**At the Supreme Court** **HCJ 1635/16**
**Sitting as the High Court of Justice**

In the matter of:

1. **Abu Kaf, ID No. _____**
2. **Atrash, ID No. _____**
3. **Dwayat, ID No. _____**
4. **Abu Ghanem, ID No. _____**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA No. 580163517**

all represented by counsel, Adv. Abir Joubran-Dakwar (Lic. No. 44346) and/or Sigi Ben Ari (Lic. No. 37566) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Ido Blum (Lic. No. 44538) and/or Anat Gonen (Lic. No. 28359) and/or Nadia Dakah (Lic. No. 66713) and/or Hava Matras-Irron (Lic. No. 35174) and/or Nasser Odeh (Lic. No. 68398) and/or Daniel Shenhar (Lic. No. 41065)

Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
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**The Petitioners**

v.

1. **Government of Israel**
2. **Minister of Interior**

represented by the State Attorney's Office
29 Salah-a-din St., Jerusalem
Tel.: 02-6466590; Fax: 02-6466713

**The Respondents**

# Petition for *Order Nisi*

A petition for an *order nisi* is hereby filed with the honorable court which is directed at the respondents ordering them to appear and show cause:

1. Why they should not revoke respondent 2's decision dated January 21, 2016, which provides for the revocation of the permanent residency status of petitioners 1-4 on the grounds of breach of allegiance based on section 11(a)(2) of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry Into Israel Law**), due, *inter alia*, to the special status of the residents of East Jerusalem and due to the absence of explicit and detailed authorization in primary legislation.

2. Why respondent 2 should not refrain from the revocation of the permanent residency status of East Jerusalem residents based on section 11(a)(2) of the Entry into Israel Law on the grounds of breach of allegiance or other grounds, due, *inter alia*, to the special status of the residents of East Jerusalem and due to the absence of explicit and detailed authorization in primary legislation.

**Jurisdiction to consider this petition is vested with this honorable court**

1. This petition concerns respondents' decision to revoke the permanent residency status of East Jerusalem residents, including petitioners 1-4, based on section 11(a)(2) of the Entry into Israel Law, on the grounds of an alleged "breach of allegiance to the State of Israel".

2. In response to an answer which may be raised regarding the filing of this petition to the High Court of Justice (rather than to the court of appeals or the court for administrative affairs), the petitioners wish to clarify:

3. This petition concerns not only the private matter of petitioners 1-4 and the revocation of their permanent residency status, but also, and probably mainly, the unlawfulness of section 11(a)(2) of the Entry into Israel Law and the lack of authority of the Minister of Interior to revoke the permanent residency status of East Jerusalem residents in general, in view of the fact that a general authority is concerned and in view of the fact that the population at hand is a special, indigenous population which obtained its status in complex historical circumstances, as will be specified below. **Hence, the petition concerns general-substantial issues which have important and crucial ramifications on the life and status of petitioners 1-4 in particular and on the life and status of the residents of East Jerusalem, in general**.

4. Furthermore. The decision regarding the procedure for the revocation of the residency of East Jerusalem residents was made by the Ministerial Committee on National Security Affairs, in the context of the measures which the government decided to take in response to the security events. Amendment No. 22 of the Entry into Israel Law stipulates that the court of appeals is vested with the jurisdiction to consider decisions which pertain to entry into Israel, presence and residency in Israel and exit from Israel according to the Entry into Israel Law, **other than government resolutions**, and other than matters pertaining to the promulgation of regulations (see section 23 of the Law and its Addendum). It should be emphasized that the Ministerial Committee on National Security Affairs operates by virtue of section 6 of the Government Law, 5761-2001 and its decisions are regarded as government resolutions. Hence, the court of appeals does not have jurisdiction in respect of the decision of the ministerial committee regarding the revocation of the permanent residency status of East Jerusalem residents.

5. It should also be noted that in the past a petition was filed with the court for administrative affairs AP 832/06 **Abu Arafeh v. Minister of Interior,** regarding the unlawfulness of the decision of the Minister of Interior to revoke the permanent residency status of four East Jerusalem residents on the grounds of breach of allegiance, based on section 11(a)(2) of the Entry into Israel Law.

6. The honorable President Musia Arad ordered on September 21, 2006, to transfer the petition to the High Court of Justice "due to the importance of the matter being the subject matter of the petition", pursuant to section 6 of the Courts for Administrative Affairs Law.

A copy of the decision of the honorable Judge Musia Arad dated September 21, 2006, in AP 832/06 **Abu Arafeh v. Minister of Interior**, is attached and marked **P/1**.

7. **And indeed, the Abu Arafeh petition was filed with this honorable court in** HCJ 7803/06 **Abu Arafeh v. Minister of Interior (Abu Arafeh** or **the General Petition)**, **which issued an *order nisi* therein**, ordering the Minister of Interior to appear and show cause why his decision for the revocation of the permanent residency status of four East Jerusalem residents being the subject matter of the **Abu Arafeh** petition should not be revoked "due, *inter alia*, to the absence of explicit and detailed authorization in primary legislation and the absence of primary arrangement in primary legislation for the revocation of the permanent residency status of individuals who were born in East Jerusalem on the grounds of breach of allegiance or on other grounds raised by [the Minister of Interior]." It was further held by the honorable court that **the petition would be heard by an expanded panel**. The **Abu Arafeh** petition is still pending before this honorable court.

8. **In view of the above and in view of the general and substantial issues raised in this petition, the jurisdiction to consider this petition is vested with this honorable court.**

**The subject matter of this petition**

9. This petition concerns the decision of respondent 2 to revoke the permanent residency status of petitioners 1-4 based on section 11(a)(2) which stipulates that "The Minister of Interior may, at his discretion – […] revoke residency status which was granted according to this law."

10. Respondent 2, the Minister of Interior, revoked the permanent residency status of petitioners 1-4 on the grounds of "breach of allegiance", in view of the fact that criminal charges were pressed against them in matters of an ostensible security nature and despite the fact that the criminal proceedings in their cases have not yet been completed and their guilt has not yet been proven. It is important to note that the decision to revoke the permanent residency status of petitioners 1-4 was made according to the resolution of the Ministerial Committee on National Security Affairs of respondent 1, against the backdrop of the recent security condition. Namely, it is first and foremost a decision the purpose of which is to deter and punish.

11. It is the petitioners' view, as will be specified below in the legal part, that the respondent has no authority to revoke the permanent residency status of East Jerusalem residents in general, and the status of petitioners 1-4 in particular, on the grounds of "breach of allegiance" for several main reasons:

12. The residents of East Jerusalem are indigenous people. They were granted permanent residency status by the State of Israel following the annexation of East Jerusalem to Israel due to the fact that they were born in the annexed territory – contrary to other groups which received permanent residency status as a result of the fact that they entered Israel and settled therein. *A priori*, the duty of allegiance did not constitute a condition for granting permanent residency status to the residents of East Jerusalem.

13. Section 11(a)(2) of the Entry into Israel Law is a general section which ostensibly grants unlimited and broad power to the Minister of Interior to revoke the status of permanent residency while no criteria for the exercise of such an extreme and injurious power were specified in primary legislation. According to the case law, the scope of the authority and discretion must be defined and circumscribed in primary legislative arrangements, especially in view of the severe, fatal and extreme harm to the rights of petitioners 1-4 in particular, and the East Jerusalem residents in general, including the right to residency, the right to liberty, the right to dignity, the right to family life, the right to personal autonomy and the right to freedom of movement.

14. Section 11(a)(2) must be given a purposive interpretation which reconciles with the historical intention of the legislator, with the principles of Israeli law and with the principle of separation of power. According to the purposive interpretation of this section, the power and discretion of the Minister of Interior to revoke the status of permanent residency should be limited only to cases in which the status holder breached an explicit term which had been set in advance as a condition for the receipt of the status, or to cases in which the resident moved to another country and settled down therein (according to the terms set forth in the Entry into Israel Regulations, 5734-1974). In addition, and is indicated by the discussions which were held with respect to this section by the Knesset, the legislator itself did not wish to grant the Minister of Interior the power to revoke the permanent residency status of individuals born in this land.

15. Section 11(a) of the Citizenship Law, 5712-1952 (hereinafter **Citizenship Law**), obligates granting a permanent residency visa to a person whose citizenship was revoked due to breach of allegiance to the state, should he be left without status in the world, which reinforces the argument that the status of a resident does not contain the duty of allegiance to the state.

16. In addition, the residents of East Jerusalem are protected residents according to international humanitarian law. The residents of East Jerusalem have all protections which are available to protected residents, including the right to be protected against deportation from their occupied homeland and the right not to pledge allegiance to the occupying power. As a result of the revocation of petitioners' permanent residency status they will be deported from Jerusalem and their family and personal ties with Jerusalem will be severed. In addition, as a result of the revocation of their status, petitioners 1-3 will remain stateless in the entire world.

17. Even if we assume that the Minister of Interior has the power to revoke the permanent residency status of East Jerusalem residents, then, according to the position of the Minister of Interior in the general petition in the **Abu Arafeh** case, he should use it only in extreme and extraordinary cases. In the circumstances at hand, it seems that the cases of petitioners 1-4 as we shall elaborate in detail below are not cases which enable the Minister of Interior to exercise said power, and most certainly not at this current stage, when the criminal proceedings in their cases are still pending and their guilt has not yet been proven.

## Table of Contents


**The Factual Part**

The Parties…… 6

The criminal proceedings currently pending against petitioners 1-3 underlying the decision to revoke their permanent residency status in Israel …….. 7

The criminal proceeding currently pending against petitioner 4 underlying the decision to revoke his permanent residency status in Israel…….. 8

An additional sanction – an intention to forfeit and demolish the family homes of petitioners 1-4 by virtue of Regulation 119 of the Defense (Emergency) Regulation, 1945…… 8

Exhaustion of remedies – the proceeding for the revocation of petitioners' residency…… 9

The general petition in Abu Arafeh's matter regarding revocation of the permanent residency status of East Jerusalem residents for breach of allegiance…… 16

**The Legal Part**

**Preface** 17

**Part I: The Legal Framework – the special status of East Jerusalem under Israeli Law and International Humanitarian Law**…….. 19

**Part II: The Minister of Interior is not authorized to revoke the permanent residency status of East Jerusalem residents pursuant to section 11(a)(2) of the Entry into Israel Law on the grounds of breach of allegiance**……. 21

**A.** The duty of allegiance did not constitute a condition for the registration of the residents of East Jerusalem in the Israeli Population Registry as permanent residents…… 21

**B.** Absence of explicit authorization in the Entry into Israel Law to revoke permanent residency for breach of allegiance……. 24

**C.** The obligation to grant permanent resident in Israel to a person whose citizenship was revoked on the grounds of breach of allegiance to the state…….. 27

**D.** The purposive interpretation of section 11(a)(2) of the Entry into Israel Law revokes the discretion and authority of the Minister of Interior to revoke permanent residency status…… 27

**Part III: The flaws in the administrative proceedings for the revocation of the permanent residency status of petitioners 1-3**……..... 31

**A.** Violation of petitioners 1-3's right to be heard…….. 31

**B.** The revocation of the permanent residency status before conviction in the criminal proceeding is extremely unfair and unreasonable …….. 33

**C.** The Decision of the Minister of Interior is unreasonable and is based on extraneous considerations….. 35

**D.** These are not the exceptional cases which justify the use of such an extreme sanction…….. 38

**E.** Draconian administrative sanctions in addition to the criminal proceeding……. 39

**Part IV: Violation of petitioners 1-4's fundamental rights**…… 39

**Conclusion**…… 44

## The Factual Part

### The Parties

18. **Petitioner 1**, Abu Kaf, who is about 18 and-a-half years old, was born in Jerusalem on May 17, 1997. He lived in Sur Bahir neighborhood in East Jerusalem where he attended Ibn Rushd school. Petitioner 1's parents were born in Jerusalem and reside therein and the entire family has been living in Jerusalem for many generations.

    Petitioner 1 comes from a very low socioeconomic status family. Petitioner 1's mother suffers from a very severe mental illness of schizophrenia. The family's poverty along the mother's illness which erupted about eight years ago, have substantially affected all of the family's children and particularly petitioner 1, the eldest child, who was ten years old at the time, and was consequently treated by the welfare authorities of Sur Bahir in East Jerusalem.

    Throughout the years and due to the family's distress and the mother's illness, the children were mostly taken care of by petitioner 1's father. At a certain point, petitioner 1, the eldest son of six siblings stepped into his father's shoes. He had to leave school when he was approximately in the eighth grade and had to start working at a young age to support the family. For two years petitioner 1 worked for the food chain Supersal and delivered groceries to homes in west Jerusalem. When he was seventeen years old petitioner 1 started to work in the early morning hours in the distribution of the newspaper "Yisrael Hayom", and thereafter continued to work with a company that distributed food products in the Beit Shemesh and Rishon LeZion area. Petitioner 1 has no status elsewhere in the entire world and he has never travelled abroad.

19. **Petitioner 2**, Atrash, who is about 18 and-a-half years old, was born in Jerusalem on August 26, 1997. He lived in Sur Bahir neighborhood in East Jerusalem where he attended school. His mother is a permanent resident who has been living in Jerusalem her entire life. Petitioner 2's father was born in Jordan and has Jordanian citizenship. In 1995, when he married petitioner 2's mother, the father moved to Jerusalem and received permanent residency by virtue of a family unification procedure undertaken by him. Petitioner 2 graduated high school. He enrolled in the Open University and was about to start his studies there in October this year. Petitioner 2 wants to a sports teacher. Petitioner 2 has Jordanian citizenship by virtue of his father's status.

20. **Petitioner 3**, Dwayaet, who is 19 and-a-half years old, was born in Jerusalem on July 23, 1996. He lived in Sur Bahir neighborhood in East Jerusalem where he attended school. Petitioner 3's parents were born in Jerusalem. They reside in Jerusalem and the entire family has been living in Jerusalem for many generations. Petitioner 3's father passed away in 2001. Petitioner 3 graduated high school about a year ago and planned to go to the university – but due to the family's economic condition he undertook a variety of odd jobs such as construction, waiting and gardening. Petitioner 3 has no status elsewhere in the entire world.

21. **Petitioner 4**, Abu Ghanem, who is 22 years old, was born on January 8, 1994 in Jordan. His mother is a Jerusalem resident and his father is Jordanian. The mother relocated to Jordan after she married petitioner 4's father in 1991. In 1995, when petitioner 4 was an infant, the family left Jordan and moved to Jenin where they lived until 1999. Since 1999, when petitioner 4 was about five years old, he has been living in Jabal al Mukabber neighborhood in East Jerusalem. Petitioner 4 studied in Jerusalem and graduated high school. Thereafter he studies in Abu Dies University. Petitioner 4 advised that he had no ties to Jordan other than a single visit in 2012 and that he was not certain whether he still had Jordanian citizenship.

22. **Petitioner 5** (hereinafter: **HaMoked**), is a registered non-profit association which has taken upon itself, *inter alia*, to assist East Jerusalem residents and their family members in various matters *vis-à-vis* state authorities and to protect their rights before legal instances, either in its own name as a public petitioner or as counsel to those whose rights were violated.

23. **Respondent 1** (hereinafter: **respondent 1**), is the government of Israel on behalf of which the Ministerial Committee on National Security Affairs decided to revoke the permanent residency status of perpetrators, as part of the measures taken in response to recent security incidents.

24. **Respondent 2** (hereinafter: **respondent 2** or **Minister of Interior**), is the Minister whose decision to revoke the permanent residency status in Israel of the petitioners 1-4 according to section 11(a)(2) of the Entry into Israel Law is challenged in this petition.

**The criminal proceedings currently pending against petitioners 1-3 underlying the decision to revoke their permanent residency status in Israel**

25. On October 15, 2015, indictments were filed against petitioners 1-3 in the framework of CrimC 26792-10-15. The indictments allege that on September 13, 2015, on *Rosh Hashana* eve, petitioners 1-3 threw stones at cars which drove on the road which connects between Hebron road in *Talpiot* neighborhood and *Armon HaNatziv* neighborhood in Jerusalem and which passes near the outskirts of Sur Bahir village (hereinafter: the **road**), and that a few minutes later a car driven by the late Mr. Alexander Levlovitch (hereinafter: the **deceased**) who had two additional passengers with him drove by. According to the indictment, petitioner 3 threw a stone at the deceased's car, which led to an accident in which the deceased was killed and another passenger injured. Petitioners 1-3 are accused of manslaughter, stone throwing at a vehicle and the infliction of severe injury. According to the notices concerning the intention to revoke the permanent residency status of petitioners 1-3 and respondents' decisions to revoke their residency, the above decisions are premised on said indictments.

    A copy of the indictments against petitioners 1-3 is attached and marked **P/2**.

26. The criminal proceeding in petitioners 1-3's matter is only in its initial stages. On November 9, 2015 a hearing was held in the state's application for detention until completion of proceedings of petitioners 1-3.

27. On November 25, 205 it was held that *prima facie* evidence existed in petitioners 1-3's matter and a decision was given for their detention until completion of proceedings (Detention File 26655-10-15). Petitioners 1-3 are held in Megiddo prison.

28. In January 2016, petitioners 1-3 responded to the indictments which were filed against them.

29. Petitioner 1 totally denied the allegations made against him in the indictment and claimed that he had not thrown stones at vehicles.

30. Petitioner 2 also denied all allegations raised against him in the indictment other than his presence in the place of the occurrence and claimed that he had not thrown stones at vehicles.

31. Petitioner 3 admitted that he stood beside the road and threw a few single stones at vehicles without any intention to cause bodily harm to their passengers. Petitioner 3 totally denied that he had noticed the deceased's car or that he had thrown stones at it.

32. Contrary to what is attributed to them in the indictments, petitioners 1-3 totally deny that they had a early agreement to jointly throw stones, they deny that they arrived to the road together and they

deny that they acted jointly and threw stones jointly. In addition, all three deny any connection on their part to the occurrence in which the deceased lost control over his car, as a result of which the car hit a post and a tree which eventually lead to the deceased's death.

The petitioners raise arguments against the manner by which their admissions were taken in an Israel Security Agency (ISA) interrogation, which have not yet been examined and this is the early stage in which the criminal proceeding against them is currently at.

Copies of the replies submitted by petitioners 1-3 to the indictments are attached and marked **P/3-P/5**.

33. On March 7, 2016, the first evidence hearing will be held in the criminal case of the three petitioners.

34. In addition to the above, the indictments also attribute to petitioners 1-3 the offenses of attempt to cause severe injury, manufacture of firearms, arson, attempted arson, disturbing an officer in severe circumstances, all of which are denied by them.

**The criminal proceeding currently pending against petitioner 4 underlying the decision to revoke his permanent residency status in Israel**

35. On November 9, 2015 an indictment was filed against petitioner 4 due to his involvement in a shooting attack on a bus in *Armon HaNatziv* neighborhood. Petitioner 4 is accused of three counts of murder and seven additional counts of attempted murder according to section 300(a)(2) and 305(1) of the Penal Law, 5737-1977, respectively.

A copy of the indictment which was filed against petitioner 4 is attached and marked **P/6**.

36. According to the notice of the intention to revoke the permanent residency status of petitioner 4, the decision is premised on said indictment. The criminal proceedings in the matter of petitioner 4 are in their initial stages. The petitioner is detained until completion of proceedings and is held in Eshel prison. On March 13, 2016, a hearing is scheduled in the criminal proceeding in which petitioner 4 will respond to the allegations made against him in the indictment.

**An additional sanction – an intention to forfeit and demolish the family homes of petitioners 1-4 by virtue of Regulation 119 of the Defense (Emergency) Regulation, 1945**

37. On February 4, 2016, at night, notices were delivered to the legal counsels of petitioners 1-3 of the intent to forfeit and seal the dwellings of petitioners' families by virtue of the power vested in the GOC Home Front Command according to Regulation 119 of the Defense (Emergency) Regulations, 1945 (hereinafter: the **Defense Regulations**). The notices stated that said measure was taken due to the execution of the attack on September 13, 2015, "in which stones were thrown at Jewish vehicles which passed on the 'Asher Vinner' route with the intent to injure them. As a result of the attack Alexander Levlovitch was **murdered**." (Emphasis added by the undersigned). It should already be emphasized that the offense with which the petitioners are charged is manslaughter rather than murder. The family members were given an opportunity to submit objections against said intent until February 10, 2016, at 09:00.

38. On February 10, 2016, petitioners 1-3 submitted through their legal counsel’s objections against the intent to forfeit and seal the apartments in which they lived. On February 11, 2016, the objections which pertained to the family homes of petitioner 1 and petitioner 2 were denied. On February 17, 2016, petitions were filed with this court against the intent to demolish the family home of petitioner 1 (HCJ 1337/16) and against the intent to demolish the family home of petitioner 2 (HCJ 1336/16).

A hearing in said petitions has not yet been held. On February 23, 2016, the objection in the matter of the family home of petitioner 3 was denied.

Copies of the decisions in the objections and the forfeiture and sealing orders of the structures in which live the families of petitioners 1-3 are attached and marked **P/7-P/9**.

39. The family of petitioner 4 also received on November 10, 2015, a notice of the intent to forfeit and seal the apartment which served as the residence of the family, in view of the fact that the petitioner had resided therein until the day of the attack and his arrest. On November 15, 2015, an objection was submitted against the intent to demolish the family home. The decision of the GOC Home Front Command regarding the dwelling has not yet been given.

A copy of the notice of intent to forfeit and seal the structure in which lived the family of petitioner 4 is attached and marked **P/10**.

**Exhaustion of remedies – the proceeding for the revocation of petitioners' residency**

40. On October 14, 2015, respondent 1's Ministerial Committee on National Security Affairs convened to discuss the security situation and approved a series of measures. Among other things the committee decided to "**revoke the permanent residency of perpetrators**". In the government meeting dated October 18, 2015, the prime minister specified the measures taken recently according to the decision of the Ministerial Committee on National Security Affairs, including "revocation of perpetrators' residency".

A copy of the decision of the Ministerial Committee on National Security Affairs given on October 14, 2015, taken from the website of the prime minister's office, is attached and marked **P/11**.

A copy of the announcement of the government secretary given following the government meeting which was held on October 18, 2015, taken from the website of the prime minister's office, is attached and marked **P/12**.

41. Following the publication of the decisions of the Ministerial Committee on National Security Affairs, HaMoked wrote to the prime minister and demanded that action be taken for the cancelation of the decision to revoke the permanent residency status of East Jerusalem residents who were involved in the execution of attacks. HaMoked noted, *inter alia*, that the power to revoke the permanent residency status of East Jerusalem residents and its constitutionality were questionable and that said issue was currently pending before the Supreme Court in the framework of the general petition.

A copy of HaMoked's letter to the prime minister dated October 15, 2015, is attached and marked **P/13**.

42. On October 22, 2015, HaMoked wrote to respondent 2 and informed him that it was representing petitioners 1-4 in the status revocation proceedings in Israel, following media publications which appeared a day earlier according to which respondent 2 signed letters which summoned the four petitioners for a hearing. HaMoked requested to be advised of any action taken in connection with said proceedings.

A copy of HaMoked's letter to respondent 2 dated October 22, 2015, is attached and marked **P/14**.

43. On November 2, 2015, the response of the Attorney General to HaMoked's letter dated October 15, 2015, was received according to which "Your letter was reviewed and transferred to Adv. Dina Zilber – Deputy to the Attorney General (Counseling), for her attention."

A copy of the Attorney General's letter to HaMoked dated November 2, 2015, is attached and marked **P/15**.

44. On November 9, 2015, petitioner 3 informed his counsel in the criminal proceeding, Adv. Akram Khalili, when he met with him in the detention extension proceeding that he had received in prison a letter dated October 21, 2015, from respondent 2, which notified of the latter's intention to revoke his permanent residency status in Israel and of the opportunity to submit arguments within 30 days. Following receipt of said information petitioners' counsel wrote on November 10, 2015, on behalf of HaMoked, to respondent 2 and protested against the failure to transfer the above notice to HaMoked despite the representation notice which was given to him. She also noted that November 9, 2015, should be regarded as the date on which the letter was served for the purpose of computing the days for the submission of arguments against the intention to revoke petitioner 3's status.

A copy of respondent 2's notice to petitioner 3 of the intention to revoke petitioner 3's permanent status is attached and marked **P/16**.

A copy of the letter of petitioners' counsel to respondent 2 regarding petitioner 3's matter dated November 10, 2015, is attached and marked **P/17**.

45. On November 12, 2015, petitioners' counsel visited petitioners 1-3 in Megiddo Prison, when she was informed that petitioners 1 and 2 have also received notices from respondent 2 of his intention to revoke their permanent status, while giving the opportunity to submit arguments within 30 days. The notices were dated October 21, 2015.

A copy of respondent 2's notice to petitioner 1 of the intention to revoke petitioner 1's permanent status is attached and marked **P/18**.

A copy of respondent 2's notice to petitioner 2 of the intention to revoke petitioner 2's permanent status is attached and marked **P/19**.

46. On November 16, 2015, petitioners' counsel wrote to responded 2 and **demanded that the proceedings for the revocation of petitioners 1-3's status be stayed**. In the letter, petitioners' counsel noted that she first learnt of the intention to revoke the permanent residency status of petitioners 1-2 on November 12, 2015, when she visited them in prison, despite HaMoked's representation notice dated October 22, 2015. Therefore, November 12, 2015, should be regarded as the effective date for the purpose of computing the days for the submission of the arguments against the decision to revoke their status.

47. In the letter, petitioners' counsel demanded that **the proceedings for the revocation of petitioners 1-3's residency be stayed until judgment was given in the general petition concerning this issue,** which was pending before an expanded panel of the Supreme Court and in which an *order nisi* was issued.

A copy of the demand letter for a stay of the proceedings in petitioners 1-3's matter dated November 16, 2015, is attached and marked **P/20**.

48. On November 16, 2015, the response of the legal advisor for the prime minister's office to HaMoked's letter dated October 15, 2015, regarding the decision of the Ministerial Committee on National Security Affairs was received, which stated that the power to revoke the status of a permanent

resident was vested with the Minister of Interior subject to the approval of the Attorney General and once the decision was made the party prejudiced by the decision could file a petition.

A copy of the legal advisor of the Prime Minister's Office dated November 16, 2015, is attached and marked **P/21**.

49. On November 17, 2015, a response was given through the legal advisor for the population and immigration authority to the letters of petitioners' counsel dated November 10, 2015, and November 16, 2015. The letter noted that on October 21, 2015, respondent 2 signed a notice of his intention to act according to section 11(a) of the Entry into Israel Law with respect to petitioners 1-4 and that his notices were transferred to the four petitioners through the Israel Prison Service. It was also noted that he was not aware of HaMoked's notice dated October 22, 2015, that it was representing the petitioners.

50. As to petitioners' demand that the proceedings be stayed in view of the general petition which was pending before the Supreme Court, respondent 2 argued that there was no justification for the demand and that the responses of the four petitioners to the notices of the Minister of Interior should be submitted not later than December 8, 2015.

A copy of the response of the legal advisor of the Population and Immigration Authority of respondent 2, dated November 17, 2015, is attached and marked **P/22**.

51. On November 17, 2015, petitioners' counsel answered respondent 2's letter and noted that she, personally, verified respondent 2 bureau's receipt of the notice concerning petitioners' representation dated October 22, 2015. She also added that there was no basis for the date stipulated by respondent 2's representative, December 8, 2015, as the date for the submission of the written arguments, and reiterated that the dates mentioned in her former letters should be regarded as the effective dates for this matter.

A copy of the letter of petitioners' counsel to the legal advisor of the Population and Immigration Authority, dated November 17, 2015, is attached and marked **P/23**.

52. On November 19, 2015, petitioners' counsel sent another letter to respondent 2's representative and added that hearings held to the petitioners in such an early stage of the criminal proceeding, prejudiced their right to due process.

A copy of the letter of petitioners' counsel to the legal advisor of the Population and Immigration Authority of respondent 2, dated November 19, 2015, is attached and marked **P/24**.

53. In view of respondent's failure to respond to the letters of petitioners' counsel, the petitioners filed on November 23, 2015, an urgent petition and a request for an interim order to this honorable court, HCJ 7961/15 **Dwayat v. Government of Israel**. In the petition the petitioners requested to stay the implementation of the decision of the Ministerial Committee on National Security Affairs regarding "revocation of permanent residency of perpetrators" and to order respondent 2 to refrain from taking measures for the revocation of the permanent residency of the petitioners in particular and of the residents of East Jerusalem in general until decision was given in the general petition in **Abu Arafeh**'s matter which was pending before this honorable court.

54. On that day a decision was given by the honorable court according to which the respondents should respond to the petition within 30 days. In view of said decision the petitioners submitted on the following day, November 24, 2015, an urgent request for clarification in which they noted that the decision made no reference to the interim injunction which was requested together with the petition and that the date which was set in the decision for respondents' response rendered the petition

redundant, in view of the fact that the respondents have already commenced the proceeding for the revocation of petitioners' permanent residency and therefore the appellants had to submit their arguments against the decision by December 8, 2015. The petitioners requested further that should the honorable court denies the petition for *order nisi [sic]*, an urgent hearing be scheduled in the petition before December 8, 2015, the date which was scheduled by the respondents for the submission of petitioners' arguments against their decision. Following petitioners' request, the honorable court gave another decision which stated that it found no reason to issue the requested interim injunction and that in view of the court's tight schedule the request for an urgent hearing in the petition was also denied.

55. On November 29, 2015, the petitioners submitted an appeal to the court of appeals (Appeal 4682/15 **Abed Dwayat et al. v. Minister of Interior et al**.), in which they requested the court of appeals to order the respondents to give them 30 full days for submitting a written appeal against respondent 2's intent to revoke the permanent residency status of appellants 1-4, as required by law.

A copy of appeal 4682/15 **Abed Dwayat et al. v. Minister of Interior et al.,** without its exhibits, is attached and marked **P/25**.

56. On that day, November 29, 2015, at noontime, respondent 2's legal advisor sent a letter to appellants' counsel in which he notified that the last submission date of the written arguments was December 15, 2015. Respondent 2's legal advisor also argued that "the argument according to which we should wait until the criminal proceedings against your client are terminated has no merit and there is no preclusion for taking the administrative proceedings against them."

A copy of the letter of the legal advisor of the Population and Immigration Authority of respondent 2, dated November 29, 2015, is attached and marked **P/26**.

57. Therefore, the appellants submitted on November 29, 2015, a request on their behalf for the deletion of the appeal and for costs. On November 30, 2015 a judgment was given by the court of appeals which ordered that the appeal be deleted without an order for costs.

A copy of appellants' request to delete appeal 4682/15 is attached and marked **P/27**;

A copy of the judgment of the court of appeals in appeal 4682/15 is attached and marked **P/28**.

58. On December 7, 2015, petitioners' counsel wrote to respondent 2's legal advisor and requested to hold an oral hearing for the petitioners in addition to the written hearing, due to the severe violation of petitioners' right to residency and family life.

A copy of petitioners counsel's letter dated December 7, 2015 to the legal advisor of the Population and Immigration Authority of respondent 2 is attached and marked **P/29**.

59. On December 9, 2015, a response was received from respondent 2's legal advisor regarding the demand to hold an oral hearing, which stated that the request for an oral hearing would be considered by respondent 2 after his receipt of the written arguments, to the extent made.

A copy of the letter of the legal advisor of the Population and Immigration Authority of respondent 2 is attached and marked **P/30**.

60. In view of the response of respondent 2's legal advisor to the demand for an oral hearing, petitioners' counsel wrote immediately on that very same day again to the legal advisor of respondent 2's population and immigration authority and made it clear that the petitioners insisted on their right to have an oral hearing before a final decision was given in their matter, regardless of their written

arguments. Hence, petitioners' counsel demanded that respondent 2 immediately verified that petitioners' right for an oral hearing was reserved.

A copy of petitioners counsel's letter to the legal advisor of the Population and Immigration Authority of respondent 2, dated December 9, 2015, is attached and marked **P/31**.

61. On December 10, 2015, respondents' response was received in HCJ 7961/15 **Dwayat et al. v. Government of Israel et al**., according to which the petition to stay the proceedings against petitioners1-4 in particular and against the residents of East Jerusalem in general, should be denied in view of the fact that it was premature, since a final decision regarding the revocation of the permanent residency status of petitioners 1-4 had not yet been made by respondent 2.

A copy of respondents' response dated December 10, 2015, in HCJ 7961/15 **Dwayat et al. v. Government of Israel et al**., is attached and marked **P/32**.

62. On December 15, 2015, a letter was received from respondent 2's legal advisor which reiterated his position that "your clients' request for an oral hearing will be considered after receipt of your written arguments."

A copy of the response letter of the legal advisor of the Population and Immigration Authority of respondent 2, dated December 14, 2015, is attached and marked **P/33**.

63. On December 15, 2015, petitioners 1-4 submitted to respondent 2 their written arguments against the intention to revoke their permanent residency status.

Copies of petitioners 1-4 written arguments against the intention to revoke their permanent residency status which were submitted to respondent 2 on December 15, 2015, are attached and marked **P/34-P/37**.

64. On December 17, 2015, the petitioners submitted an appeal to the court of appeals, appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**., within the framework of which the appellants wanted to ensure that an oral hearing be held for petitioners 1-4 before a final decision was given in the intention to revoke their status as permanent residents in Israel. The appellants requested an interim injunction and an interim order for a stay of proceedings until a decision was made in appellants' request for an oral hearing.

Copies of the request for temporary order and interim order and the statement of appeal (appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**.) are attached and marked **P/38**.

65. On December 20, 2015, respondent 2's legal advisor sent a letter to petitioners' counsel in which he notified that a decision was made to hold oral hearings for petitioners 1-4.

A copy of the legal advisor of the Population and Immigration Authority of respondent 2 dated December 20, 2015, is attached and marked **P/39**.

66. On December 22, 2015, respondent 2 notified through the legal department of the population and immigration authority that the hearing of petitioners 1-3 would be held on December 24, 2015 in Megiddo prison at 09:30. In addition he proposed in his letter two dates for petitioner 4's oral hearing.

A copy of the letter dated December 22, 2015, on behalf of respondent 2 is attached and marked **P/40**.

67. On December 22, 2015, the court of appeals ordered the respondents to respond to the appeal in writing within 30 days and to the interim injunction and interim order within seven days. In view of

respondent 2's letters which stated that a decision was made to hold oral hearings the appellants submitted on December 23, 2015, a request to delete the appeal

A copy of the request to delete the appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**., is attached and marked **P/41**.

68. On December 23, 2015, following the retirement of the Minister Shalom from office as Minister of Interior, HaMoked wrote to the Prime Minister and requested to stay the proceedings for the revocation of petitioners 1-4's permanent residency status, at least until the appointment of a new Minister of Interior.

A copy of HaMoked's letter to the Prime Minister dated December 23, 2015, is attached and marked **P/42**.

69. On December 24, 2015, petitioners 1-3's oral hearings were held in Megido prison in the presence of their legal counsel. The hearings were conducted on behalf of respondent 2 by Ms. Hagit Weiss, Head of the East Jerusalem population and immigration bureau, and Adv. Noam Kahan from respondent 2's legal department. In the framework of the hearings petitioners' counsel requested to receive an undertaking that things that would be said in the hearing would not be used in the criminal proceedings against petitioners 1-3 as part of the privilege against self-incrimination. Respondent 2's representatives who attended the hearings said that they would check the request. **It is important to note that in view of the failure to receive a clear answer on the privilege against self-incrimination issue, petitioners 1-3 had to avoid the criminal charges pressed against them**.

Copies of the minutes of petitioners 1-3's oral hearings which were held on December 24, 2015, are attached and marked **P/43-P/45**.

70. On December 27, 2015, the respondents submitted in 5042-15 **Dwayat et al., v. Minister of Interior et al**., a response to appellants' request for the deletion of the appeal and an order for costs. On December 28, 2015, the appellants submitted their reply to respondents' response.

A copy of respondents' response in appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**., dated December 27, 2015, is attached and marked **P/46**.

A copy of appellants' reply in appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**., dated December 28, 2015, is attached and marked **P/47**.

71. On December 28, 2015, petitioners' counsel sent a letter to respondent 2's legal advisor in which she notified that she agreed to hold petitioner 4's oral hearing on January 14, 2016. In her letter she requested to receive an undertaking on behalf of respondent 2 that things that would be said by petitioner 4 in the oral hearing would not be used in the criminal proceedings pending against him as part of his privilege against self-incrimination according to section 47 of the Evidence Ordinance [New Version], 5731-1971.

A copy of petitioners counsel's letter to respondent 2's the legal advisor’s office of the Population and Immigration Authority, dated December 28, 2015, is attached and marked **P/48**.

72. On December 30, 2015, the petitioners submitted in the framework of HCJ 7961/15 an application to the honorable court in which they requested to determine as soon as possible the manner by which the petition would be processed in view of the fact that the measures which were taken to revoke their permanent residency status were in progress.

73. On January 7, 2016, the judgment of this honorable court was given in HCJ 7961/15, which denied the petition.

A copy of the judgment in HCJ 7961/15 Dwayat et al., v. the Government of Israel et al., is attached and marked **P/49**.

74. On January 12, 2016, respondent 2's legal advisor notified that "It was decided that in view of the circumstances, things that would be said by your client [petitioner 4] during the hearing would not be used against him in the criminal proceeding pending in his matter."

A copy of the letter of respondent 2's legal advisor dated January 12, 2016, is attached and marked **P/50**.

75. On January 14, 2016, petitioner 4's oral hearing was held at the presence of a representative of respondent 2's legal department and of the wadi al-joz bureau of the East Jerusalem population and immigration administration.

A copy of the minutes of petitioner 4's oral hearing held on January 14, 2016, is attached and marked **P/51**.

76. In view of the appointment of a new Minister of Interior, Mr. Arye Deri, petitioner 5 sent a letter on January 14, 2016, in which it requested respondent 2 to stay the proceedings against petitioners 1-4, until a decision was made by this honorable court in the general issue which was raised in HCJ **Abu Arafeh** regarding the power to revoke the permanent residency status of East Jerusalem residents for breach of allegiance. In this context petitioner 5 noted that a private bill was submitted by MK Hazan to the Ministerial Committee for the amendment of the Entry into Israel Law (Revocation of residency of a person who breached the duty of allegiance to the state of Israel or that of his relative), 5776-2016, which proposed to add a new sub-section to section 11 of the Entry into Israel Law that would empower the Minister of Interior to revoke the Israeli residency status of a person convicted of an offence involving "breach of allegiance" to the state, since that bill emphasized very well the fact that the Minister of Interior was not empowered to revoke the Israeli permanent residency status of East Jerusalem residents according to section 11(a)(2) of the Entry into Israel Law. In addition HaMoked presented to the new Minister its general and specific arguments against the intention to revoke the permanent residency status of petitioners 1-4.

A copy of the letter dated January 14, 2016, of petitioner 5 to respondent 2 is attached and marked **P/52**.

77. On January 17, 2016, the court of appeals dispatched its judgment in appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**. In its judgment the court ordered that the Appeal would be deleted without an order for costs.

A copy of the judgment in appeal 5042-15 **Dwayat et al., v. Minister of Interior et al**. dated January 14, 2016, is attached and marked **P/53**.

78. **On January 21, 2016, petitioners' counsels learnt from the media that respondent 2 decided to revoke the permanent residency status of petitioners 1-4, before they have received a formal notice to that effect**. An examination of various websites conducted by petitioners' counsel indicated that respondent 2 hurried to give, through the spokesperson of the population department, a detailed announcement to the media, including petitioners' full names, of his decision to revoke the permanent residency status of petitioners 1-4. The announcement stated, *inter alia*, as follows:

> **It is inconceivable that a person who killed Israelis and threatened the security of the state of Israel will continue to have the benefit of its rights. From now on perpetrators will know that acts of terror have ramifications beyond sitting in prison (emphasis appears in the original).**

And furthermore.

> It is an exceptional act but the severity of the actions of the four totally justifies my decision. In the execution of their acts of terror the perpetrators took advantage of the freedom of movement in Israel which stems from the fact that they are permanent Israeli residents who hold an Israeli identification card.

A copy of the media announcement of the spokesperson of the population and immigration office, which was published in the media before any formal notice was given to the petitioners or their counsel, dated January 21, 2016, is attached and marked **P/54**.

79. Only after petitioners' counsel called respondent 2's legal department to clarify the content of the spokesperson's announcement, did respondent 2's representatives confirm the content of the spokesperson's announcement and deigned to send to petitioners' counsel the formal decisions of the Minister of Interior to revoke the permanent residency status of petitioners 1-4.

Copies of respondent 2's decisions to revoke the permanent residency status of petitioners 1-4, sent to the petitioners' counsel on January 21, 2016, are attached and marked **P/55-P/58**.

80. It is important to note that respondent 2's decision was formulated while petitioners 1-3 were not given a genuine opportunity for a fair hearing in which they could refer to the merits of the charges attributed to them, in view of the fact that respondent 2's representatives refused to undertake to give them the right against self-incrimination.

**The general petition in Abu Arafeh's matter regarding revocation of the permanent residency status of East Jerusalem residents for breach of allegiance**

81. The **Abu Arafeh** petition was filed with the honorable court on September 26, 2006, against the unprecedented decision of the Minister of Interior dated June 30, 2006, to revoke the permanent residency of four petitioners, residents of East Jerusalem, who were appointed to hold office in institutions of the Palestinian Authority. The revocation was based on an alleged breach of allegiance to the state of Israel.

82. On December 25, 2006, the first hearing was held in the petition, in which the honorable court heard, *inter alia*, the request of the Association for Civil Rights in Israel and the Adalah organization to join the proceeding as *Amicus Curiae*, and in which a decision was given that:

> "**In view of the general aspects with which this petition is concerned, beyond the personal matter of the petitioners**, and in view of the fact that the Association for Civil Rights in Israel and the Adalah organization may contribute in their arguments to the clarification of said general aspect, we decide to accept the request and join them as *Amicus Curiae*.
>
> (Emphasis added by the undersigned)

83. Following said decision, on May 9, 2007, an opinion was submitted on behalf of the *Amicus Curiae.*

84. On October 23, 2011, following several hearings in the petition, the honorable court issued an *order nisi* which states as follows:

> *Order nisi* is hereby granted directing respondent 1 to appear and show cause why he should not revoke his decision dated June 30, 2006, to revoke the permanent residency status of petitioners 1, 8, 15 and 21, *inter alia*, in view of the absence of explicit and detailed authorization in primary legislation and in the absence of primary arrangement in primary legislation for the revocation of the permanent residency status of individuals who were born in East Jerusalem by reason of breach of allegiance or other reasons raised by respondent 1.

A copy of the decision of the honorable court in **Abu Arafeh** dated October 23, 2011, is attached and marked **P/59**.

85. On May 13, 2014, the honorable court decided to expand the panel which heard the petition by stating as follows: "Following an additional review and reconsideration of the parties' arguments, we have concluded that it would be appropriate for this petition to be scheduled for further hearing before an expanded panel, and so we decide."

A copy of the honorable court's decision and order nisi in **Abu Arafeh,** dated May 13, 2014, is attached and marked **P/60**.

86. On May 5, 2015, a hearing in the petition was held before an expanded panel following which the up-to-date position of the Minister of Interior was requested concerning the revocation of petitioners' residency due to various developments which occurred with respect to the petitioners. On September 10, 2015, the Minister of Interior notified the court that he did not see any reason to change the decision to revoke the permanent residency of the petitioners. **In view of the notice of the Minister of Interior, the parties are currently waiting for judgment in the general petition and in the substantial and general issues pertaining to the power of the Minister of Interior to revoke the permanent residency status of East Jerusalem residents on the grounds of breach of allegiance to the state or for other reasons by virtue of section 11(a)(2) of the Entry into Israel Law**.

## The Legal Part

### Preface

87. The petition concerns respondent 2's decision to revoke the permanent residency status of petitioners 1-4 pursuant to section 11(a)(2) which stipulates that "The Minister of Interior may, at his discretion – […] revoke residency status given according to this law." Respondent 2 revoked the permanent residency status of the petitioners on the grounds of "breach of allegiance" in view of the fact that criminal charges were pressed against them in cases of an ostensible security nature, despite the fact that the criminal proceedings in their cases are still pending and their guilt has not yet been proven.

88. Petitioners' position is, as will be elaborated in detail below, that respondent 2 is not authorized to revoke the permanent residency status of East Jerusalem residents in general, and of the petitioners, in particular, on the grounds of "breach of allegiance", for several reasons.

89. **Firstly, the status of residency by virtue of birth does not impose a duty of allegiance to the state**. The permanent residency of East Jerusalem residents is residency by virtue of birth which derives directly from the annexation of East Jerusalem in 1967 to Israel. The state of Israel refrained from giving the Palestinian population in East Jerusalem citizenship and in view of the fact that it could neither be left without status nor deported, the State of Israel registered the Palestinians who

lived in the annexed territory as permanent residents, being fully aware of the fact that this was a hostile population and that persons who were subjects of an enemy state were concerned. Therefore, as far as East Jerusalem is concerned, the duty of allegiance did not constitute, from the beginning, a condition for the grant of the status. The permanent residency status of the residents of East Jerusalem was given to them due to the fact that they were born in the territory which was annexed, in contrast to other groups in Israel whose permanent residency status was granted to them following their entry into Israel and their settlement therein.

90. **Secondly, the Minister of Interior does not have the power to revoke the permanent residency status of East Jerusalem residents on the grounds of breach of allegiance pursuant to section 11(a)(2) of the Entry into Israel Law in view of the absence of explicit authorization**. Section 11(a)(2) grants the Minister of Interior very broad authority – with no guidelines and with no criteria according to which he must act, and without specifying the conditions for the revocation of permanent residency. Case law provides that the guidelines for the acts of the executive authority must be established in primary legislation, particularly when such a severe violation of human rights is concerned, including the right to residency and the right to liberty, the right to dignity and the right to autonomy, the right to freedom of movement and the right to family life. It should be noted that in the Citizenship Law, the legislator explicitly authorized the Minister of Interior to revoke citizenship on the grounds of breach of allegiance to the state, in the framework of section 11 of the Citizenship Law, and even defined the acts which are regarded as a breach of allegiance, in contrary to the general wording of section 11(a)(2) of the Entry into Israel Law.

91. **Thirdly, the grant of permanent residency status to a person whose citizenship had been revoked by the Minister of Interior due to breach of allegiance to the state** strengthens the argument that a permanent resident does not owe a duty of allegiance to the state: the revocation of the Israeli citizenship of a person on the grounds of breach of allegiance pursuant to section 11(a) of the Citizenship Law, requires the grant of permanent residency to the person who, as a result of the revocation of his citizenship remained stateless in the world. Namely, a citizen who breached the duty of allegiance is still entitled to permanent residency status in Israel. Hence, it is clear that residency status does not entail the duty of allegiance to the state.

92. **Fourthly, purposive interpretation of section 11(a)(2) of the Entry into Israel Law revokes the discretion and authority of the Minister of Interior to revoke the status of permanent residency.** According the required purposive interpretation of section 11(a)(2) of the Entry into Israel Law –in view of the legislative history of the section and in view of the rules of Israeli law, namely, the principle of separation of powers and fundamental rights – the authority of respondent 2 to revoke permanent residency status is limited only to cases clearly defined in law or in the Entry into Israel Regulations: including breach of an express condition for receipt of the permanent residency status, which was established and enunciated in the permit to begin with, or permanent relocation to another country.

93. Moreover. Even if we assume that respondent 2 does indeed have authority to revoke the permanent residency status of East Jerusalem residents as argued by the respondents, the decision at hand are severely flawed: (a) respondent 2 refused to grant petitioners1-3 the right against self-incrimination in the context of the administrative proceedings for the revocation of their permanent residency status which violated their right to present arguments and their right to due process. (b) Respondent 2's decision is not reasonable, is based on extraneous considerations and relies on inaccurate findings, particularly in the cases of petitioners 1-3. In addition, the decision to revoke petitioners' permanent residency status precisely at this time, before they have been convicted of any criminal offense, stems from political and media-related pressures. (c) According to Respondent 2's position, as presented in the general petition in **Abu Arafeh**'s case, it is an authority which must be used in exceptional and extreme cases only. Therefore, in the circumstances of the case at hand, and particularly in the case

of petitioners 1-3 who are accused of manslaughter and not in murder, we are not concerned with exceptional and extreme cases which justify such a severe violation of fundamental rights. In addition, in cases similar to the offenses attributed to petitioner 4, the Minister of Interior chose not to exercise his authority to revoke citizenship.

94. Finally, East Jerusalem residents are protected residents by virtue of the special status of East Jerusalem under international humanitarian law. As protected residents they enjoy all protections afforded to them by international humanitarian law, in addition to the protection afforded under Israeli law, including protection against deportation from the occupied territory and protection against severance of the family connection as well as absence of duty of allegiance to the occupying power.

**Part I: The Legal Framework – the special status of East Jerusalem under Israeli Law and International Humanitarian Law**

95. For the examination of the scope and lawfulness of respondent 2's authority to revoke the permanent residency status of East Jerusalem residents, it is necessary to take into consideration the legal framework of the discussion in view of the special legal status of East Jerusalem.

96. In June 1967 the State of Israel conquered the West Bank. Immediately after the war the Government of Israel decided to annex to Israel about 70,500 dunums of the occupied territory located to the north, east and south of Jerusalem. According to a government bill, an amendment to the Law and Administration Ordinance was passed in the Knesset on 27 June, 1967, in the framework of which section 11B was added to the Ordinance which provides: "The law, jurisdiction and administration of the State shall apply to all areas of the Land of Israel which the government has determined by Order." On the following day, June 28, 1967, the government issued the Law and Administration Order (No. 1), 5767-1967, which applies the "law, jurisdiction and administration of the State", to East Jerusalem. In a proclamation made on the same day according to the Municipalities Ordinance, the annexed territory was included in the municipal area of Jerusalem (See: **Abu Labada v. Minister of Education,** paragraph 22 of the judgment of Justice (emeritus) Procaccia (reported in Nevo, February 6, 2011).

97. The Basic Law: Jerusalem, Capital of Israel**,** which was enacted in 1980, stipulates further, in section 1 thereof that "Jerusalem, complete and united, is the capital of Israel". In 2000, the Basic Law was amended and section 5 thereof stipulates that the "The jurisdiction of Jerusalem includes, for the purposes of this basic law, among other things, all of the area which is described in the appendix of the proclamation expanding the municipal area of Jerusalem dated Sivan 3, 5727 (June 28, 1967), as given according to the Municipalities' Ordinance". Section 6 of the Basic Law stipulates that "no authority which is lawfully vested with the State of Israel or with the Jerusalem Municipality and which pertains to the municipal area of Jerusalem shall be transferred to any foreign body, political or governmental or any other similar foreign body, either permanently or for a defined period of time." Section 7 of the Basic Law stipulates that "the provisions of sections 5 and 6 may only be amended by a Basic Law that is passed by a majority of the members of Knesset. (See also Amnon Rubenstein and Barak Medina, **The Constitutional Law of the State of Israel** (2005) pages 926-927, 932-935 (hereinafter: **Rubenstein and Medina)).**

98. Hence, in view of the above and according to **Israeli domestic law**, Israeli law which applies to the territory of East Jerusalem that was annexed to Israel also applies to the permanent residents of the annexed territory.

99. However, "the territory of a State, or its sovereign jurisdiction, are a matter to be decided by International Law", rather than by the domestic law of the state (**Rubenstein and Medina**, 924).

According to international law sovereignty is acquired in two ways: by entering an agreement with the bordering states, or by acquiring sovereignty over a territory in which there is no political sovereign of any kind (*Ibid.*). The unilateral application of the "law, jurisdiction, and administration" upon a territory which was occupied is not recognized by international law as a way for applying sovereignty.

100. Indeed, **international law** does not recognize the unilateral annexation of East Jerusalem or the legal validity of the normative steps adopted by Israel for the application of its sovereignty over East Jerusalem. In a host of pointed decisions the international community and the international institutions have repeatedly stressed that the practical and normative steps adopted by Israel in its annexation of East Jerusalem ran contrary to the rules of international law, and that East Jerusalem was an occupied territory (see, *inter alia*: United Nations General Assembly Resolution 2253 (ES-V) and 2254 (ES-V) (both of July, 1967); United Nations General Assembly Resolution 35/169E (December 1980), United Nations General Assembly Resolution A/61/408 (December 2006); United Nations Security Council Resolution No. 252 (May 1968); No. 267 (July 1969); No. 271 (September 1969); No. 298 (September 1971); No. 478 (August 1980); and No. 673 (October 1990)). See also: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (International Court of Justice, July 9, 2004), 43 IL M 1009 (2004) para. 75-78).

101. This position of international law is shared by the states all over the world. All states which maintain diplomatic relations with Israel on the ambassadorial level do not recognize the annexation and therefore are not prepared to house their embassies in Jerusalem (in recent years the embassies of Costa Rica and el Salvador, the last embassies to be housed in Jerusalem, have left Jerusalem).

See:

Rubenstein and Medina, pages 924-927, and page 933;
Yoram Dinstein, "Zion Shall be Redeemed by International Law' (in Hebrew) *HaPraklit* 27 5 (2001);
David Herling, *The Court, the Ministry and the Law: Awad and the Withdrawal of East Jerusalem Residence Rights*, 33 Israel Law Review 67, 69-70 (1999).

102. Hence, alongside the permanent residency status in Israel of the residents of East Jerusalem according to Israeli law, under international law East Jerusalem is regarded as an occupied territory whose residents have the status of "protected persons" who are entitled to the protections afforded to protected persons by international humanitarian law, including the Fourth Geneva Convention of 1949 and the Regulations annexed to the Hague Convention Respecting the Laws of War on Land of 1907 (hereinafter: the **Hague Regulations**).

103. In view of the fact that pragmatically it is clear that any annexing country will defend the lawfulness of the annexation, the draftsmen of the Convention ensured that even if such claim is made, it may not be used to deprive the protected persons of their rights as defined by international humanitarian law.

104. The application of Israeli law to East Jerusalem and its residents does not derogate from the protections afforded to the residents by international humanitarian law. Therefore, to the extent Israel wishes to regard East Jerusalem and its residents a part of Israel, it chooses to apply to East Jerusalem and its residents additional layers of normative protection which are not less powerful than those enshrined in international humanitarian law. Accordingly, Israeli law carries with it constitutional protections of its own as well as Israel's undertakings according to international human rights law. Hence, the application of Israeli law to East Jerusalem requires that the fundamental rights

entrenched in Israeli law be maintained and that Israel's undertakings according to international human rights law be fulfilled.

105. This is the approach which the petitioners request the honorable court to adopt in the case at hand**: the court is not requested to hold that Israeli law does not apply to East Jerusalem, but rather that the application of Israeli law does not deprive the residents of the eastern part of the city of their special rights as protected persons.** Clearly, the court must make its decision according to Israeli law, including the legislation of the Knesset as well as according to international customary law and international agreements absorbed in our domestic law.

## Part II: The Minister of Interior is not authorized to revoke the permanent residency status of East Jerusalem residents pursuant to section 11(a)(2) of the Entry into Israel Law on the grounds of breach of allegiance

### A. The duty of allegiance did not constitute a condition for the registration of the residents of East Jerusalem in the Israeli Population Registry as permanent residents

106. The residents of East Jerusalem were born and raised in Jerusalem and lived there for many generations before Israel annexed their city in 1967, when Jerusalem became part of the territory of the state of Israel. The residents of East Jerusalem were citizens of the Kingdom of Jordan, previously citizens of mandatory "Palestine" and previously citizens of the Ottoman Empire. East Jerusalem had been their home and homeland for ages. The residents of East Jerusalem received their permanent residency status in Israel by virtue of their being indigenous population and as a direct result of the annexation of their city to Israel.

107. After the annexation of East Jerusalem and its residents, Israel conducted a census, and any person who was counted in the census received permanent residency status. Thereafter permanent residency status was also given to persons who proved that they lived in the annexed territory prior to 1967 and continuously thereafter, even if not counted in the census (AAA 10811/04 **Suwarhi v. Ministry of Interior**, IsrSC 59(6) 411 (2005)).

108. The circumstances which lead to the grant of permanent residency status to the residents of East Jerusalem are described in a study which has been recently published by the Jerusalem Institute for Israel Studies and the primary sources on which it is based, particularly minutes of cabinet meetings which preceded the annexation of Jerusalem of June 1967 (Amnon Ramon ""From deep concerns to an enthusiastic and wide annexation: the moves of the Israeli regime toward the 'annexation of Jerusalem' (June 1967) **Research of Jerusalem throughout the ages: Substance and Mind** 365 (2015) (hereinafter: **Ramon**)).

109. In the case of the residents of East Jerusalem, they were registered in the Israeli population registry and Israeli identification cards with permanent residency status were given to them, with the clear knowledge that they were **subjects of an enemy state** who found themselves, after a difficult war, under the rule of the Israeli regime; and nobody expected them to pledge or express allegiance to the state of Israel.

110. In that sense, the grant of permanent residency constituted, in fact, a declaration of an existing situation and its legalization in the new territorial framework (since any other alternative would have resulted in a massive deportation of dozens of thousands of residents from the territory of East Jerusalem which was occupied and annexed).

111. On June 12, 1967, a discussion was held by the "Ministerial Committee for the Arrangement of the Status of Unified Jerusalem" on the nature of the legislation which would "unify Jerusalem", in which the ministers argued about the number of Arab residents who were living in the areas which were about to be annexed to the city (**Ramon**, page 385).

112. Furthermore. In a cabinet meeting dated June 18, 1967, the Minister of Police, Sasson, emphasized:

> If we take Jerusalem together with its Arab residents it means that we annex to Israel additional 60-70 thousand Arabs who are made part of Israel […] we cannot deport the Arabs from Jerusalem )Minutes of cabinet meeting dated June 18, 1967, page 13).
>
> http://www.archives.gov.il/NR/rdonlyres/0D02EAA5-A65A-49EA-BA85-D288 F8C910E1/0/YeshivatMemshala02.pdf

113. Eventually, the fate of the East Jerusalem population was determined by the Ministerial Committee on Jerusalem affairs which convened on June 21, 1967, in which the then GOC Central Command Major-General Uzi Narkis raised the question who would be a resident in East Jerusalem. The Minister of Justice Shapira replied and said that: "**services should be given to all residents**" however, "**according to the current law there is no such thing as automatic citizenship**." And the Attorney General Ben-Zeev said that "**our assumption is that whoever stays [in East Jerusalem] will be a resident**. They will have an active and passive right to vote to the municipality" (**Ramon**, page 392).

114. It is important to emphasize that the grant of permanent residency status to the residents of East Jerusalem was not made without security concerns. The registration of the residents of East Jerusalem as "permanent residents" (which in fact constituted, as aforesaid, a declaration of an existing situation), was made despite the fact that these individuals were subjects of an enemy state and hostile population, which could not be expected to show allegiance to the state of Israel.

115. To give a simple and clear explanation and demonstrate the fact that the loyalty of the population of East Jerusalem was not disregarded by the government of Israel it should be noted that in the meeting of the Ministerial Committee on Jerusalem Affairs which was held on June 21, 1967, and in which the fate of the population of East Jerusalem was determined, the then mayor of Jerusalem Tedi Kolek argued that the joining of Arab residents to the city council would interfere with the ability to hold discussions on sensitive issues such as looting of property in East Jerusalem, **and that there was a concern that information would be transferred to "foreign and hostile parties"**. The then Minister of Justice emphasized that "problematic" council members would be replaced by the Minister of Interior. Furthermore. The head of the Jerusalem area at the Israel Security Agency (ISA) sent to Tedi Kolek detailed biographies of the members of the Jordanian city council, including detailed profiles and certain representatives were disqualified from holding positions in the city council of the united city for security reasons (**Ramon**, pages 394-5).

116. The them Minister of Defense Moshe Dayan also clarified that the annexation of East Jerusalem including its residents was made <u>despite the objection</u> of its residents to the Israeli rule:

> With respect to the first signs of revolt in the West Bank and in East Jerusalem […] the Arabs are not interested in the unification of Jerusalem […] however we are not there because they want it […] we are not there subject to or due to their wishes but because it is a necessity of life for our security. Jerusalem is not Aden and the administration there is not

> conditioned upon the cooperation of the Arabs […] If the Arabs fail to cooperate, will regret it, but it will not have any effect whatsoever on the unification of Jerusalem (M. Meizels "Dayan: We have a historical responsibility to establish the permanent borders of Israel" **Maariv** (August 10, 1967)).

117. In fact, the census which was conducted in East Jerusalem in preparation for the registration of the residents of the city as permanent residents was also premised on the assumption that the population was hostile: the census was conducted under full curfew which was imposed on the entire area, and was carried out by units of censors which were accompanied by armed military guard, under heavy protection of military battalions ("The census of the residents in the liberated areas of Jerusalem was completed without problems" **Davar** (June 27, 1967); Jewish historic press database, http://www.jpress.nli.org.il).

118. The fact that the grant of permanent residency status to the residents of East Jerusalem was not conditioned upon a pledge of allegiance to the state of Israel reconciles with principles of international humanitarian law according to which a duty of allegiance to the occupying power is not imposed on protected persons.

119. Accordingly, a prohibition is imposed on the occupying power to force the residents of the occupied territory to swear allegiance to it. Regulaion 45 to the Hague Regulations stipulates as follows:

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

120. This principle was also entrenched in Article 68 of the Fourth Geneva Convention:

> [A protected person] is not bound to it [the occupying power] by any duty of allegiance.

121. And Article 87 of the Third Geneva Convention which concerns the management of legal proceedings against protected persons held by the occupying power, stipulates as follows:

> When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

122. All of the above indicate that the status of permanent residency held by the residents of East Jerusalem is a special status which was granted to them due to the fact that they were born in this country under special historical circumstances. The state of Israel did not expect that this population would be bound to it by any duty of allegiance, being well aware of the fact that these inhabitants objected to the rule of the state of Israel over said territory. For this reason they were not granted the status of citizenship.

123. Under these circumstances the authority of respondent 2 to revoke permanent residency status according to section 11(a)(2) of the Entry into Israel Law in the context of the residents of East Jerusalem, must be interpreted in a manner which does not include the cause of a "breach of allegiance" to the state of Israel, since any other interpretation runs contrary to the circumstances

which lead to the registration of the residents of East Jerusalem as permanent residents of the state of Israel.

## B. Absence of explicit authorization in the Entry into Israel Law to revoke permanent residency for breach of allegiance

124. As aforesaid, revocation of permanent residency severely violates a host of rights including the right to residency and the right to liberty, the right to dignity and the right to freedom of movement, the right to autonomy and the right to family life All as will be broadly discussed below.

125. When the authority which is established in primary legislation limits liberties and violates fundamental rights, the primary legislation must be direct and explicit; the legislation must specify in advance how the authority should be exercised; in which areas and under what circumstances it may be used and it must not leave the matter for the broad discretion of the administrative authority. Important to our case are the words of the Honorable Justice (*emeritus*) Shamgar, who discussed this important issue before the Basic Law: Human Dignity and Liberty was enacted:

> Limitation on liberties, including the right to be elected, requires direct and explicit legislation which would define clear parameters and will not leave the matter for the unlimited discretion of this administrative authority or another or another agency. It was nevertheless emphasized, that in order to uphold the liberties and protect them not only formal authorization by the legislator is required, but rather, the law must also specify principled criteria for the exercise of the authority. Namely, the law must consist of two substantial aspects: the first should express the grant of the formal authority as such, and the other, should define the circumstances in which the authority may be exercised (EA 1/88 **Neiman v. Chair of the Central Election Committee for the 12$^{TH}$ Knesset**, IsrSC 42(4) 177, 186 (1989)).

See also:

HCJ 693/91 **Dr. Michal Efrat v. The person in charge of the Population Registry at the Ministry of Interior**, IsrSC 47(1) 749, 768 (1993).

126. The above was reinforced after the Basic Law: Human Dignity and Liberty was enacted. According to case law, one of the conditions for violation of human rights is that the authority to do so is entrenched in primary legislation:

> This sensitivity to human rights leads to the conclusion that the **violation of human rights**, even when it promotes the values of the state, is for a worthy purpose and does not exceed that which is necessary, **must be prescribed by a law specifying the primary arrangements. Indeed, one cannot be satisfied with the formal delegation of legislative authority to the executive branch** (Emphasis added by the undersigned)(HCJ 3267/97 **Amnon Rubinstein v. Minister of Defense**, IsrSC 55(2) 255, paragraph 23 of the judgment of the President, as then titled, Barak (2000)).

127. With respect to the question what primary arrangements are and how do they differ from secondary arrangements, it was held:

> The guidelines for the resolution of crucial issues, which are fundamental to the life of the individual, must be prescribed by statute. Hence, a **primary arrangement exists where**, on the basis of **the law itself**, in accordance with its interpretation by accepted interpretative methods, **it is possible to infer the parameters within which the executive branch may act, as well as the direction, principles, or purpose that are supposed to guide the executive authority in its actions**. To the extent that the regulation of a particular area requires that fundamental decisions which substantially affect the lives of individuals and society be taken, it is appropriate that such decisions be made within the confines of the statute itself. Hence, **a primary arrangement exists where the statute itself sets out the principles or standards on a higher level, which must be brought to fruition at a lower level.** The level of abstraction of the primary arrangement will change from issue to issue. **As far as, and to the extent that the issue is one in which individual freedom is violated, so too the level of abstraction cannot be too high and an arrangement that establishes the nature of the violation and the extent of the violation of freedom enshrined in the legislation will be required. When the object of the regulation is a complex one, requiring considerable expertise, it is quite often possible to satisfy oneself with a very high level of abstraction** (Emphases were added by the undersigned) (*Ibid.*, paragraph 24 of the judgment of Justice Barak).

128. A sweeping authority granted to the administrative authority with no arrangement in primary legislation, violates the principle of the rule of law and the principle of separation of powers:

> The rule of law is diminished in as much as the scope of the power grows and in as much fewer restrictions are imposed on the authority by the legislator. A law which, for instance, grants the Minister of Health sweeping authority to arrange the treatment of the mentally disabled will in fact, put the minister in the shoes of the legislator. **In such an event the law will not rule the minister but rather the minister will rule the law**. (Emphasis added by the undersigned) Itzhak Zamir **The Administrative Authority** 235 (1996).

129. Also important to our case are the words of President *(emeritus)* Barak regarding the broad authority of the district police commissioner to impose conditions on a demonstration permit according to section 85 of the Police Ordinance. President *(emeritus)* Barak held that authority granted without general terms or guidelines for the manner by which the administrative discretion of the district police commissioner should be exercised, violates the principle of the rule of law and the principle of separation of powers. And most importantly, a general authority which is not accompanied by the relevant considerations and terms for the exercise of such authority renders the legislation from which such authority is derived into unclear and even 'vague' legislation:

> A review of the language of section 85 of the Police Ordinance shows that the authority given therein to the district commissioner to issue a demonstration permit subject to conditions is general and vague. The section does not specify, even in general terms, what conditions the police commissioner may impose, and for what considerations he is entitled to impose such conditions. There is no guidance at all for the administrative discretion. This is vague legislation. Vague legislation is undesirable. It

> violates the principle of separation of powers and the principle of the rule of law […] How does it violate the principle of the separation of powers? This principle requires the Knesset, and not the executive, to determine the general criteria for the exercise of the administrative power. A broad and vague authority violates the Knesset's legislative power. How does it violate the principle of the rule of law? The substantive rule of law requires the law to be 'clear, certain and understandable so that members of the public can manage their affairs accordingly'. A general and vague authority impairs the ability of members of the public to have a proper knowledge of their rights and duties. **(HCJ 2557/05 Majority Camp v. Israel Police**, IsrSC 62(1) 200, paragraph 9 (2005)).

130. Notwithstanding the above, in the case at hand, despite the fact that we are concerned with a very severe violation of the right to status and its ancillary rights, the respondent relies in his decision on section 11(a)(2) of the Entry into Israel Law, according to which "The Minister of Interior may, at his discretion – […] revoke a residency status or permit which was granted according to this law." Hence, this is a general and vague "basket clause" which does not establish terms, does not describe the direction, principles or purpose and by all means does not set a "breach of allegiance to the state of Israel" as a cause for revocation of residency. Such a severe violation of the right to status – in fact the revocation of said right – based on a mere general and formal authorization of respondent 2 to revoke residency with no explicit arrangements in primary legislation - cannot be upheld.

131. In the last hearing which was held before an expanded panel of this honorable court in **Abu Arafeh** on May 5, 2015, the Honorable Justice Vogelman pointed at the difficulty embedded in section 11(a)(2) of the Entry into Israel Law and raised some difficult general questions regarding the duty of allegiance of a permanent resident as opposed to a citizen, and the need to arrange the issue in primary legislation:

> We follow Israeli law. **Therefore the question is whether this can be done when the primary legislator did not define the duty of allegiance of individuals who are not Israeli residents and there are diverse views s to which duties should be imposed and on citizens. Wouldn't it be appropriate that the criteria for making such a decision will be established by the primary legislator? I refer Madam, for comparison purposes, to the Citizenship Law** which contained an explicit cause. The causes for revocation were determined [including] breach of allegiance and only then said authority could be exercised. While here we have nothing. We only have a very general statement. It did not consider such circumstances. There is no definition of breach of allegiance. The question is whether this is a correct interpretation of the authority according to the Entry Law? [Emphasis added by the undersigned] (Minutes of a hearing in HCJ 7803/06 **Abu Arafeh et al. v. Minister of Interior**, dated May 5, 2015).

132. A comparison between the arrangements established in section 11(a)(2) of the Entry into Israel Law and those established in section 11 of the Citizenship Law more vigorously emphasizes the fact that respondent 2 is not authorized to revoke the residency of East Jerusalem residents on the grounds of breach of allegiance. While the Entry into Israel Law is drafted in a general manner only which does not specify the cause of "breach of allegiance to the state of Israel" as a possible cause for the revocation of the permanent residency status, the Citizenship Law establishes the cause of "breach of allegiance to the state of Israel" as an explicit cause for the revocation of citizenship and transfers

the revocation authority from respondent 2 to the courts for administrative affairs, following the approval of the Attorney General.

**C. The obligation to grant permanent resident in Israel to a person whose citizenship was revoked on the grounds of breach of allegiance to the state**

133. The Citizenship Law – which as aforesaid provides explicitly and specifically that citizenship may be revoked on the grounds of breach of allegiance to the state – provides that if the person whose citizenship was revoked for breach of allegiance remains stateless, permanent residency status shall be given to him; namely, the Citizenship Law states that residency should be given to a person who "breached allegiance" to such an extent which justified the revocation of his citizenship. This means that a "duty of allegiance" is not required of a permanent resident.

134. It therefore seems that contrary to the status of citizenship which imposes a duty of allegiance on its holder (see section 5(c) of the Citizenship Law), permanent residency status does not impose such a duty. Had such duty been imposed on permanent residents, said status would not have been granted to persons whose citizenship had been revoked due to breach of allegiance. Otherwise, what good was brought about?

**D. The purposive interpretation of Section 11(a)(2) of the Entry into Israel Law revokes the discretion and authority of the Minister of Interior to revoke permanent residency status**

135. A purposive interpretation of Section 11(a)(2) of the Entry into Israel Law which is based on a balancing between the intentions of the historic legislator and the fundamental values of our society after the constitutional revolution and the enactment of the Basic Law: Human Dignity and Liberty, leads to the conclusion that it was not the legislator's intention to grant respondent 2 authority to revoke the status of permanent residency of persons who were born in Israel due to breach of allegiance to the state.

136. The interpretation of legislation is a purposive interpretation. Purposive interpretation balances between the past and the present. It balances between the subjective purpose of the law – the purpose of the historic legislator – and the objective purpose of the law, which reflects the basic values of the society which are based on fundamental rights and the principle of separation of powers.

> A literal interpretation [of legislation] does not take into consideration the role of legislation in the system and the objective which an enactment is meant to achieve. It gives the law a literal meaning although it is not the purpose of the law. The interpretation is not free: free interpretation does not take into consideration the position of the legislator and gives the judge-interpreter power which does not reconcile with the role of legislation in the system. Interpretation is purposive. The interpreter judge gives the enacted text the meaning which realizes in an optimal manner the purpose of the legislation. This purpose is the subjective purpose which reflects the intention of the historic legislator and the objective purpose which reflects the basic values of the society. Hence, the central role of legislation in the system is realized (Aharon Barak **Selected Writings** Volume A (2000) pages 59-60).

See also:

Aharon Barak **Interpretation in law – Purposive Interpretation** (1992), 371-372.

137. The subjective purpose of section 11 of the Entry into Israel Law can be deducted from the questions posed and answers given in the framework of the discussion which was held in connection with this section on August 27, 1952, in the plenum of the Third Knesset. The discussion concerned the broad authority of the Minister of Interior according to section 11 to revoke a permanent residency status. The then MK Tawfik Toubi presented the issue in the plenum of the Knesset and said:

> It is possible that many of the Arab residents of Israel will not be granted citizenship and it is possible that they will not be granted citizenship and it is possible that they will only be given the possibility to stay in Israel as permanent residents. We object to the Minister's right to revoke the right of these persons to be permanent residents. If they do not have foreign residency they must be given this possibility. We demand that the Minister of Interior does not revoke the permanent residency status of a person who does not have another citizenship. Minutes of meeting 128 of the Third Knesset, page 8173, August 27, 1952).

138. The then chairman of the Internal Affairs Committee, Yosef Sapir, responded to the request of MK Tawfik Toubi to refrain from applying section 11 of the Entry into Israel Law to the indigenous residents of Israel, namely, the Arabs, and said that the authority of respondent 2 to revoke permanent residency would be limited only to those who came to Israel and settled therein and received their permanent status by virtue of their entry into Israel and presence therein rather than by virtue of birth:

> The persons of whom MK Tawfik Toubi spoke did not request and did not receive in my opinion residency status as such. They probably demand their right as inhabitants of Israel. This pertains mostly to people who wish to come to Israel and request, after the enactment of the law, temporary or permanent residency therein.
>
> I said time and time again with respect to the paragraph which was introduced by the committee that all residents to whom the law does not apply will continue to have the same status they had prior to the law. **The committee's intention was that the law would not change the status of these people. It is so stated in section 18. This means that anyone who was in Israel on the effective date of the law, the law does not apply to him.** This means that these people have the same status they had before the enactment of the law, that the purpose of the law is not to give rights or deny rights, but rather to leave the status quo as is. And since the main issues are not included in the law the other issues will be arranged as I said without regard to this law (Ibid., page 3174).

A copy of the relevant pages of the transcript of meeting 128 of the Third Knesset dated August 27, 1952, is attached and marked **P/61**.

139. The discussion regarding section 11 of the Entry into Israel bill in the Knesset indicates that already in 1952 the legislator has treated differently a resident who received his status by virtue of birth as opposed to a resident who received his status by virtue of settlement in Israel. Like the Arab residents of Israel in 1948, the residents of East Jerusalem and their children were given permanent residency status by virtue of birth. Hence, we are concerned with generations of indigenous residents who have the right to reside in their city Jerusalem based on the historic connection of such population to the land of Jerusalem. Therefore, and as indicated by the discussion in the Knesset, according to the subjective purpose of section 11 of the Entry into Israel Law – which reflects the intention of the historic legislator – the Minister of Interior was not given the authority to revoke the permanent

residency of the indigenous residents of East Jerusalem, as opposed to the case of foreigners who settled down in Israel.

140. The objective purpose of section 11 of the Entry into Israel Law should be examined in view of the Basic Law: Human Dignity and Liberty. Indeed, according to section 10 of the Basic Law: Human Dignity and Liberty, the enactment of the Basic Law did not affect the validity of the laws which preceded it. However, it affected the interpretation of said enactments and thus, "the language of the law did not change, but the purpose of law changed." (HCJ 2390/96 **Karisak v. State of Israel, Israel Land Administration**, IsrSC 55(2) 625, 713 (2009)).

141. Relevant to our case are the words of the Honorable Justice (*emeritus*) Dorner in **Ghanimat** which concerned general constitutional issues regarding the ramifications of the Basic Law: Human Dignity and Liberty on the interpretation of laws which preceded it:

> The provisions of the Basic Law do not affect the validity of enactments which preceded the Basic Law (section 10 of the Basic Law). However, all governmental authorities – including the court – must respect the rights enshrined in the Basic Law in as much as it reconciles with the valid laws based on which they operate (section 11 of the Basic Law) […] The court must fulfill this obligation by giving a strict interpretation to provisions of law which violate a person's liberty, by exercising the discretion vested in the court in a manner which would violate such liberty to the minimum extent possible. […] Said obligation, which derives from section 11 of the Basic Law, also undoubtedly applies to the interpretation of laws the validity of which is maintained according to section 10 and to the exercise of discretion by virtue thereof (CrimApp 537/95 **Ghanimat v. State of Israel**, IsrSC 49(3) 355, 375 (1997)).

See also: HCJ 906/95 **Shmlevitch v. State of Israel**, IsrSC 49(2) 184, 194 (1995)).

142. Hence, laws which were in effect before the Basic Law: Human Dignity and Liberty was enacted should be interpreted in a manner which would entrench and realize the fundamental rights and basic values of the society. On this issue, the words of Justice Barak (as then titled) in **Efrat** are important:

> A law is – in the words of Justice Susman – "a creature which lives in its environment" […] It integrates in its normative environment, affects it and is affected by it. […]
>
> Therefore we interpret laws in view of the understanding that they were designed to realize human rights, to uphold the rule of law and separation of powers, to safeguard justice and morality and to protect the existence of the state and the strength […] of the legal system. (HCJ 693/91 **Dr. Michal Efrat v. The person in charge of the Population Registry at the Ministry of Interior**, IsrSC 47(1) 749, 768 (1993).

143. Revocation of residency will severely violate the rights of petitioners 1-4 after they are released from prison including their right to be protected against deportation from their homeland, their right to status and residency, their right to freedom, their right to family life, their right to autonomy and their right to freedom of movement. It should be emphasized that for most East Jerusalem residents, including two of the petitioners in the petition at hand, the permanent residency which was given to them is the only status they have and the revocation thereof will leave them stateless in the entire

world. The rights which are violated as a result of the revocation of the status are primary rights forming part of the human right to dignity and liberty enshrined in the Basic Law: Human Dignity and Liberty. In view of the severe violation of the fundamental rights of petitioners 1-4 section 11(a)(2) must be interpreted very narrowly.

144. It is important to note here that throughout the years Israeli case law recognized the special status of the residents of East Jerusalem and ruled that it was justified to treat these residents in a different manner as opposed to permanent residents who received their status by virtue of settlement in the state, in view of the circumstances of life and the complex legal condition of the residents of East Jerusalem. It was so held in HCJ 282/88 **'Awad v. The Prime Minister and Minister of Interior** (hereinafter: **'Awad**) which concerned the authority to revoke the permanent residency status of East Jerusalem residents not on the grounds of breach of allegiance but pursuant to the Entry into Israel Regulations 5734-1974:

> Indeed, by virtue of the fact that the residents of East Jerusalem who were counted in the census which was conducted in 1967 were recognized **as its lawful permanent residents,** they were registered in the population registry and were given identification cards.
>
> […]
>
> **Indeed, "permanent residency" by its nature, is a reality of life.** The status, once granted, gives this reality lawful validity. (Emphasis was added by the undersigned) (HCJ 282/88 **'Awad v. Itzhak Shamir**, IsrSC 42(2) 424, paragraphs 9 and 14 of the judgment of Justice Barak (as then titled) (1988)).

145. In **Nabulsi** the Court for Administrative Affairs in Jerusalem held that:

> The court held time and time again that the **unique reality of life of the persons who have permanent residency status in Israel by virtue of birth in East Jerusalem and the legal complexity created by this reality of life justify a different treatment than the treatment given to those who acquired permanent status in Israel by virtue of immigration and who have thereafter lost it as a result of settlement in a foreign country** (Emphasis was added by the undersigned)(AP (Admin Jerusalem) 19473-10-13 **Nabulsi v. Minister of Interior**, paragraph 17 (reported in Nevo, December 26, 2013)).

146. And in **Husseini** it was held by the Court for Administrative Affairs that:

> When we are concerned with a person who already held in his possession a permanent residency status, in general, and a person who held such status by virtue of being an East Jerusalem resident who was born in Israel (or a territory which became part of Israel) in particular, we cannot rule out the application of a more lenient criterion to the person who requests the restoration of his status. A more lenient criterion – in the sense that in the exercise of the broad discretion of the Minister of Interior on the restoration of the permanent residency status, **special weight will be given to the underlying reason based on which the permanent residency status had been given in the first place, when residents of East Jerusalem who were born in Israel (or in a territory which became**

> **part of Israel) are concerned.** (Emphasis was added by the undersigned) (AP (Admin Jerusalem) 1630/09 **Husseini v. Minister of Interior**, paragraph 14 (reported in Nevo, August 24, 2014).

147. It was similarly held by the Court for Administrative Affairs in **Atai**:

> However, an opinion was expressed in this court that when **we were concerned** with a person who already held in his possession a permanent residency status, and particularly a person who **held such status by virtue of being an East Jerusalem resident who was born in Israel (or a territory which became part of Israel)**, we could not rule out the application of a more lenient criterion to his matter in the sense that said fact would be given special weight and the burden which would be imposed on the applicant, although a significant burden, would reflect "**the legal complexity and unique reality of life of these residents** (the Honorable Judge I. Marzel in AP (Jerusalem 1630/09 **'Abed al Karim Husseini v. Minister of Interior** [reported in Nevo], which quotes in this context the remark of the Honorable Judge D. Berliner in the above **Dari**). I join this opinion. (Emphasis was added by the undersigned) (AP (Jerusalem) 20173-05-10 **'Abed Atai v. Minister of Interior**, paragraph 13 (2011).

148. And in Siywana:

> I accept the approach that the burden imposed on the applicant who requests the restoration of his status, who is an East Jerusalem resident that was born in Israel (or a territory which became part of Israel) should be more lenient, due to the need to into consideration **the legal complexity and unique reality of life of these residents whose permanent residency status rather than the status of citizenship, a derivative of the application of Israeli law and jurisdiction to the eastern part of the city, has been in force for 44 years**. (Emphasis was added by the undersigned) (AP (Admin Jerusalem) 1760/09 **Harnadrian Siywana v. Minister of Interior**, paragraph 13 (reported in Nevo, April 17, 2011)).

149. **In view of the above, the purposive interpretation of section 11(a)(2) of the Entry into Israel Law limits the authority to revoke the permanent residency status only to such cases which were explicitly defined in the law or the regulations, namely, to cases in which an explicit condition which appeared in the permit was breached (paragraph 6(2) of the Entry into Israel Law), or to the expiration of the status due to the resident's settlement in another country according to the Entry into Israel Regulations, 5734-1974**. The above interpretation reconciles with Israeli legislation and case law, with the principle of separation of powers and the limitation of the power of the executive authority and with the fundamental rights and the Basic Law: Human Dignity and Liberty.

## Part III: The flaws in the administrative proceedings for the revocation of the permanent residency status of petitioners 1-3

### A. Violation of petitioners 1-3's right to be heard

150. As specified in factual part, before the commencement of their oral hearings petitioners 1-3 requested that the privilege against self-incrimination according to section 47 of the Evidence Ordinance [New

Version], 5731-1971, would apply to the content of the things which would be said in the hearings, in view of the fact that along the residency revocation proceedings, criminal indictments were pending against them and therefore there was a concern that the things which would be said in the hearings would be used as evidence against them in the criminal proceedings.

151. Respondent 2's representatives who conducted the hearing refused to make any commitment with respect to the privilege and noted that an application in that regard should be submitted which would be accordingly considered. In these circumstances and due to the fact that no assurances were given that the privilege would apply to the things which would be said in the hearing, petitioners 1-3's counsel advised them not to discuss the charges which were brought against them. In view of the above, in the hearing, the petitioners discussed their personal circumstances only and refrained from raising any arguments against the offenses attributed to them in the indictments.

152. The Supreme Court regards the preliminary hearing in the realm of administrative law as one of the rules of natural justice (see: HCJ 3/58 **Berman v. Minister of Interior**, IsrSC 12 1493, 1503; HCJ 290/65 **Eltagar v. The Mayor of Ramat Gan**, IsrSC 20(1) 29, 33; CrimApp 768/80 **Shapira v. State of Israel**, IsrSC 36(3) 337, 363 (1981).

153. The right to be heard and its importance was discussed by the Honorable Justice (as then titled) Barak in the **Gingold** case as follows:

> A fundamental right of an individual in Israel is that the public authority which takes action against his status would not do so before it grants said individual the right to present his arguments. As far as this fundamental right is concerned, it makes no difference whether the public authority acts by virtue of a statute or by virtue of an internal directive or agreement. It also makes no difference whether the power which is exercised is judicial, quasi-judicial or administrative and whether the discretion vested in said authority is broad or narrow. In any event in which a public authority wishes to change a person's status it must act towards him fairly, and said duty imposes on the authority the obligation to give said person the opportunity to present his arguments. (HCJ 654/38 **Riva Gingold v. the National Labor Court**, IsrSC 35(2) 649, pages 654-655 (1981)).

154. The more severe and irreversible the consequences of the governmental decision are, the more essential it is to enable the involved individual to present his arguments and respond to arguments raised against him in an attempt to refute them (see: HCJ 5973/92 **The Association for Civil Rights in Israel v. Minister of Defense,** IsrSC 47(1) 267, 285-286 (1993)).

155. The right to be heard is not only a formal procedure which consists of invitation and hearing. **The right to be heard is the right to a fair hearing** (see: HCJ 598/77 **Eliyahu Deri v. The Parole Board,** IsrSC 32(3) 161 (1978)). **It is the right to be given proper opportunity to respond to information which was obtained** and which may affect the decision in petitioner's matter (see: HCJ 361/76 "**Hamegader – Barzelit" Iron Wires and Nets Ltd. v. Shlomo Refaeli, Audit and Accounts Coordinator at the Department of the Customs and Excise Officer,** IsrSC 31(3) 281 (1977)).

156. **The right to present arguments** before the administrative authority which considers or intends to take an action which violates an individual's right or interest, was recognized as a primary right which constitutes part of the rules of natural justice (see for instance: HCJ 3/58 **Berman v. Minister of Interior**, IsrSC 12 1493, 1508 (1958); HCJ 3379/03 **Moustaki v Attorney General,** IsrSC 58(3) 865, 899 (2004); HCJ 5627/02 **Saif v. Government Press Office**, IsrSC 58(5) 70, 75 (2004)).

157. In another matter it was held that the right to be heard is not only the right of the individual to present his arguments before the authority, but rather it is a right which requires a **fair hearing** that provides the individual an opportunity to respond to the arguments raised against him:

> The case before us demonstrates the great importance that should be attributed to a strict adherence to the rules concerning the right to a fair hearing. Since the petitioner has not been given the opportunity to hear the complaints against him and to present his own position, he became convinced that the considerations of the authorities were inappropriate and discriminatory and his trust as a citizen in the government was undermined.
>
> The rules concerning the right to a fair hearing are aimed at preventing this state of affairs, since the purpose thereof is not only to ensure that in practice justice is made with the injured individual, but also to ensure that the trust of the public in good governance is maintained…
>
> This right is not only a formal procedure of summons and hearing. The right to be heard means the right to a fair hearing (HCJ 598/77, page 168). The meaning of this right is to give a proper opportunity to respond to information which was obtained and which may affect a decision which concerns petitioner's matter (see: HCJ 361/76).
>
> **Therefore, the right to be heard is not properly exercised, if the applicant is not advised of the information which was obtained in his matter** and is not given the opportunity **to properly respond thereto**. (Emphasis was added by the undersigned) (HCJ 656/80 **Abu Romi v. Minister of Health**, IsrSC 35(3) 185, 190 (2008)).

158. The refusal of respondent 2's representatives to undertake that petitioners 1-3's privilege against self-incrimination would be maintained made the hearing redundant in view of the fact that the petitioners could not raise before the Minister of Interior arguments against the offenses attributed to them. In fact, the petitioners were given only a formal right to be heard, which flawed the administrative proceeding and materially violated petitioners' right to a fair hearing and their right to due process, particularly in view of the fact that this case concerns a hearing in a proceeding which ended in a very far reaching result of the revocation of petitioners' permanent residency status.

159. It should be noted that to the same extent that the Minister of Interior assured petitioner 4, in advance, that his privilege against self-incrimination in the oral hearing would be maintained, petitioners 1-3 could also be given the same assurances that their privilege against self-incrimination would be maintained and accordingly they could have been summoned for a complementary oral hearing on another date. Instead, respondent 2 hurried to revoke the permanent residency status of petitioners 1-3. The decision to revoke was received, as aforesaid, following a **partial and flawed hearing**. The decision which was made based on a defective administrative proceeding should be abolished.

**B. The revocation of the permanent residency status before conviction in the criminal proceeding is extremely unfair and unreasonable**

160. The Minister of Interior revoked the permanent residency status of petitioners 1-4 based on administrative evidence only, prior to the examination of the evidence against them in the framework of the legal proceedings which are in their initial stages.

161. In view of the severe violation of petitioners' fundamental rights it would have been appropriate for the Minister of Interior to stay the revocation of petitioners 1-4's permanent residency status until the termination of the criminal proceedings which are pending against them and their conviction.

162. The revocation of the permanent residency status violates petitioners' fundamental rights in a very severe manner. We are concerned with a permanent violation, an absolute violation of their rights to residency and family life, to freedom and autonomy, to dignity and freedom of movement. In view of the above, respondent 2 should have waited at least until judgment was given in the criminal proceedings before having exercised his authority, and should not have exercised it based only on administrative evidence, so that his drastic decision would be backed by strong evidence which had been proven beyond any reasonable doubt.

163. The criminal proceeding is based on a rigid procedure and on a particularly high level of proof for conviction, for two main reasons: the first stems from the severity of the results of the criminal conviction which include a deprivation of defendant's liberty, violation of his dignity and impingement of his reputation. The other is based on the need to bridge over the huge gaps of resources which exist between the defendant and of the prosecution which has all state resources available to it. The state is subject to the rules of evidence and other procedural limitations. In addition, the criminal procedure enshrines the rights of the defendant and first and foremost the right to due process, a constitutional right which receives wide protection.

164. In the criminal proceedings the prosecution must prove its case beyond any reasonable doubt. As aforesaid, the legislator has deliberately set a high level of proof in a bid to protect the fundamental rights of the defendant, *inter alia*, his right to dignity and goodwill, to liberty, autonomy and freedom of movement. Important and relevant to our case are the words of Justice *(emeritus)* Procaccia in **Vaknin**:

> The obligation to prove that the defendant committed the criminal offense beyond reasonable doubt is a demand of a constitutional nature. It derives from the fundamental human right to freedom, to protection of his personal liberty against detention and arrest and against a violation of his dignity and goodwill. The level of proof beyond reasonable doubt as aforesaid integrates with section 2 of the Basic Law: Human Dignity and Liberty, according to which there shall be no violation of the life, body or dignity of any person as such. This value is merged, inter alia, with the presumption of innocence, from which derives the principle that no person should be convicted if any reasonable doubt exists as to whether he has committed the offense attribute to him (CA 6295/05 **Eli Vaknin v. State of Israel**, paragraph 43 (reported in Nevo, January 25, 2007)).

165. And more.

> The presumption of innocence requires that the defendant be acquitted unless proven guilty. It is an evidentiary presumption provided by law to the defendant until proven guilty by sufficient evidence. The reasonable doubt issue is associated with the sufficiency and weight of the incriminating evidence, which determine whether or not the presumption of innocence was refuted. Therefore, the presumption of innocence and reasonable doubt are not congruent terms, but rather complementary terms. **Hence, the defendant is presumed innocent until proven guilty beyond any reasonable doubt.** […] The burden to prove the criminal guilt beyond any reasonable doubt is a primary measure to cope with the concern of

false-convictions which are based on factual error. The importance of this rule as far as the defendant is concerned is of a considerable weight. False conviction may unlawfully deprive a person's liberty and goodwill (*Ibid*., paragraphs 44-45).

166. The Criminal proceeding is premised on the presumption of innocence. In contrast, the administrative proceeding is premised on the presumption of administrative validity. When the administrative authority determines that a person breached the law and consequently takes sanctions against him, the governmental act enjoys the presumption of administrative validity. However, said presumption creates an ostensible presumption of guilt and the burden to refute it lies on the person who argues against the administrative decision. This situation contradicts the presumption of innocence. The creation of an ostensible presumption of guilt at the stage in which a decision in the legal proceeding has not yet been made violates the fundamental right of the defendant to enjoy the presumption of innocence until his guilt has been established by evidence and violates the protection afforded to him by this fundamental right *vis-à-vis* the authority. (See: Ron Shapira "From Criminal Enforcement to Administrative Enforcement" [Hebrew] ***Hasanegor*** 205 4, 7-8 (2014); Rinat Kitai, The meaning of the presumption of innocence beyond the level of proof in the criminal trial 319 (Dissertation towards Ph.D. in Law, The Hebrew University of Jerusalem, July 2000)).

167. In conclusion, even if it is determined, contrary to petitioners' position, that respondent 2 is authorized to revoke the permanent residency status of petitioners 1-4, then, in view of the severe violation of petitioners' fundamental rights, it would be proper and fair for him to postpone his decision regarding the revocation of the permanent residency status until petitioners 1-4's guilt was established in the criminal proceedings. Thus, the evidence upon which he relies is criminal evidence the reliability of which was examined and reviewed by the competent judicial instance, rather than mere administrative evidence which can still be refuted in the context of the criminal proceeding. In addition, petitioners 1-4 are anyway held in detention until completion of proceedings, so it is unclear why respondent 2 is in such a hurry to already revoke their permanent residency status at this time.

**C. The Decision of the Minister of Interior is unreasonable and is based on extraneous considerations**

168. Respondent 2's decision to revoke the permanent residency status of petitioners 1-4 is primarily a political decision of the security cabinet. To evidence, respondent 2 hurried to give announcements to media of his intention to revoke petitioners' permanent residency, and only at a later stage notices were also sent to the petitioners themselves. As aforesaid, the notices were sent shortly after indictments had been filed against the defendants, and while the criminal proceedings against them were still in their initial stages. Similarly, respondent 2 hurried to announce in the media of his final decision to revoke petitioners' permanent residency status, even before notice to that effect was given to the petitioners or their legal counsels.

169. With respect to petitioners 1-3, respondent 2 explains his decision to revoke their permanent residency status as follows: "The decision to revoke the permanent residency status is made in view of a **murderous terror attack** which was committed [by petitioners 1-3] on September 13, 2015" while according to the facts described in the indictments, petitioners 1-3 are accused of **manslaughter rather than murder**. The offense of murder encompasses the most severe possible cases of homicide, and is therefore punishable by the most severe penalty – life imprisonment as a mandatory penalty. On the other hand, the offense of manslaughter attributes to the offender a mental state of recklessness/indifference to the possibility that death will occur and the maximum sentence therefore is limited to twenty years in prison. A person will be convicted of murder only if his intention to kill a person was proved, while a person who was convicted of manslaughter does not intend to cause the fatal result. As aforesaid, **the prosecution does not attribute to petitioners 1-3**

**intent to kill and they are accused of manslaughter, an offense the mental element of which includes at the utmost recklessness/indifference to the possibility that their actions would lead to a person's death**. Hence, even the assumption underlying respondent 2's decision, the assumption that petitioners 1-3 committed a murderous act, is incorrect and does not reconcile with the charges which appear in the indictments that were filed against them and with the evidentiary material which supports said charges (see **P/2**).

170. In addition, the three decisions of the Minister of Interior to revoke the permanent residency status of petitioners 1-3, state as follows:

> Your client, together with others, deliberately threw stones at vehicles which were driving along the major traffic route in Jerusalem. As a result of these deeds, an Israeli citizen, the late Mr. Alex Levlovitch was killed and another person was seriously injured. (See **P/55-P/57**).

171. As aforesaid, petitioners 1-3 deny the "collaboration" attributed to them in the indictments. They denied the allegation that planned in advance to throw stones at vehicles and the allegations that when they were standing near the road petitioners 1-2 gave petitioner 3 stones to be thrown by him at passing vehicles. In addition, petitioners 1-3 deny any connection between any stone throwing by either one of them and the deceased's death. The district court will have to decide and determine based on the evidence, whether the deceased lost control of his car as a result of the stone which was thrown at him or perhaps it was the deceased's medical condition which caused the accident. It should be noted that despite the requests of petitioners 1-3 counsels, they have not yet received the deceased's medical records. According to several testimonies, shortly before the incident the deceased received medical treatments due to various problems and it is unknown whether such illnesses caused or contributed to his death. In addition, the district court will be required to examine within the framework of the criminal proceeding whether petitioner 3 was the one who threw the stone which hit the deceased's car or whether the stone was thrown by other people who were present on scene, since evidence exists to the fact that at the top of the relevant street another group of youngsters was throwing stones at vehicles.

172. It is a well-known rule that a decision of the administrative authority is unreasonable when the authority, in the framework of the balancing between the different considerations, did not take into account or failed to give proper weight to any consideration. (See: Itzhak Zamir, **The Administrative Authority**, second edition, volume A, page 156; Daphna Barak-Erez, **Administrative Law**, volume B, page 729 an onwards).

173. An administrative authority breaches the duty to act reasonably also when it takes into account the relevant considerations but fails to give the relative proper and just weight to any of the pertinent considerations:

> The administrative authority breaches the duty to act reasonably when it indeed takes into account all relevant considerations and does not take into account extraneous considerations, but gives relative unreasonable weight to this consideration or another. This issue was stressed by Justice Shamgar in HCJ 156/75 Dakah V. Minister of Transportation [3] page 105: "Circumstances may occur in which the ministerial authority did not consider extraneous considerations, and only relevant considerations were taken into account, however, weight was given to the various relevant considerations in such a distorted proportion in and amongst themselves, which rendered the final conclusion baseless *ab initio* and therefore totally

unreasonable (Honorable Justice Dorner in HCJFH 3299/93 **Vechselbaum v. Minister of Defense**).

See also:
HCJ 935/89 **Ganor v. Attorney General**, IsrSC 44(2) 485, 513 (1990);
HCJ 341/81 **Moshav Beit Oved v. Commissioner of Transportation**, IsrSC 36(3) 349, 354 (1982);
HCJ 3094/93 **The Movement for Quality in Government v. State of Israel**, IsrSC 47(5) 404, 420-421 (1993).

174. An unreasonable conduct of the administrative authority may lead to the disqualification of its administrative discretion and even to the revocation of its decision:

> The principle of reasonableness leads to the disqualification of the administrative discretion which does not give proper weight to the different interests which the administrative authority must consider in making its decision". (HCJ 389/90 **Yellow Pages v. Israel Broadcasting Authority**, paragraph 4 of the words of the Honorable Justice (as then titled) Barak (1980)).

175. In addition to the obligation to act reasonably, the administrative authority must also act fairly:

> The duty of the state to conduct itself with extreme fairness in all of its actions is plain as the sun at midday to the extent that it does not require references; "Something which is not sufficiently clear and deciphered, requires ample references" (Book of Proverbs and Sayings, Y.C. Tabayov). This is what singles the state out, in particular, and public service in general, sharply and clearly. As far as I am concerned an ethical-moral aspect is embedded in all of the above. **State internal agencies are not expected** – and I am not talking about times of war or of any kind of external maneuvers – **to take tactical consideration**. (Emphases were added by the undersigned). (Taken from the judgment of the Deputy President, Honorable Justice Rubinstein dated March 4, 2010 (LCA 470/08 **Carmel Desalination Ltd. v. State of Israel – Ministry of Finance,** paragraphs 9-11 of the judgment of the Deputy President, Honorable Justice Rubinstein (reported in Nevo, March 4, 2010)**).**

176. To the extent that the administrative authority bases its decision on erroneous factual infrastructure it is incumbent on it to reconsider its decision. Important to our case are the words of the Honorable Justice Daphan Barak Erez in al-Kaiyan:

> The authority must act fairly with a citizen with whom it communicates. Said fairness requires, *inter alia*, willingness to consider with an "open mind" data presented to it which are ostensible not compatible with thoughts and plans previously conceived by the representatives of the authority. However, administrative fairness is not exhausted thereby. Each administrative decision must be made after all considerations relevant to the issue at hand have been taken into account. Indeed, the authority is vested with broad discretion as to the balancing between the considerations. However, it cannot disregard a relevant consideration or fail to take it into account in the first place […] In addition, **the exercise of the administrative discretion must be based on a correct factual infrastructure**. When the administrative decision is made based on an

> infrastructure which later on turned out to be incorrect, it is incumbent upon the authority to reconsider whether an update thereof is required in view of the revised underlying infrastructure. […] To the extent that a "material error" is concerned it was held that it would be able to do so (See: Daphna Barak Erez Administrative Law Volume A 389 (2010)). The above is also relevant, *mutatis mutandis*, in cases in which the original decision of the authority was a severe decision as far as the individual is concerned, due to an error. (Emphases were added by the undersigned) (LCA 3094/11 **Ibrahim Farhud Abu al-Kaiyan et al., v. State of Israel**, paragraph 7 of the judgment of the Honorable Justice Daphna Barak Erez (reported in Nevo, May 5, 2015).

177. The Minister of Interior did not give adequate weight to the fact that petitioners 1-3 were not indicted for murder but rather for manslaughter, and even based its decision on erroneous factual infrastructure. In addition, the Minister of Interior did not give adequate weight to the fact that the District Court has not yet examined the criminal evidence and has not yet decided whether the deceased's death resulted from stone throwing or from another reason which is not associated with the petitioners. The Minister of Interior did not give adequate weight to the fact that the indictments do not attribute to petitioners 1-2 an actual stone throwing at the deceased's car, and therefore, even if their involvement in the incident is proved, it will remain limited and it is doubtful whether it will amount to conviction in manslaughter. All of the above leads to the conclusion that respondent 2's decision in petitioners' matter is a hasty and unreasonable decision.

**D. These are not the exceptional cases which justify the use of such an extreme sanction**

178. Even if it is accepted that respondent 2 has the authority to revoke the status of petitioners 1-4, the, according to respondent2's position, as presented in the statement of response in **Abu Arafeh** of July 1, 2012, the authority to revoke a permanent residency status on the grounds of breach of allegiance is a broad authority which should be used **with a measuring cup, meticulously, carefully, for pertinent considerations, based on a strict examination of a factual and circumstantial infrastructure, rationally and in unique, rare, exceptional and extraordinary cases, in very severe circumstances with strict adherence to substantial and procedural limitations** (see paragraphs 75, 112-113, 127-131 of the statement of response).

179. In the case at hand we are not concerned with rare, exceptional or extremely extraordinary cases which justify the use of such an extreme authority. Certainly, this is not the case as far as petitioners 1-3 are concerned in view of the fact that even if the facts which appear in the indictments are fully proved, the only thing which may be attributed to them is stone throwing at vehicles with indifference to the possibility that their actions may cause death.

180. Revocation of status on the grounds of "breach of allegiance" is an extreme and sweeping authority which does not meet the proportionality test. There is no dispute that state authorities can take action against any person who injures state security or the safety of its residents; however they have in their disposal many enforcement measures which are not as severe as the measure of status revocation. It was so held for instance in a petition in which it was requested to obligate the Minister of Interior to revoke the citizenship of Igal Amir as an expression of a decisive dismay of the horrendous act of murder of a prime minister. The Supreme Court was of the opinion that the criminal law and the incarceration sentence which was imposed on Igal Amir by virtue thereof were the appropriate way to express condemnation and decisive dismay of the murder and therefore there was no need to take the measure of citizenship revocation (See HCJ 2757/96 **Elrai v. Minister of Interior**, IsrSC 50(2)

18, 22-23 (1996)). If so, the above most certainly befit the revocation of status of petitioners 1-3, young men who allegedly threw stones and some of them only ostensibly assisted to throw stones, without an intention to kill, even if consequently the regretful tragedy occurred which lead to the death of the deceased, the late Mr. Levlovitch, and to the injury of others.

181. It should be noted that also in the case of petitioner 4 respondent 2 should have refrained from using such an extreme authority and the criminal procedure should have sufficed as was done in the Igal Amir case and in other cases – which unfortunately are not so rare or exceptional in Israeli reality – in which Arabs and Jews were convicted of murder or attempted murder for nationalistic motives. Criminal law is the way to condemn prohibited actions, to impose sanctions according to their severity and to protect the safety of the citizens of the state and its residents against the recurrence of similar actions by the same person or other persons.

**E. Draconian administrative sanctions in addition to the criminal proceeding**

182. Other than the criminal proceedings which are pending against the petitioners which my end by the deprivation of their liberty for many years, and in addition to the revocation of their status which is the subject matter of this petition, the state took another sanction against the petitioners – the issue of demolition and sealing orders against the apartments in which they lived prior to their arrest, pursuant to Regulation 119 of the Defense Regulations. This sanction, should it be exercised, will leave the families of the petitioners homeless.

183. As aforesaid, the criminal proceeding is the proper way to express society's dismay of breach of law and infliction of bodily harm. This is the measure in the framework of which the petitioners may be condemned, deterred and punished of the death which was caused by them, if they are indeed convicted. However, for exactly the same act, and before it has actually been proved and decided that it was committed by them, the state imposes additional sanctions which are not less severe than the criminal sanction and are even worst - leaving the petitioners stateless in their home/homeland and leaving their family members who did nothing wrong, homeless.

184. It seems that the thin line between punishment and pure vengeance was crossed in petitioners' case in the state's reaction to their actions. Instead of taking only criminal proceedings against them, the results of which are severe enough as they are, additional draconian and brutal measures of revocation of residency and house demolition are taken against them and their families. The honorable court will hopefully interfere in petitioners' matter so that the state shall resume its position as a prosecutor, and if they are convicted, as the punishing body, and on the other hand, shall refrain from taking additional measures against the petitioners and their families, the lawfulness of which is questionable.

## Part IV: Violation of petitioners 1-4's fundamental rights

185. The residents of East Jerusalem are indigenous people. As specified above, the permanent residency status of the residents of East Jerusalem is different from the permanent residency status of foreigners who relocated to Israel. It should be added that the status of the residents of East Jerusalem prior to its annexation – as Jordanian subjects and previously as subjects of Palestine under the British Mandate and subjects of the Ottoman Empire – was always given to them by virtue of the fact that they lived in East Jerusalem. Thus also the residents of East Jerusalem were given Jordanian citizenship during the years 1948-1967, not based on their ties to the Kingdom of Jordan but rather based on their ties to East Jerusalem.

186. Case law has not yet discussed the constitutional status of residency by virtue of birth or membership of an indigenous group but the status of said right may be inferred from the judgment in the above

mentioned **Elrai case** regarding the status of the right to citizenship, where the petitioners requested to revoke the status of Igal Amir, the murderer of the Prime Minister, Itzhak Rabin. In that case the honorable court referred to the status of citizenship and held as follows:

> Although in Israel citizenship was not afforded an elevated status in a basic law, there is no doubt that it is one of the fundamental rights, including, *inter alia*, due to the fact that it is the basis for the right to vote to the Knesset from which democracy stems. As is known, it is incumbent on any administrative authority to refrain from the violation of fundamental rights, citizenship included, other than for a proper purpose and in a proportionate manner; all the more so when citizenship is concerned, as opposed to any other violation, and even more forcefully when a revocation of citizenship is concerned which renders a person who has citizenship by virtue of birth stateless. (HCJ 2757/96 **Elrai v. Minister of Interior**, IsrSC 50(2) 18, 22 (1996)).

187. Residency by virtue of birth is a constitutional right since it guarantees the right to continue to live in one's homeland without the risk of deportation, and it guarantees the realization of other constitutional and fundamental rights including the rights to liberty and dignity, to family life and freedom of movement, to livelihood and autonomy and freedom of choice, and as stated by the Supreme Court in **Ajuri**:

> The fundamental premise is that the displacement of a person from his place of residence and his forcible assignment to another place seriously harms his dignity, his liberty and his property. A person's home is not merely a roof over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships […] Several basic human rights are harmed as a result of an involuntary displacement of a person from his home and his residence being assigned to another place, even if this assigned residence does not involve him crossing an international border […] These human rights derive in part from the internal law of the various countries, and are in part enshrined in the norms of international law. (HCJ 7015/02 **Ajuri v. Commander of IDF Forces**, IsrSC 56(6) 352, 375 (2002)).

188. Realization of constitutional and fundamental rights depends on and is related to a person's homeland or place of residence. Violation of the right to residency and the revocation of petitioners 1-4's status will lead, upon their release, for their deportation and disconnection from their homeland, from their natural environment, from their family members, from the community and from the neighborhood in which they grew up.

189. The right to family life is a fundamental right which has been recognized by Israeli law as well as by international law. Israeli has recognized the right to family life as a derivative of human right to dignity and privacy enshrined in sections 1 and 3 of the Basic Law: Human Dignity and Liberty. The President, as then titled, Barak emphasized in his judgment in **Adalah** not only the great importance of the right to family life , but also the importance of the place in which the right to family life is realized and the right to continue to plant the family roots in one's homeland; The same applies to the petitioners – their right to family life in the city and their right to establish a nuclear family of their own in East Jerusalem.

> It is our main and basic duty to preserve, nurture and protect **the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family**…Family relations... underlie Israeli jurisprudence. The family has an **essential** and central role in the life of the individual and in the life of the society. Family relations, which are protected by the law and which the law seeks to develop, are of the strongest and most meaningful in a person's life […]
>
> The right to have the family unit is the right to realize the family unit in the country of the Israeli spouse. That is where his home is, that is where the rest of his family is, that is where his **community** is. That is where his historical, cultural and social roots are. **The family unit does not exist in a vacuum. It lives in a specific time and place**. The law violates this right. **Indeed, it is the right of the Israeli spouse that his family should live with him in Israel; it is his right to plant the family roots in the soil of his country** (Emphases were added by the undersigned) (HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior**, IsrSC 61(2) paragraph 25, 43 of the judgment of the President *(emeritus)* Barak (2006)).

See also:

HCJ 6427/02 **Movement for Quality Government in Israel v. Knesset**, IsrSC 61(2) 619, paragraph 35 of the judgment of the President *(emeritus)* Barak (2006));

HCJ 466/07 MK **Zehava Galon v. Attorney General**, paragraph 8 of the judgment of Justice Arbel (reported in Nevo, January 11, 2012);

HCJ 2245/06 **Dobrin v. Israel Prison Service**, paragraph 12 of the judgment of Justice Procaccia (reported in Nevo, June 13, 2006));

Aharon Barak, **Judge in a Democratic Society** (2004), pages 137-138;

Articles 17 and 23 of the Convention on Civil and Political Rights 1966;

Article 12 and Article 16(3) of the Universal Declaration of Human Rights 1948;

Article 12 of the European Convention on Human Rights 1950; Article 27 of the Fourth Geneva Convention 1949;

Article 10(1) of the International Convention on Economic, Social and Cultural Rights 1966;

And the preamble of the Convention on Rights of the Child, 1989.

190. Add to the above that the fundamental rights of the petitioners to personal liberty and dignity, to freedom of movement and autonomy will be severely violated as a result of the revocation of their permanent residency status and their deportation from their homeland.

See:

HCJ 6385/05 **Vaanunu v. GOC Home Front Command,** para. 10 (reported in Nevo, 2006);

HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754 (2005);

HCJ 6824/07 **Man'a v. Tax Authority**, para. 40 (reported in Nevo, December 20, 2010);

HCJ 7146/12 **Adam et al., v. Knesset et al**., paras. 72 and 78 of the judgment of Justice *(emeritus)* Arbel (reported in Nevo, September 16, 2013).

191. The right to nationality has been recognized in a host of conventions and international and regional documents (see, e.g., Article 15 of the Universal Declaration of Human Rights; Articles 2 and 7 of the Convention on the Rights of the Child; Article 5 of the Convention on the Elimination of Racial Discrimination; Article 9 of the Convention for the Elimination of Discrimination against Women; Article 32 of the Convention relating to the Status of Stateless Persons; Article 20 of the American Convention on Human Rights, etc.)

192. The state of Israel signed the Convention relating to the Status of Stateless Persons of 1954 and signed and ratified the Convention on the Reduction of Statelessness of 1961.

193. Israel recognizes the importance of the right to have status in the world and participates in and is committed to the fight against the phenomenon of statelessness. The above was expressed in the **Alxeyev** case where it was held that the status of persons who stay in Israel and have no nationality must be lawfully arranged and that the Minister of Interior must publish a procedure on what steps persons without nationality who stay in Israel should take to arrange their status for as long as they are stateless. The required procedure captioned "Procedure for handling persons who allege that they have no nationality" was published in 2012. And it was so stated in the judgment:

> **On the international level conventions were signed in a bid to limit the phenomenon of persons who live in the world with nationality and without any political affiliation which provides rights and identity**. The two major conventions are the convention of 1954 relating to the Status of Stateless Persons […] and the Convention on the Reduction of Statelessness… of 1961. […]
>
> **The state of Israel is a signatory of these two conventions and the first convention was also ratified by it**. […]
>
> Whatever the position of the Minister of Interior on the matter of stateless persons may be, it must be based on reasonable discretion and entrenched in clear criteria which will reflect it. […]
>
> In view of the above I find it appropriate to order the respondent to establish a clear policy in the matter of stateless persons and draft administrative directives which will outline the steps that a stateless person should take and the procedure which should be followed by the authorities in his matter (Emphases were added by the undersigned) (AP (Tel Aviv-Jaffa) 2887/05 **Alexeyev Sergei v. Minister of Interior**, paras. 23-24 and 37-38 (reported in Nevo, January 29, 2007).

194. The United Nations High Commission for Refugees (UNHCR) stressed the importance of international fight for the elimination of the phenomenon of political statelessness in the world in the preface to the Convention on the Reduction of Statelessness of 1961:

> **Underlying the 1961 Convention is the notion that while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided.** […]
>
> The 1961 Convention establishes safeguards against statelessness in several different contexts. **A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless.** To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. **The Convention further seeks to prevent statelessness later in life by prohibiting the withdrawal of citizenship from States' nationals – either through loss, renunciation, or deprivation of nationality – when doing so would result in statelessness. Finally, the Convention instructs States to avoid statelessness in the context of transfer of territory. For all of these scenarios, the 1961 Convention safeguards are triggered only where statelessness would otherwise arise and for individuals who have some link with a country**. (Emphases were added by the undersigned).

195. In addition, in 2014 UNHCR published a **Global 2014-04 Action Plan to End Statelessness within ten years**, which states as follows:

> **Statelessness is a profound violation of an individual's human rights**. It would be deeply unethical to perpetuate the pain it causes when solutions are so clearly within reach. This Global Action Plan sets out a strategy to put a definitive end to this human suffering within 10 years. I count on your support to help make this ambitious goal a reality. […]
>
> Whatever the cause, statelessness has serious consequences for people in almost every country and in all regions of the world. Stateless persons are often denied enjoyment of a range of rights such as **identity documents**, employment, education and health services. Statelessness can lead to forced displacement just as forced displacement can lead to statelessness. It can also contribute to political and social tensions. The exclusion and denial of rights to large populations because they are stateless can impair the economic and social development of States. Under international law, States set the rules for acquisition, change and withdrawal of nationality. **At the same time, the discretion of States with regard to nationality is limited by obligations under international treaties to which they are a party, customary international law and general principles of international law.** The 1954 Convention relating to the Status of Stateless Persons is the cornerstone of the international protection regime for stateless people. Specific obligations relating to the prevention and reduction of statelessness are established under the 1961 Convention on the Reduction of Statelessness. (Emphases were added by the undersigned).

196. This is the place to note that putting the petitioners at the risk of deportation from their homeland – as a direct result from the revocation of their status – is contrary to Article 49 of the Fourth Geneva Convention which explicitly prohibits the occupying power to "forcibly transfer" protected persons in any manner whatsoever.

> Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

197. The language of the Article is clear. The prohibition applies to all sorts of deportations: of individuals or mases; from occupied territory to the territory of the Occupying Power; from occupied territory to the territory of any other country; from occupied territory to occupied territory; regardless of the reason therefore.

198. The prohibition against deportation according to Article 49 of the Fourth Geneva Convention is absolute and the only exception to the rule emphasizes its scope. The second paragraph of Article 49 permits **nevertheless** partial and temporary evacuation of a certain area from its civilian population if the security of the protected population or imperative military reasons so demand. Even then, the exception permits only transfers **within the occupied territory itself**. Only as an exception to the exception, when for material reasons it is impossible to avoid such displacement, protected persons may be transferred outside the occupied territory. Hence, the transfer of protected persons outside the occupied territory in any manner whatsoever is prohibited, unless under the strict conditions specified in the second paragraph.

199. In conclusion. Respondents' decision to revoke the permanent residency status of the residents of East Jerusalem, in general, and in particular of petitioners 1-3 (and of petitioner 4 if it becomes evident that his Jordanian nationality was revoked) – who became as a result of said decision stateless in the entire world – a decision which directly disconnects the petitioners from East Jerusalem and causes them to be stateless in the entire world – is not only contrary to Israeli law due to the critical violation of their constitutional rights, and primarily their right as persons who were born in Israel and who reside therein to continue to live in their city and country without being exposed to the risk of deportation and separation from their loved ones, but is also in complete contradiction with international humanitarian law and international law and should therefore be revoked.

**Conclusion**

200. This petition concerns weighty issues which should be resolved by this honorable court at this time: including, whether respondent 2 is authorized to revoke permanent residency status due to breach of allegiance despite the fact that this issue is not arranged in primary legislation and whether the residents of East Jerusalem owe a duty of allegiance to the state.

201. As specified in the petition petitioners' position is that respondent 2 does not have the authority to revoke the permanent residency status of petitioners 1-4, in particular, and of East Jerusalem residents, in general, on the grounds of breach of allegiance. We are concerned with indigenous population of East Jerusalem which received its special status and permanent residency status under complex historic and legal circumstances. It is a status which by its nature is different from a permanent residency status given to a foreigner who relocated to Israel and settled therein. In addition, there is no explicit authorization in the law which grants the Minister of Interior the authority to revoke permanent residency status on the grounds of breach of allegiance, in contrast to the explicit authorization to do so under the Citizenship Law.

202. In addition, according to the purposive interpretation of section 11(a)(2) of the Entry into Israel Law, the authority to exercise discretion for the revocation of permanent residency status is limited to the cases specified in the Entry into Israel Regulations and to the events in which an explicit condition of the permit/status was breached.

203. Even if we assume that the Minister of Interior is vested with the authority to revoke the permanent residency status of East Jerusalem residents, the proceeding itself was materially flawed. The decision of the Minister of Interior is unreasonable and very extreme and was made without giving proper weight to weighty considerations, as specified above. The decision of the Minister of Interior very severely and extremely violates petitioners' right to status in East Jerusalem, their right to residency and their right to be protected from deportation.

204. The petitioners reserve their right to elaborate at a later date on the criminal proceedings which are pending against them.

205. This petition is supported by the affidavits of petitioners 1-5.

206. In view of all of the above, the honorable court is requested to accept the petition and issue an *order nisi* as requested above.

Jerusalem, February 28, 2016

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[File No. 89542]