matter of:

1. **_____ Hamidat, ID No. _____**
2. **_____ Hamidat, ID No. _____**
3. **_____ Hamidat, ID No. _____**
4. **_____ Hamidat, ID No. _____**
5. **_____ Hamidat, ID No. _____**
6. **_____ Hamidat, ID No. _____**
7. **_____ Hamidat, ID No. _____**
8. **_____ Hamidat, ID No. _____**
9. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Noa Diamond (Lic. No. 54665) and/or Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben Ari (Lic. No. 37566) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Nimrod Avigal (Lic. No. 51583) and/or Bilal Sbihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448)

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Chair of the Appellate Committee for Foreigners (Jerusalem District)**
2. **Legal Advisor to the Population, Immigration and Border Authority**
3. **Head of the Population, Immigration and Border Authority**
4. **Minister of Interior**

all represented by Jerusalem District Attorney's Office
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondents

Administrative Petition

An administrative petition is hereby filed against the decision of the Chair of the Appellate Committee for Foreigners dated January 17, 2013, in appeal 157/12.

In the petition, the honorable court is requested to order the respondents to approve the family unification application of petitioners 1 and 2, so that petitioner 2 would receive DCO permits and would be able to be with his family in Israel.

The petition

1. This petition concerns respondents' denial of an application filed by petitioner l, a permanent Israeli resident, to grant her spouse a stay permit in Israel by virtue of a family unification procedure. The grounds for denying the application according to the respondents, is that petitioner 2's employment at the Palestinian Authority (PA), ostensibly creates a "conflict of interest".

2. The petitioners will argue that respondents' violation of petitioners' fundamental right for family life is disproportionate, particularly in view of the fact that petitioner 2 only requests to stay in Israel lawfully (he neither requests – nor can he receive – permanent residency status in Israel), and in view of the vagueness of the protected interest. The petitioners will further argue that the disproportionality of respondents' decision is intensified in petitioner's specific case, in view of his proven activity for the promotion of peace and dialogue between Israelis and Palestinians.

The parties to the petition

3. **Petitioner 1** (hereinafter: **petitioner 1**), is an Israeli resident, who resides in Silwan, Jerusalem. An objection filed against respondent 4's denial of her application for family unification with her husband, **petitioner 2** (hereinafter: **petitioner 2**), was rejected.

4. The spouses have six children, petitioners 3-8. Petitioners 4-8 are registered have permanent residency status. Petitioner 3 holds renewable DCO permits.

5. **Petitioner 9** is a registered not-for-profit association which has taken upon itself to assist victims of cruelty or deprivation by state authorities, including by protecting their rights before the authorities, either in its own name as a public petitioner or as counsel for persons whose rights have been violated.

6. **Respondent 1** (hereinafter also: the **commissioner**) reviews applications for the grant of status in Israel to spouses of persons who have permanent residency status in Israel as well as applications for the grant of status in Israel. By virtue of his authority according to section 16(a) of the Entry into Israel Law, respondent 4 has delegated to respondent 1 some of his powers under said law. The powers of the commissioners of the appellate committee are arranged in procedure 1.5.0002 of the Population Authority. During the relevant period, two chairpersons presided over the Jerusalem committee: Commissioner Advocate Sara Ben Shaul Weiss, and Commissioner Advocate Zvi Gal.

7. **Respondent 2** is the legal advisor to the Population, Immigration and Border Authority (hereinafter: the **authority**). Some of the powers of respondent 4 concerning the handling and approval of family unification applications and applications for the arrangement of the status of children, submitted by permanent residents of the state residing in East Jerusalem, have been delegated to the person heading this authority. The lawyers of the authority's legal department present the authority's position to respondent 1 and to appellants, in the context of appeals.

8. **Respondent 3** is the head of the Population, Immigration and Border Authority. According to the Entry into Israel Regulations, 5734-1974, respondent 4 has delegated some of his powers to handle and approve applications for family unification and for the arrangement of the status of children, submitted by permanent residents of Israel residing in East Jerusalem. In addition, respondent 3 acts as the chairperson of the Inter-ministerial Committee for Humanitarian Affairs, which discusses applications for status in Israel that do not satisfy the regular criteria.

9. **Respondent 4** is the minister who has the authority under the Entry into Israel Law, 5712-1952, to handle all matters associated with this law, including family unification applications and applications for the arrangement of the status of children, submitted by permanent residents of the state who live in East Jerusalem.

The Facts Concerning the Matter at Hand

10. Petitioner 1, an Israeli resident, married in 1990 petitioner 2, a resident of Bani Na'im located in the Occupied Palestinian Territories (OPT).

11. After the marriage and until 1999, the spouses shared their life between the village of Bani Na'im and Silwan, while from the beginning of 1996 petitioner 1 has been living most of the time in Jerusalem. During that period their three elder children were born, _____, _____ and _____ - all in Jerusalem.

12. From the the end of 1999 to date, the family has been living continuously and permanently in Silwan, Jerusalem, in the home of Mrs. Hamidat's brother in law, _____ Hamidat. During this period the spouses had three additional children - _____, _____ and _____.

13. It should be noted, as a background to the petition, that petitioner 1 had to conduct a long battle against respondent 4 concerning her status in Israel, in view of the fact that in the context of an application for the registration of her children submitted in 2001, it turned out that her residency was revoked. Only on January 17, 2006, following long proceeding which included a petition to the court, petitioner 1 regained her permanent residency status.

14. On July 21, 2008 an application for a stay permit in Israel was submitted for petitioner 1's spouse, Mr. _____ Hamidat, petitioner 2.

    A copy of a confirmation regarding the submission of the application is attached and marked **P/1**.

15. Three reminders regarding the family unification applications were sent on January 21, 2009, June 2, 2009, and July 13, 2009.

    Copies of said reminders are attached and marked **P/2**.

16. On July 27, 2009, a denial letter was sent to HaMoked by the Population Authority's East Jerusalem Bureau (hereinafter also: the **respondent**), which notified that the application had already been denied on January 19, 2009, for criminal reasons, and that a denial letter was sent to the Hamidat family "but the letter was returned by the postal service". The original denial letter

dated January 19, 2009, was attached to the updated letter which noted that "according to the position of the police, the application is denied until the termination of the proceedings" and that if petitioner 1 wanted to receive more information concerning the denial, she should turn to the police station near her place of residence.

A copy of the letter dated January 19, 2009, is attached and marked **P/3.**

A copy of the letter dated July 27, 2009, is attached and marked **P/4**.

17. In response to the denial letter, a letter was sent by HaMoked on August 11, 2009, in which it expressed its resentment of respondent's conduct. Firstly, of the fact that the original denial letter was sent to the Hamidat family rather than to HaMoked's offices, despite the fact that the respondent knew that the family was represented by HaMoked for a long time. Secondly, of the fact that the original denial letter did not provide any details concerning the matter and of the criminal reasons due to which, ostensibly, the application was denied. An updated criminal record of petitioner 2 was attached to said letter, which attested to the fact that no police file was pending against him.

    A copy of HaMoked's letter to the respondent dated August 11, 2009, and a copy of the criminal record are attached and marked **P/5**.

18. On September 22, 2009, a letter was sent by the respondent which stated that the processing of the application was reinstated in view of the position of the Israel Police dated September 13, 2009.

    The notice dated September 22, 2009, according to which the processing of the application was reinstated, is attached and marked **P/6**.

Appeal 833/09

19. After the notice dated September 22, 2009, no additional notice was received from the respondent, who dragged his fit in providing a response. Therefore, on December 22, 2009, appeal 833/09 was submitted. In the appeal, the appellate committee was requested, *inter alia*, to order the respondent to make a decision in petitioner 1's application for family unification with petitioner 2 (the appeal also concerned the arrangement of the status of the children Arij and Osama. This petition does not concern their matter). It was emphasized that upon the submission of the appeal, a period exceeding one year and five months has already elapsed from the date on which petitioner 1 submitted the application for family unification with petitioner 2. It was argued that respondent's decision not to respond to the application violated the right of petitioner 1 to family with her husband, the right of her children to family life with their father and the right of the family to stability and fair and equal treatment.

    Appeal 833/09 is attached and marked **P/7**.

20. On December 30, 2009, respondent 1 directed respondent 2 to respond to the appeal, on its merits, within 30 days.

    The decision of respondent 1 dated December 30, 2009, is attached and marked **P/8**.

21. On January 14, 2010, an interim order was issued which prevented the removal of petitioner 2 (appellant 2 in the objection), until after the committee's decision.

    The interim order dated January 14, 2010 is attached and marked **P/9**.

22. On January 28, 2010, respondent 2 requested a two month extension for the submission of his response to the appeal.

    Respondent's request for extension dated January 28, 2010 is attached and marked **P/10**.

23. In a response dated February 4, 2010, the petitioners-appellants agreed to extension in the matter of _____ and _____, but objected to extension in petitioner 2's matter.

    The response of the petitioners-appellants dated February 4, 2010, is attached and marked **P/11**.

24. On February 7, 2010, respondent 1 granted respondent 2 the requested extension.

    Commissioner's decision to grant the extension dated February 2, 2010, is attached and marked **P/12**.

25. On April 22, 2010, and contrary to the position of the petitioners-appellants, respondent 2 was granted an additional two month extension for the submission of his response to the appeal.

    The decision dated April 22, 2010, to grant extension for the submission of response to the appeal is attached and marked **P/13**.

26. On June, 6, 2010, petitioners 1 and 2 were summoned for a hearing which was scheduled for June 20, 2010, at respondent's East Jerusalem branch office. On June 16, 2010, the hearing was postponed to June 27, 2010, at petitioners' request.

    A copy of the summons for the hearing dated June 16, 2010, is attached and marked **P/14**.

27. Several days before the date scheduled for the hearing, on June 23, 2010, petitioner 2 turned to DCO Ramallah for the purpose of receiving a one-time entry permit into Israel, to enable him to attend the hearing as required. Petitioner 2's request was denied by the DCO, and therefore HaMoked's representative turned to respondent's bureau and requested assistance in the arrangement of petitioner 2's entry into Israel. On June 24, 2010, the bureau's secretary, Zivanit Paskal, notified that the hearing may be held in respondent's offices in the Qalandia crossing. In that conversation, Ms. Paskal notified verbally that the hearing which was scheduled for June 27, 2010, was cancelled, and that a new date would be scheduled for the hearing which would be held in Qalandia.

28. On July 4, 2010, the petitioners-appellants submitted a request for a decision in the appeal in the absence of response on behalf of the respondent. On that very same day, respondent 1 held that respondent 2's response to the appeal should be submitted forthwith.

    Petitioners-appellants' request for a decision, with commissioner's decision scrawled thereon, is attached and marked **P/15**.

29. On July 25, 2010, respondent 2 submitted a notice and request to delete the appeal. In his notice respondent 2 argued that the petitioners failed to appear to the hearing as required on June 27, 2010 (despite the fact that said date was cancelled in coordination with Ms. Paskal), and notified that "to facilitate the continuation of the processing of appellants' family unification application, the appellants are summoned to respondent's office in Qalandia for a hearing, according to respondent's procedures, concerning a possible conflict of interests, for July 12, 2020." The notice argued that "under said circumstances, the need to make a decision in the appeal on the family unification application became redundant, and the honorable chair of the appellant committee is requested to order of its deletion (emphasis appears in the original, N.D.).With

respect to the application for the registration of the children, the respondent requested an extension for the submission of a reasoned response on that issue.

30. On that day respondent 1's decision was given, which allocated 14 days for appellants' response.

    "Respondent's Notice and Request for Deletion" with commissioner's decision scrawled thereon, is attached and marked **P/16**.

31. On July 12, 2010, a hearing was held for the petitioners in respondent's office in the Qalandia crossing. The hearing was conducted by respondent's clerk, Mr. Avraham Levy, at the presence of HaMoked's representatives Advocate Leora Bechor, the intern (at that time) Mr. Benjamin Agsteribbe and Ms. Dima Darawsheh. The hearing was conducted in Arabic and Ms. Darawsheh, who is fluent in both Arabic and Hebrew, recorded the hearing in Hebrew.

32. On July 18, 2010, the petitioners-appellants submitted their response to respondent 2's notice nad request dated July 5, 2010. In their response the petitioners-appellants objected to the deletion of the appeal, in view of the fact that the remedy requested in the appeal – namely – a decision in the family unification application – has not yet been made. In addition, the appellants objected to respondent 2's request for extension.

    Petitioners-appellants' response dated July 18, 2010, is attached and marked **P/17**.

33. On July 20, 2010, respondent 1's decision was received, which allocated two weeks for respondent's response on the deletion issue, and granted the respondent the requested extension – two months to refer to the rest of the appeal.

    Respondent 1's decision dated July 20, 2010, is attached and marked **P/18**.

34. On August 31, 2010, respondent 1's decision was received. The decision held that petitioners-appellants' request to leave the appeal pending until a decision in the family unification application shall have been made by the respondent – was accepted.

    Respondent 1's decision dated August 31, 2010, is attached and marked **P/19**.

35. On February 24, 2011, the petitioners-appellants submitted to respondent 2's representative, Advocate Gilboa, additional documents in petitioner 2's matter. Said documents attested to petitioner 2's activities in the "Parents Circle - Bereaved Families Forum", which will be described below.

36. On June 15, 2011, the chair of the committee held that respondent 2 would update the committee within 30 days on petitioners' family unification application.

37. On July 18, 2011, in view of the fact that the 30 days which were allocated to respondent 2 passed, and no response was received, the petitioners-appellants requested that a decision shall be made in the appeal without respondent 2's response. On that day the chair of the committee held that respondent 2 would respond within 21 days to that part of the appeal which concerned the family unification application.

    Petitioners request dated July 18, 2011, and respondent 1's decision scrawled thereon is attached and marked **P/20**.

38. On August 9, 2011, respondent 2's representative requested a 60 days extension for the submission of a response. On August 11, 2011, the petitioners-appellants consented to said request, hoping that this would promote their case.

Respondent 2's request for extension dated August 9, 2011, is attached and marked **P/21**.

39. On October 24, 2011, after the elapse of the extension given to respondent 2, the petitioners-appellants submitted a request for a decision in the appeal in the absence of respondent's response.

    A request for a decision dated October 24, 2011, is attached and marked **P/22**.

40. On October 31, 2011, respondent 1 held that respondent 2's response would be given forthwith.

    The decision dated October 31, 2011, is attached and marked **P/23**.

41. Two weeks after the date of the above decision, in the absence of response on behalf of respondent 2, the petitioners-appellants turned again to respondent 1 on November 14, 2011, and requested it to make a decision in the appeal based on the statement of appeal only.

    The request for decision dated November 14, 2011, is attached and marked **P/24**.

42. On November 17, 2011, a request for extension of respondent 2 of the same day was received, in which respondent 2 notified that "the realization of respondent's decision depends on external bodies which are not connected to the respondent. The respondent uses his best efforts to expedite the matter. To the extent a response is received it will be transferred to appellants' counsel without delay". Hence – a request for extension without a specific time frame.

    "Request for extension" dated November 17, 2011, is attached and marked **P/25.**

43. On November 20, 2011, the petitioners-appellants submitted their objection for the grant of an additional extension.

    Notice dated November 20, 2011, is attached and marked **P/26**.

44. On November 22, 2011, respondent 1 ordered respondent 2 to notify within seven days "what is he waiting for".

    Respondent 1's decision dated November 22, 2011, is attached and marked **P/27.**

45. On December 7, 2011, respondent 2's notice of the same day has eventually been received. According to the response, "Having reviewed the application of appellant 2 for family unification and under the circumstances of the matter, his application is denied due to conflict of interests". The letter of Ms. Liat Melamed from respondent's bureau was attached to the response, which contained additional details concerning the denial "due to a possible conflict of interests". Due to its importance, we shall quote the letter in its entirety:

> It was decided to deny the application in view of the fact that Mr. Hamidat is employed by the Palestinian Authority, where he holds the cultural and political training portfolio. In the framework of his position, Mr. Hamidat is in charge of the provision of training and consultation to the police officers of the Palestinian Authority.
>
> Between 1992-1994 Mr. Hamidat worked at the Orient House and has been employed by the Palestinian Authority from its establishment.

> In addition, between 1990-1991 Mr. Hamidat was held under administrative detention, and between 1991-1992 he was held under an additional administrative detention.
>
> In a hearing held for Mr. Hamidat he claimed that he was appointed to the position of head of cultural affairs in the Palestinian Authority on April 1, 2010, but not on behalf of the police. In the hearing, Mr. Hamidat claimed further that he was in charge of political training and that he acted as a lecturer.
>
> A review of the pay slips provided by Mr. Hamidat indicates that Mr. Hamidat's salary is paid by the Palestinian Authority and that he holds the rank of "Akid" (lieutenant colonel).
>
> In view of the above, due to a possible conflict of interests, it was decided to deny his application.

The letter of Ms. Melamed dated December 5, 2011, is attached and marked **P/28**.

46. On December 21, 2011, the petitioners-appellants submitted their response to respondent 2's notice dated December 7, 2011. In their response the petitioners-appellants specified in detail their arguments concerning respondent's denial of the family unification application due to "possible conflict of interests". In addition, the petitioners noted that the requested remedy in the appeal was to receive a response to the family unification application and **its approval**; that a decision to deny a family unification application due to conflict of interests should be made by respondent 3, Head of the Population Authority, and that despite repeated reminders, the petitioners have not received the transcript of their hearing which was conducted on July 12, 2010.

    The response dated December 21, 2011, is attached and marked **P/29**.

47. On December 26, 2011, respondent 2's representative notified that the decision to deny the family unification application was made by respondent 3.

48. On January 2, 2012, the decision of the chair of the committee of the same day was received. The decision stated that "the cause of the appeal, failure to receive a response to appellants' family unification application – was exhausted." It was also held that the respondent would transfer to the appellants within 21 days the transcript of the hearing, and that a new application would be submitted based on updated data.

    Respondent 1's decision dated January 2, 2012, is attached and marked **P/30**.

49. On January 15, 2012, a request to transfer the transcript of the hearing to petitioners' counsel was sent the bureau.

    The request is attached and marked **P/31**.

50. On January 26, 2012, an additional request was sent.

    The request dated January 26, 2012, is attached and marked **P/32**.

51. On January 30, 2012, as the transcript of the hearing has not yet been transferred to petitioners' counsel, they turned to respondent 1 and requested it to order the respondent to uphold its decision dated January 2, 2012.

The request dated January 30, 2012, is attached and marked **P/33**.

52. On February 2, 2012, the transcript of the hearing was received by appellants' counsel.

    A copy of the hearing's transcript is attached and marked **P/34**.

53. At this stage, when the petitioners finally had in their possession the entire relevant material, they could submit an appeal against respondent's denial of their family unification application.

Appeal 157/12

54. On February 27, 2012, an appeal was submitted against the denial of the family unification application on the grounds of "conflict of interests. The appeal argued that respondent's violation of petitioners-appellants' fundamental right to family life was not proportionate, mainly in view of the fact that the only thing requested by petitioner 2 was to lawfully stay in Israel (since, in any event, the petitioner cannot receive permanent residency status in Israel) and in view of the vagueness of the protected interest. The petitioners-appellants added further that the disproportionality in petitioner 2's matter only intensified in view of the fact that his position was civilian-academic in nature, and in view of his relentless activity for peace and dialogue between Jews and Palestinians. A joint recommendation letter of the directors of the Parents Circle – Bereaved Families Forum was attached to the appeal, which described the work and personality of Dr. Rashed Tu'ameh Hamidat, as expressed, in his past and current activity, in the framework of the forum.

    All of petitioners' arguments in the appeal constitute an integral part of this petition. The petitioners refer to paragraphs 45-79 of the statement of appeal.

    Appeal 157/12, without its exhibits, is attached and marked **P/35**.

55. It should be noted that in the beginning of the appeal the petitioners requested that it would be handled expeditiously and efficiently, certainly within the time frames prescribed in the procedure which regulated the committee's work, in view of the fact that the proceedings in the previous appeal, which according to respondent 1 "exhausted itself", lingered for a very long time.

56. On February 28, 2012, respondent 1 allocated 30 days for filing a response to the appeal, on its merits, and 14 days for filing a response to the request for a temporary relief in the appeal.

    Respondent 1's decision dated February 28, 2012, is attached and marked **P/36**.

57. On March 13, 2012, an interim relief was given in the appeal, which prevented the removal of petitioner 2 from Israel until otherwise resolved by the committee.

    The interim decision dated March 13, 2012, is attached and marked **P/37**.

58. On May 14, 2012, the petitioners-appellants requested that a decision would be made in the appeal, in the absence of response of behalf of respondent 2.

    A request dated May 14, 2012, is attached and marked **P/38**.

59. On May 23, 2012, respondent 2 requested an extension for filing a response to the appeal, on the grounds of his heavy workload. Respondent 2 requested an extension of 60 days, and undertook that his representative "would use her best efforts to file the response within said period." On

May 24, 2012, the decision of respondent 1, scrawled on respondent 2's request, was received, according to which the appellants should submit their response within seven days.

The request for extension and respondent 1's decision scrawled thereon, which was received by the petitioners on May 28, 2012, is attached and marked **P/39**.

60. On May 29, 2012, a response on behalf of the petitioners-appellants was received. The petitioners argued that respondent 2 was familiar with their case, in view of the fact that he had deliberated over it for a long time before he decided to deny their family unification application. As to the alleged workload, the petitioners noted that at least in the appeals handled by HaMoked, the exception – delay in giving a response beyond the timeframe stipulated in the procedure – became the rule. Only in 10% of HaMoked's appeals respondent's response was filed on time. Therefore, the petitioners argued that preference should be given to the handling of the petition, and they expressed their objection to the grant of the requested extension.

    A response dated May 29, 2012, is attached and marked **P/40**.

61. On June 13, 2012, respondent 1's decision was given, according to which respondent 2's response to the appeal would be submitted until July 27, 2012.

    Respondent 1's decision dated June 13, 2012, is attached and marked **P/41**.

62. On July 26, 2012, the petitioners received a request on behalf of respondent 2, for the extension of the filing of his response by seven days, with respondent 1's decision of the same day, scrawled thereon, according to which the requested extension was granted.

    A request and a decision dated July 26, 2012, is attached and marked **P/42**.

63. On August 8, 2012, in the absence of response on behalf of the respondent, the petitioners-appellants requested to receive a decision in the absence of a response.

    A request dated August 8, 2012, is attached and marked **P/43**.

64. On August 16, 2012, respondent 1's decision dated August 12, 2012, was received, according to which "respondent's counsel shall respond immediately".

    A decision dated August 12, 2012, is attached and marked **P/44**.

65. On August 21, 2012, in the absence of response on behalf of the respondent, the petitioners-appellants submitted a request for a decision in the absence of response, in which they wondered whether they would have to turn to the court, for the purpose of promoting their matter in the appellate committee – a body which was established *to reduce* the workload on the Courts for Administrative Affairs.

    A request dated August 21, 2012, is attached and marked **P/45**.

66. On August 26, 2012, respondent 1's decision dated August 23, 2012, was received. According to which "In this appeal a temporary relief was granted. Respondent's counsel will update within seven days of the date on which his response to the appeal will be submitted."

    Respondent 1's decision dated August 23, 2012, is attached and marked **P/46**.

67. On August 26, 2012, the petitioners-appellants filed a request for a reconsideration of the decision dated August 23, 2012. The petitioners-appellants argued that, as stipulated in the decision for the

grant of the temporary relief itself, the mere grant of the temporary relief does not derogate from respondent's obligation to respond to the appeal. It was also argued that there was no room for the extreme a-symmetry created by respondent 1's decision, whereby respondent 2 disregards the procedure and the decisions of the chair persons, and in addition he is the one who determines the dates on which his responses would be submitted.

A request for reconsideration dated August 26, 2012, is attached and marked **P/47**.

68. On August 29, 2012, respondent 1's decision dated August 27, 2012, was received. The decision stipulated that respondent 2 would submit a schedule, and the committee would consider whether to accept said schedule or make a decision in the appeal based on the material in its possession, all of the above within seven days.

A decision dated August 27, 2012, is attached and marked **P/48**.

69. On August 30, 2012, a request for a one week extension was received from respondent 2, with respondent 1's decision scrawled thereon, which granted the requested extension.

A request for extension with respondent 1's decision scrawled thereon is attached and marked **P/49**.

70. On September 6, 2012, respondent 2's response to the appeal was finally received. Respondent 2 opened his response by emphasizing the broad discretion vested in the Minister of Interior in granting stay permits to foreigners in Israel, and stipulated that the Minister of Interior was entitled to consider whether the acceptance of the request to stay in Israel and receive status therein may impinge on state sovereignty "**or other important interests of the state"** (emphasis appears in the original, paragraph 33 of respondent 2's response).

71. Respondent 2 cited in his response HCJ 754/83 **Renkin v. Minister of Interior** (paragraph 35 of the response), which concerned the grant of Israeli citizenship, which held that "the grant of citizenship is a very important act… loyalty is embedded within citizenship… this state of affairs dictates, by its nature, that the naturalization act be made whole heartedly and with willingness to become part of the state's fabric of life." **According to respondent 2, the court's ruling in Renkin is "all the more so" applicable to the grant of a stay permit in Israel pursuant to the Entry into Israel Law**.

72. Respondent 2 argued further that he balanced petitioner 1's right to family life against "the expected impingement on the interests of the state of Israel and the broad security aspect, if permit to stay in Israel is granted to a person holding a senior position at the Palestinian Authority, with which Israel has a basic conflict, in various areas."

73. Respondent 2 argued further that petitioner 2 had a loyalty obligation to the Authority and was committed to its interests, and therefore, for his part, he had a conflict of interests. The above lead respondent 2 to the conclusion that the grant of **status** (emphasis added, N.D.) in Israel to the appellant may impinge on important and vital interests of the state.

74. Respondent 2's position was supported by the judgments in HCJ 3373/96 **Za'atre v. Minister of Interior**, HCJ 2898/97 **Atiya v. Minister of Interior** and HCJ 1447/07 **Safaa v. Ministry of Interior**.

Respondent 1's decision, given on September 6, 2012, was scrawled on respondent 2's response and stated that the response was transferred to appellants' response to be submitted within 38 days.

Respondent 2's response to the appeal (without exhibits) and respondent 1's decision scrawled thereon, is attached and marked **P/50**.

75. On October 9, 2012, the petitioners-appellants submitted their response to respondent 2's response to the appeal. In their response the petitioners argued that respondent 2 continued, like he did in the past, to rely on a protected interest of a vague nature, without any substantial reasoning regarding the potential harm to public safety, which ostensibly derived from the approval of the family unification application. Respondent 2 did not argue that a security or criminal risk was embedded in the approval of the family unification application. He did not argue that any specific information existed which connected petitioner 2 to a possible infringement on public safety in Israel. **Petitioner 2 is not defined as dangerous**.

76. The petitioners argued that reference was made only to an obscure and non-specific "concern". Respondent 2 did not even specify the **consequences** which may arise from the realization of the "concern" for a conflict of interests, and did not indicate what was the probability that his concern would be realized. Respondent 2 did not argue that he had any information – open or privileged – concerning the risk posed to public safety in Israel should petitioners' family unification application be approved, as a result of the "concern that conflict of interests existed".

77. It was argued that respondent 2's argument concerning the applicability of HCJ **Renkin** to petitioners' case by way of "*a fortiori*", was peculiar, when raised with respect to status applicants under the Entry into Israel Law in general, and when raised with respect to people who were subject to the Temporary Order, in particular, in view of the fact that the loyalty tests which applied to nationalization did not apply to people who sought permanent status according to the Entry into Israel Law, certainly not by way of "*a fortiori*". Secondly, for as long as the **Citizenship and Entry into Israel Law (Temporary Order), 5763-2003**, was in force (see the judgment in HCJ 466/07 **Gal-On v. Attorney General**, where the petitions against the Temporary Order were denied) **the most petitioner 2 could receive in the framework of a family unification application was a <u>DCO permit</u>**. Therefore, the manner by which the situation was referred to by the respondent, who regarded the appellant as if seeking **<u>status in Israel</u>** was not relevant and disregarded the overall legal and factual picture.

78. Therefore, the petitioners argued that by disregarding the fact that the most petitioner 2 could receive in the framework of a family unification procedure was a **<u>DCO permit</u>** (rather than ***<u>status</u>*** in Israel of any kind or nature whatsoever), respondent 2's decision did satisfy the third proportionality sub-test, namely, choosing the least injurious measure.

79. With respect to the judgments referred to by respondent 2, the **Za'atre and Atiya** judgments were given **before the Preliminary Order was enacted**, when sponsored party who underwent family unification procedure could apply for (and receive) permanent residency status or Israeli citizenship. With respect to the **Safaa** judgment, it was a judgment which relied on the **Za'atre and Atiya** judgments without drawing the above distinction. In addition, said judgment was given before a decision was made in the petitions filed against the Temporary Order and before the judgment given in HCJ 7444/03 **Dakah v. Ministry of Interior**. Currently, the up-to-date legal situation is that there is no family unification "procedure", no status upgrades are (normally) granted and permanent residency status or citizenship may not be received.

    Petitioners-appellants' response dated October 9, 2012, is attached and marked **P/51**.

80. On October10, 2012, respondent 1's decision of the same day was received, according to which respondent 2's response should be given within 21 days.

The decision dated October 10, 2012, is attached and marked **P/52**.

81. On January 14, 2013, after the 21 days given for the submission of respondent 2's response have passed and after the 60 days for the grant of a final decision in the appeal have passed as well, the petitioners-appellants turned to the chair of the committee and requested that a decision would be given according to the committee's procedure.

    The request dated January 14, 2013, is attached and marked **P/53**.

82. On January 17, 2013,respondent 1's decision in the appeal was given, which was received by the petitioners on the same day. In his decision, respondent 1 rejected the appeal. The following is a short summary of respondent 1's decision:

    a. Respondent 1 reviewed the relevant normative framework, and particularly referred to the respondent 4's broad discretion, his obligation to act according to the principles of reasonableness and proportionality, and the meaning of section 3D – the "security preclusion" clause – of the **Citizenship and Entry into Israel Law (Temporary Order), 5763-2003** (the **Temporary Order**).

    b. Thereafter, respondent 1 reviewed the "information" which was ostensibly received from security agencies, and in the hearing which was conducted to the petitioners, on which the respondent based his decision to dent petitioners' family unification application.

    c. In the following stage respondent 1 addressed the "conflict of interests" issue and stated that he did not find room to present his opinion on the issue "in length". Instead, respondent 1 chose to refer to the relevant judgments on the issue. With respect to the **Za'atre** and **Atiya** judgments, respondent 1 accepted petitioners' position according to which these judgments were dated, in view of the change that occurred in the normative situation and the entering into effect of the Temporary Order. Therefore, respondent 1 referred to the **Sabag** and **Mugrabi** judgments (HCJ 5702/07 and AP 310/07, respectively) and implemented them on the case at hand.

    d. Respondent 1 held that the appeal should be rejected, in view of the senior position held by petitioner 2 at the Palestinian Authority and – peculiarly and without any connection to facts of the matter at hand – "in view of the continuity of the presence of appellant 1 and her children in Israel - which did not exceed three years – on the date on which the application was filed."

    e. It should be emphasized that respondent 1 referred to the family unification application as if it was **a request for a permanent residency status**, rather than a request for a renewable DCO stay permit. Respondent 1 stipulates in paragraph 36 of his decision as follows: "… this case concern a family unification application the final purpose of which is to receive a permanent stay permit, a permanent residency status in Israel, rather than renewable stay permits."

    The decision in the appeal dated January 17, 2013 is attached and marked **P/54**.

The Legal Argument

83. It will be hereinafter argued that the respondents did not properly balance, as required by case law, the harm caused to family life against the protection of public interest. It will be argued that in this case, the protected public interest is an obscure interest, and that the probability that it would be impinged on is unknown, whereas the violation of the right is severe and unquestionable. It will be further argued that respondent 1 made a problematic and selective

distinction between the judgments on which he chose to base his decision on, and the circumstances of the case at hand.

The violated right: the constitutional right to family life

84. Respondents' denial of petitioners' family unification application, severely violates their right to family life. As is known, in HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel v. Minister of Interior**, which discussed the constitutionality of the Citizenship and Entry into Israel Law, the right to family life was given the status of a constitutional right, embedded in the right to human dignity enshrined in the Basic Law: Human Dignity and Liberty. President Barak, who held a minority opinion with respect to the end result of the judgment, summarized, with the consent of eight of the eleven justices of the panel, the ruling which was established in said judgment concerning the status of the right to family life in Israel.

> From human dignity, which is based on the autonomy of the individual to shape his life, we derive the derivative right of establishing the family unit and continuing to live together as one unit. Does this also imply that the realization of the constitutional right to live together also includes the constitutional right to realize it in Israel? My answer to this question is that the constitutional right to establish a family unit means the right to establish the family unit in Israel. Indeed, the Israeli spouse has a constitutional right, which is derived from human dignity, to live with his foreign spouse in Israel and to raise his children in Israel. The constitutional right of a spouse to realize his family unit is, first and foremost, his right to do so in his own country. The right of an Israeli to family life means his right to realize it in Israel.
>
> (*Ibid*., paragraph 34 of President Barak's judgment)

85. Giving the right to family life the status of a constitutional right means, that and violation of said right should be made according to the Basic Law: Human Dignity and Liberty, and only for weighty considerations.

86. As is known, a violation of a constitutional right must satisfy the proportionality tests:

> In the framework of his discretion, the Minister should balance the right to family life of the Israeli spouse and family, on the one hand, against the public interest, on the other. The obtained balance should be within the realm of proportionality, and should not violate human rights to an extent greater than required.
>
> (HCJ 876/07 **Keisi v. Minister of Interior**, reported in Nevo).

87. Meeting the proportionality tests was interpreted as follows:

> On this issue three sub-tests were developed: the rational connection tests, the least injurious measure test and the proportionality test (in its narrow sense). In our case, a rational connection is required between the purpose of securing state security and public safety and the refusal to issue a stay permit; it is required that the least injurious measure be taken; and finally, it is required that the measure of refusing to issue a stay permit is properly balanced against the benefit arising there-from to state security and public safety.
>
> (HCJ 2028/05 **Amarah v. Minister of Interior**, reported in Nevo).

88. In the case at hand, respondents' decision places petitioners' right to family life *vis-à-vis* the need of the state of Israel to prevent injury to the public, which may arise from a conflict of interests of applicants wishing to receive status therein. We shall examine below, whether the violation of the right meets the proportionality tests, but firstly, we shall turn to the interest that the state wishes to protect by violating the right.

The obscure nature of the protected interest

89. Due to their importance, we shall quote again, in their entirety, respondent 3's reasons for denying appellants' family unification application:

> It was decided to deny the application in view of the fact that Mr. Hamidat is employed by the Palestinian Authority, where he is in charge of the cultural and political training portfolio. In the framework of his position, Mr. Hamidat provides training and consultation to the police officers of the Palestinian Authority.
>
> Between 1992-1994 Mr. Hamidat worked at the Orient House and from its establishment he became an employee of the Palestinian Authority.
>
> In addition, between 1990-1991 Mr. Hamidat was held under administrative detention, and between 1991-1992 he was held under an additional administrative detention.
>
> In a hearing held for Mr. Hamidat he claimed that he was appointed to the position of head of cultural affairs in the Palestinian Authority on April 1, 2010, but not on behalf of the police. In the hearing Mr. Hamidat claimed further that he was responsible for the political guidance and that he acted as a lecturer.
>
> A review of the pay slips provided by Mr. Hamidat indicates that Mr. Hamidat's salary is paid by the Palestinian Authority and that he holds the rank of "Akid" (lieutenant colonel).
>
> In view of the above, due to a possible conflict of interests, it was decided to deny his application.

90. So we see: respondent 3 does not argue that any security or criminal threat is embedded in the approval of the family unification application. He does not claim that specific information exists which indicates that petitioner 2 may be associated with a possible injury to public safety in Israel. **Petitioner 2 is not defined as dangerous**. As will be further elaborated below, the contrary is true: petitioner 2 is a person who acts greatly for the promotion of peace, understanding and tolerance between the two nations.

91. We are therefore faced with an obscure and nonspecific "concern". Respondent 3 neither specifies the **consequences** which may arise from the realization of the "concern" for a conflict of interests, nor does he specify the **probability** of the realization of his concern. Furthermore, the respondents did not argue that they had in their possession information – open or privileged – concerning the threat posed to public security in Israel, which may arise as a result of the approval of petitioners' family unification application, due to the "concern of a conflict of interests", while the obligation imposed on them is:

> … must prove that the probability of a threat to public safety is at the highest level, reaching, at least near certainty, and that it is impossible to defend against it without violating human rights.
>
> (HCJ 7444/03 **Dakah v. Minister of Interior** (reported in Nevo, hereinafter: **Dakah**)).

92. It should be further mentioned in connection with the burden of proof that:

> **The burden to prove the probability that a security risk exists to a degree that justifies an impingement of a human right rests with the state** (**Movement for Quality Government in Israel** paragraphs 21-22 and 49 of the opinion of President Barak; Aharon Barak, **Constitutional Interpretation**, third volume 477 (1994); HCJ 6821/93 **United Mizrahi Bank Ltd v. Migdal Cooperative Village**, IsrSC 49(4) 221, 428-429 (1995); Justice Zamir in **Tzemah**, pages 268-269). **The state must prove that the need to protect the public against a real security risk necessitates a substantial violation of a human right, and that the public need cannot be addressed without such a violation, or, at least, without a more moderate violation which does not prevent a family unification altogether**. It must prove that the probability of the security risk is so high that it requires the taking of measures to protect life and safety despite the fact that they violate human rights which are situated at the highest level of the constitutional hierarchy. Where the probability that the risk to life is at a level almost reaching certainty, even the most exalted of constitutional human rights will recede from it. **Where the probability that the risk will be realized is lower, it is possible that the value of security will not justify any violation of human rights, or it may justify a moderate violation only.** The strength of the probability that a risk exists is always balanced against the weight of the impinged values, all in accordance with the entire unique circumstances of the relevant case.
>
> **(Dakah,** paragraph 43 of the judgment. Emphases added, N.D.)

93. Hence, while examining the question whether respondents' decision to absolutely deny the constitutional right to family life was justified, we must remember that the interest which the respondents wish to protect in the case at hand is neither clear nor unequivocal, and the probability that it would be impinged on is unknown.

94. Having that in mind, we shall refer now to examine the proportionality issue.

The tests of proportionality

95. As emphasized above, the respondents do not argue that petitioner 2 poses any security or criminal threat. However, even if that was the case, respondent's decision should have satisfied the tests of proportionality:

> The key question is whether the manner by which the authority is exercised under the Temporary Order Law, and which involves a violation of the fundamental right to a family for the purpose of realizing a security need, complies with the requirement of **proportionality**. For this purpose proportionality must be examined according to the sub-tests which were developed by case law. The rational connection test, the least injurious means test, and the proportionality test in the narrow sense - are

> the leading tests for the purpose of determining the proportionality of the violation of the constitutional right. For this matter, in the application of the security preclusion consideration to spouses who are subject to the transitional provisions, an appropriate link is required between the measure taken to prevent family unification and the purpose of securing state security and public safety; it is required that the security objective cannot be achieved by another least injurious means; and finally, it is required that a proper proportion exists between the nature of the violation of the right to a family and of the right to equality according to its strength, and the security advantage gained as a result of the denial of the requested unification (**Amarah**, paragraph 11 of the President Barak's judgment). The scope of the security advantage which should be taken into account for the application of the narrow proportionality test is not necessarily the entire scope of the possible security advantage as compared to a situation in which no other preventive measure was taken against the security threat; The advantage which should be taken into account is only the marginal addition to the security gained from the cessation of the family unification procedure, as compared to the possible use of alternative security means, such as the grant of temporary residency permits renewable on a short time basis, thus allowing a periodic supervision by the authority of the real danger posed by the spouse, resident of the Area, who resides in Israel; tightening the supervision over the spouse who resides in Israel, obtaining his undertaking to sever any connection he may have with hostile parties and putting such an undertaking to a test, and such similar means.
>
> (**Dakah**, paragraph 33 of the judgment).

96. The above said is reinforced in view of the fact that of the first part, no specific security or criminal threat is posed by petitioner 2, and of the other, the protected interest is vague and its public weight is unclear. Relevant to this issue are the words of the court in **Dakah**:

> The weightier the violated human right, and the more severe the violation thereof, the stronger the conflicting public interest must be to justify the violation, otherwise, the violation may be considered disproportionate. **A correlation should exist between the strength of the fundamental right and the weight of the conflicting public interest to justify the violation of the right. The severity of the injury should also be integrated in this equation.**
>
> (*Ibid.*, paragraph 14. Emphasis added. N.D.).

97. The above indicates that in making their decision to deny the family unification application, **the respondents failed to examine whether the required correlation existed between the severity of the violation of the right and the protection of public interest**. In AP 310/07 **Mugrabi v. Minister of Interior** (reported in Nevo, hereinafter: **Mugrabi**), the court examined the proportionality issue in the context of a denial of a family unification application due to "conflict of interests", and held that the above required correlation did not exist in that case:

> Hence, what is the threat embedded in that "conflict of interests" on which the decision is based? This question was presented in the hearing to respondents' counsel, but the answer which was given only strengthened the impression that behind said interest no specific concern

existed which justified the drastic reaction of an absolute denial of a constitutional right.

[…]

The above specified difficulties arising from the reliance on the obscure reason of "conflict of interests" which does not involve any security or criminal threat, undoubtedly apply, if not to the mere relevancy of the reason itself, then at least to the balancing between said reason and the right to family life, as well as to the implementation of the tests of proportionality in the framework of the balancing. Even if it is a legitimate consideration (and I have not yet said that this was the case), its status and strength are significantly lower than the status and strength of a consideration which is based on a security or criminal threat. In any event, the Minister of Interior is doubly obligated, according to the second and third subtests of the principle of proportionality, to avoid, to the maximum extent possible, a sweeping violation of the constitutional right to family life in Israel, and prefer the solution which injures said right to the minimum extent possible, while maintaining a proper relation vis-à-vis the contribution of said injury to the prevention of said "**conflict of interests**".

The decision of the Minister of Interior dated January 15, 2007, stipulates that the need of the state of Israel to prevent "**conflict of interests**" overrides "**the right of Mr. Mugrabi to maintain family life with his wife and daughter in Israel**." The scope of the Minister of Interior's discretion in population administration matters, which is especially broad, particularly when risk evaluation is concerned, could have justified abstention from intervention in said stipulation, had the petitioner posed a security or criminal threat. This is not the case when the concern involves neither one of these risks, but rather, an obscure concern for the interests of the state on the promotional or political level. Such a concern does not completely override the constitutional right to family life in Israel. Even when a security risk is involved, the probability of the realization of the risk must be weighed against the unquestionable injury caused to family life…"

(*Ibid*., Emphases appear in the original, N.D.)

98. As aforesaid, even when the sponsored party in a family unification procedure poses a specific security or criminal threat, the respondents are obligated to balance the violated right against the protected interest – in the case of a security or criminal threat the protected interest is securing public safety and life in Israel. Said obligation is all the more so applicable, when the respondents fail to point at any specific threat to public safety which may arise from the sponsored party:

> If this is the case when a life threatening risk is concerned, it applies even more forcefully when the interest which is balanced against the violation of the constitutional right concerns the promotional and political needs of the state. A complete denial of the constitutional right due to such needs is at all possible, only when the impingement thereon is concrete, present and clear. A constitutional right cannot be sweepingly and relentlessly violated for the realization of an obscure and un-defined public interest, both in terms of its nature and the chances and time of the anticipated impingement thereon, as things stand in the case at hand according to the

> explanations given by the respondents to said "**conflict of interests**". I t is a well known rule that "**whenever the denial of existing rights or the denial of fundamental rights is at stake**" the administrative authority may not make a decision denying them unless it is based on "**clear, unequivocal and convincing**" evidence (HCJ 159/84 **Shahin v. Military Commander of the Gaza Strip Area**, IsrSC 39(1) 309, 327). "**A particularly severe violation of a fundamental right must be based on particulary reliable and convincing data.**" (HCJ 987/94 **Euronet Kavei Zahav (1992) Ltd. v. Minister of Communication**, IsrSC 48(5) 412, 425). "**The reasonableness of the decision derives from the values involved in the decision. Therefore, if the administrative discretion may violate human rights, convincing and reliable evidence, which leaves no doubt, is required**." (HCJ 680/88 **Shnitzer v. Chief Mlitary Censor**, IsrSC 42(4) 617, 637).
>
> (**Mugrabi**, Emphases appear in the original, N.D.)

99. The above said so far indicates that the connection between safeguarding state security and public safety and the refusal to grant a stay permit is not clear, in view of the fact that the danger arising from petitioner 2 is not clear. If there is another interest which the respondents wish to protect – it is not clear what that interest is, what is its nature and what is its strength. Similarly, it is not clear what benefit arises from the measure which the respondents chose to apply – a refusal to grant a stay permit. However, it is clear that the relation between such an obscure benefit and the scope of the injury inflicted on the petitioners is not proper.

100. We shall turn now to the third subtest of proportionality: whether the measure chosen by the respondents (denial of the family unification application) is the least injurious measure?

101. In this context the petitioners will argue that a decision in a family unification application, when the respondents are of the opinion that a there is a concern that the sponsored part has a conflict of interests, must take into consideration the requested status in the family unification procedure. As is known, under the current legal situation, in which the **Citizenship and Entry into Israel (Temporary Order), 5763-2003**, is in force (see judgment in HCJ 466/07 **Gal-On v. Attorney General**, which denied the petitions against the Temporary Order), **the most appellant 2 may receive in the framework of a family unification procedure, is a <u>DCO permit</u>**.

102. In cases in which the sponsored parties apply for permanent residency status (as opposed to a stay permit) in Israel, there may possibly be room – and the appellants do not present a decisive opinion on this matter in either direction - for the examination of the conflict of interests issue. However, when the only thing requested by the sponsored party – in view of the fact that it is the only thing which he is entitled to receive under applicable law – is a stay permit in Israel, the situation is completely different.

103. Indeed, the grant of renewable DCO stay permits in Israel is a proportionate solution, which will obtain the proper balance in the case at hand:

> Under such circumstances, the constitutional right does not completely recede, but rather, **a way must be found to keep it in place in a manner which maintains proper proportion between the scope of the violation of the right and the public benefit which arises from the supervision exerted over the petitioner which is intended to ensure that her presence in Israel is not used to prejudice the interests of the state**. This is done by limiting petitioner's stay in Israel for pre-

> determined periods of time, during which the ramifications of such presence on state interests will be supervised on an on-going basis, while maintaining the right of the Minister of Interior to refuse to extend the stay permit if it turns out that it was used to injure a material interest of the state.
>
> (**Mugrabi**, emphasis added, N.D.)

And also:

> A wide range of intermediate levels exists between a total denial of a permit application and a complete approval thereof for family unification purposes, including graduated permits, for the purpose of reconciling between the conflicting interests.
>
> (HCJ 5702/07 **Sabag v. Minister of Interior**, reported in Nevo).

104. All of the above indicates that respondents' decision does not satisfy the proportionality tests: the interest which the respondents wish to protect is unclear, as well as the probability that the protected interest or public safety will be injured; the respondents severely injure a fundamental right, without taking the measure which injures the protected right to a lesser extent. This argument applies to the general case in which a family unification application is denied due to a "concern that a conflict of interests exits". It most certainly applies to petitioner 2's specific case. We shall explain in detail herein-below.

<u>From the general to the particular: Application of the proportionality tests to petitioner 2's case</u>

105. As aforesaid, the argument that respondent's decision does not satisfy the proportionality tests is only intensified when petitioner 2's specific case is examined.

106. As indicated by petitioner 2's resume which is attached hereto, Mr. Hamidat is an **academic**. In the framework of his work, petitioner 2 builds educational programs for the Palestinian Police. The programs concern willingness and commitment, securing human rights and maintaining international law. Petitioner 2 prepares the courses, teaches them and supervises their implementation. It should be emphasized that **petitioner 2's position is civilian-academic in nature**. He does not engage in military or police activity and does not wear police uniform when he goes to work.

Petitioner 2's resume is attached and marked **P/55**.

107. In addition, petitioner 2 teaches in the Al-Quds Open University.

108. With respect to petitioner 2's employment with the Orient House, petitioner 2 was employed by said institution – **about twenty years** ago – as a social affairs clerk, and coordinated between widows and other needy persons and the relevant agencies in the office.

109. Hence, the nature of the positions held by petitioner 2 and the areas of his engagement indicate that a material concern for a conflict of interests does not exist in his case, in view of the fact his positions are only social-educational.

110. With respect to petitioner 2's administrative detentions, the petitioners will argue that these detentions occurred twenty years ago and therefore cannot be used as a current reason for the denial of the family unification application.

111. In addition to the above said, the petitioners wish to reiterate their arguments, which were raised before respondent 2's legal counsel, Advocate Gilboa, on February 24, 2011. In a letter of petitioners' counsel of said date, it was requested to add a document to petitioner 2's file – a joint recommendation letter of the directors of the "Parents Circle – Bereaved Families Forum" – with

the hope that said letter would be able to expedite the handling of appellants' matter and tip the scale in their favor.

The letter of appellants' legal counsel to respondent's legal counsel dated February 24, 2011, including the recommendation letter of the joint directors of the "Parents Circle – Bereaved Families Forum", is attached and marked **P/56**.

112. The above mentioned letter is a letter sent by the management of the "Parents Circle – Bereaved Families Forum", which attests to the work and personality of Dr. Rashed Tu'ameh Hamidat, as expressed, in his past and current activity, in the framework of the forum.

113. The "Parents Circle – Bereaved Families Forum" is a very well known and respectable organization which acts for the promotion of peace, reconciliation and tolerance between the Israeli and Palestinian nations and was established in 1994 by Yitzhak Frankenthal, whose son was murdered by Hamas activists. Currently the forum has a few hundred members, Israeli and Palestinian family members. The purpose of the organization is to achieve reconciliation, dialogue and peace between the nations. Due to its blessed activity, the forum has received many compliments and won many prizes and awards in Israel and around the world.

114. It should be noted that petitioner 2's activity in the forum, as well as other activities undertaken by him, were presented to respondent 4 in his hearing which was held on July 12, 2010. Thus, for instance, in addition to Dr. Hamidat's activity in the framework of the forum, he founded, together with others, a similar not-for-profit association named Al-Tariq. In addition, he is a well known lecturer on the issue of promotion of peace and reconciliation between the nations in different forums. A description of Al-Tariq's activities was also attached to the letter dated February 24, 2011. Among his other activities, Dr. Hamidat taught a few courses in the Al-Quds Open University and conducted a number of studies on democracy and human rights for NGOs.

115. Hence, and in addition to the above said, in view of the fact that respondents' decision fails to meet the proportionality tests, it is totally unclear which threat is posed by petitioner 2, and how the approval of his family unification application may prejudice an interest involving public security and safety in the state of Israel.

116. It should be noted that the transcript of petitioners' hearing, does not properly reflect what was actually said therein, particularly appellant's various professional positions and his involvement in the above described activities. As specified above, Ms. Darawsheh from HaMoked recorded the hearing in "real time". Some important points which were recorded by Ms. Darawsheh did not appear in the transcript of the hearing, such as petitioner 2's engagement in the human rights area, the fact that his position was educational in nature, petitioner 2's activities for the promotion of peace and reconciliation.

117. Instead of a complete presentation, the transcript of the hearing prepared by the Ministry of Interior provides a biased picture of petitioner 2 and hiswork. Points which support his arguments concerning the absence of conflict of interests – were not properly recorded in the transcript. It is doubtful whether respondent 4 conducted the hearing "with an open mind and heart". The deficient manner by which the transcript was drawn attests to the fact that the hearing was held as lip service only, and that petitioner 2's specific circumstances were not considered, despite the fact that the violated right in this case is a fundamental constitutional right, the violation of which should be made prudently, and subject to the satisfaction of weighty constitutional testes.

<u>Comments to stipulations made by the chair of the committee</u>

118. In addition to the legal arguments specified above, the petitioners will specifically comment on problematic points in respondent 1's decision.

119. Firstly, reference should be made to the problematic stipulation of respondent 1, who treated petitioner 2's application as an application for permanent residency status in Israel. Indeed, normally, a family unification procedure concludes in this manner. However, in the current circumstances, under the shadow of the Temporary Order, this is not the situation.

120. Respondent 1 reviews the principles of reasonableness and proportionality, but it is not clear how he reaches the conclusion that the decision is proportionate. It is particularly so in view of the fact that even if we accept his assumption that the application concerns a permanent residency status, the least injurious measure could have been chosen, such as the grant of renewable, short term, "outside the procedure", DCO permits, as the respondent occasionally does. Respondent 1 did not even deign to examine this possibility and the alternative measures which could mitigate the violation of the right.

121. It should be noted that in **Mugrabi**, on which respondent 1 relies, a proportionate solution was found in the form of renewable DCO permits.

122. Respondent 1 refers to section 3D of the Temporary Order as part of the normative framework of his decision, but does not discuss in detail the protected interest in the case at hand. In addition, he does not refer at all to the **Dakah** case and to the implementation of the tests specified therein, in the event a family unification application is denied pursuant to section 3D.

123. Indeed, respondent 1 adequately focuses on the current judgments which concern "conflict of interests" and holds that the former judgments (**Za'atra** and **Atiya**) are not relevant to the current legal situation, in view of the fact that they were given before Temporary Order. However, respondent 1 distinguishes **Mugrabi** and **Sabag,** in a problematic and selective manner. Indeed, as noted by respondent 1, **Mugrabi** concerned an "indirect denial", in view of the fact that it concerned a daughter of an employee of the Palestinian Authority, and **Sabag** concerned the matter of a low ranking employee in the public relations department of the Palestinian Authority. However, in these judgments general and fundamental statements were made concerning the conflict of interests issue, in view of the Temporary Order, which were ignored by respondent 1. Thus, for instance:

a. The independent right of petitioners' children to live in Israel with their resident mother in the context of the right to family life and the **Adalah** judgment, should be considered (**Mugrabi**, paragraph 5).

b. The protected interest is vague and the respondent did not point at any specific security risk (**Mugrabi**, paragraphs 6, 8).

c. The probability that the alleged risk would be realized should be weighed *vis-à-vis* the unquestionable injury to family life (**Mugrabi**, paragraph 9).

d. There is a proportionate solution in the form of frequently renewable permits, to enable supervision:

> This is done by limiting petitioner's stay in Israel for pre-determined periods of time, during which the ramifications of such presence on state interests will be supervised on an on-going basis, while maintaining the right of the Minister of Interior to refuse to extend the stay permit if it turns out that it was used to injure a material interest of the state.
>
> (**Mugrabi**, paragraph 9).

> A wide range of intermediate levels exists between a total denial of a permit application and a complete approval thereof for family unification purposes, including graduated permits, for the purpose of reconciling between the conflicting interests.
>
> (**Sabag**, paragraph 13).

124. Respondent 1 chose to ignore these general statements and focused on finding the differences between petitioners' matter and the matters which were discussed in said judgments. He ignored the possibility presented therein to find a proportionate solution, and the obligation to examine the probability of the realization of the risk – a risk which in the case at hand is vague and non-specific.

Conclusion

125. The respondents denied petitioners' application for the realization of their fundamental right: to live together as a unified family in petitioner 1's country, on the vague grounds of "conflict of interests", while the nature of that concern is unclear and the probability of its realization is unknown. Respondents' decision does not satisfy the tests of proportionality, particularly in view of the fact that petitioner 2 does not request – and cannot – receive status in Israel, but only a stay permit therein.

126. In view of all of the above, the petitioners request the honorable court to order the respondents to act as requested in the beginning of the petition, and to obligate the respondents to pay legal fees and costs of trial.

Jerusalem, February 28, 2013

_____

Noa Diamond, Advocate
Counsel to the petitioners

(File No. 15726)