At the Supreme Court

Sitting as the High Court of Justice **HCJ 3109/11**

In the matter of:

1. _____ Mansur, ID No. _____
2. _____ Mansur, ID No. _____
3. _____ Mansur, ID No. _____
4. _____ Mansur, (minor) ID No. _____
5. _____ Mansur, (minor) ID No. _____
6. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.**

Represented by counsel, Adv. Noa Diamond (Lic. No. 54665) and/or Leora Bechor (Lic. No. 50217) Elad Cahana (Lic. No. 49009) and/or Ido Blum (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Nimrod Avigal (Lic. No. 51583)

Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger

4 Abu Obeida St., Jerusalem 97200

Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Minister of Interior**
2. **Head of Population, Immigration and Border Authority**
3. **Director of the East Jerusalem Population Administration Bureau**
4. **Chair of the Committee for Special Humanitarian Affairs**

Represented by the State Attorney
29 Salah-a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6466713

The Respondents

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to show cause:

1. Why he does not arrange the status of petitioner 1 in Israel by approving her registration in the population registry as the holder of a temporary residency visa of the State of Israel.

2. Why the committee headed by respondent 4 does not act in accordance with the procedure and the law governing its operations, and in particular in accordance with the time frame prescribed for giving response to applicants.

In accordance with section 3a(1)(d) of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter also: the "**law**"), the Minister of Interior must render a decision in a humanitarian request: "six months from the date on which all required documents were provided to the committee; The minister's decision shall be reasoned."

To this very day, almost two and-a-half years following submission of the application, notwithstanding the provisions of the law and its requirements, no decision has been made in petitioner's matter.

Filing the Petition to the High Court of Justice

1. On March 2, 2008, the Courts of Administrative Affairs Order (Amendment of the First Addendum of the Law), 5768-2007 entered into effect (published on December 6, 2007 volume 6626) (hereinafter: the "**order**"). The order provides that decisions made by authorities in accordance with the Entry into Israel Law, 5712-1952, and the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, **with the exclusion of decisions made in accordance with section 3a1 (decisions of the humanitarian committee)** and section 3c (individuals who made a special contribution to the State of Israel), would, henceforth, be adjudicated by the Courts of Administrative Affairs. Consequently, decisions made under sections 3a1 and 3c, will be adjudicated by the High Court of Justice [HCJ].

2. This petition is concerned with an application submitted to the committee for humanitarian affairs pursuant to section 3a1 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the "**temporary order law**") and therefore this honorable court has the authority to adjudicate it.

The Parties

3. Petitioner 1 (hereinafter: the "**petitioner**"), is originally a resident of the Occupied Palestinian Territories [OPT], the widow of the late Mr. _____ Mansur, a permanent resident of Israel (numbered No. _____). Since her marriage, the petitioner has been living in Jerusalem and her stay in Israel has been arranged through renewable stay permits.

4. Petitioners 2-5 are the daughters of petitioner 1 and Mr. Mansur: petitioner 2, _____, was born in Jerusalem on March 22, 1991; petitioner 3, _____, was born in Jerusalem on June 14, 1992; petitioner 4, _____, was born in Jerusalem on May 26, 1995 and petitioner 5, _____, was born in Jerusalem on August 2, 1997.

5. Petitioner 6 is a registered not-for-profit association, that has taken upon itself to assist victims of cruelty or deprivation by state authorities, including by protecting their rights before the authorities, either in its own name as a public petitioner or as counsel for persons whose rights have been violated.

6. Respondent 1 is the minister authorized under the Entry to Israel Law, 5712-1952, to handle all matters associated with this law, including applications for family unification and for the arrangement of the status of children submitted by permanent residents of Israel residing in East Jerusalem.

7. Respondent 2 is the head of the population administration in Israel. In accordance with the Entry to Israel Regulations, 5734-1974, respondent 1 has delegated to respondents 2 and 3 some of his powers to handle and approve applications for family unification and for the arrangement of the status of children, submitted by permanent residents of Israel residing in East Jerusalem. In addition, respondent 2 takes part in establishing the policy concerning applications for status in Israel, under the Entry into Israel Law and the regulations promulgated pursuant thereto.

8. Respondent 3 is the director of the regional population administration bureau in East Jerusalem. In accordance with the Entry to Israel Regulations, 5734-1974, responden1 has delegated to respondents 2 and 3 some of his powers to handle and approve applications for family unification and for the arrangement of the status of children, submitted by permanent residents of Israel residing in East Jerusalem.

9. Respondent 4 is the chair of the humanitarian affairs committee established in accordance with section 3a1 of the Citizenship and Entry to Israel Law (Temporary Order), 5763-2003.

For the sake of convenience, respondents 1-4 will be hereinafter referred to as: the "**respondent**".

The Main Facts Concerning the Matter at Hand

10. On September 22, 1990 the petitioner married Mr. _____ Mansur, a permanent resident of Israel. Over the years, the couple had 4 daughters, petitioners 2-5.

11. In November 1990 Mr. Mansur submitted an application for family unification with the petitioner. The petitioner inquired after the status of her application in respondent 3's bureau approximately once every six months, and was told, time and again, by the bureau's clerks, that no decision had been rendered.

12. In 1995 the couple was told that some documents were missing from their application and that they must submit a new application. Therefore, on March 28, 1996, Mr. Mansur submitted an application for family unification with the petitioner (the application was numbered 361/96).

13. Only on November 22, 1999, after a waiting period of **three years and eight months**, was the application finally approved and, on that same day, the petitioner received a referral to obtain a DCO [District Coordination Office] permit, for one year.

Copies of the letter approving the family unification application and the referral to the DCO are attached and marked **P/1**.

14. On September 12, 2000 the couple submitted an application for an additional referral to obtain a DCO permit, within the framework of the graduated procedure.

A copy of the application letter dated September 12, 2000 is attached and marked **P/2**.

15. On October 5, 2000 a letter was received from respondent 3 requesting clarifications concerning the family's place of residence. On October 12, 2000, a response to respondent 3's questions was sent.

16. On November 20, 2000, a letter dated November 16, 2000 was received from respondent 3, approving the extension of the referral to obtain a DCO permit held by the petitioner.

A copy of respondent 3's letter dated November 16, 2000 is attached and marked **P/3**.

17. On December 31, 2000, the petitioner received an additional referral to obtain a DCO permit. The referral had a written note on it stating "until February 22, 2002." Under the graduated family unification procedure, the petitioner should have been granted temporary residency status after February 22, 2002.

A copy of the referral granted to the petitioner on December 31, 2000 is attached and marked **P/4**.

18. In view of the above, an application to upgrade petitioner's status to the status of temporary resident was already prepared for submission to respondent 3's bureau on January 17, 2002. Unfortunately, the bureau did not allow the couple to submit the application on that day, and they were given an appointment to submit the application for March 12, 2002. However, on that day too, the couple could not submit the application. When the petitioner and Mr. Mansur came to the bureau, for the appointment which had been scheduled for them in advance, they were surprised to find out that the bureau's doors were closed, apparently due to a strike which was taking place at that time. Thereafter, the bureau's employees went on a Passover vacation.

A copy of the application letter, which was prepared on January 17, 2002 is attached and marked **P/5**.

19. As is known, processing of family unification applications at respondent 3's bureau was halted, following the decision to freeze the processing of family unification applications with residents of the West Bank. This policy was given the effect of a government resolution (1813) on May 12, 2002.

20. In view of the above, the couple managed to schedule an appointment to submit their application only for July 14, 2002.

A copy of the letter attached to the application dated July 14, 2002, in which the respondent was requested to take into consideration the fact that the petitioner was not at fault for the failure to submit the application, is attached and marked **P/6**.

21. The petitioner did not succeed to submit the application on July 14, 2002, notwithstanding the appointment which had been scheduled for her. She was forced to schedule a new appointment for August 13, 2002.

22. Only on April 28, 2003, did the petitioner receive a new referral to obtain a DCO permit.

A copy of the referral is attached and marked **P/7**.

23. Since then the petitioner has continued to receive renewable DCO permits.

24. On December 15, 2007, Mr. Mansur, petitioner's husband, suddenly passed away. His death came as a shock to the family and the responsibility to provide for the family and raise the girls, fell on petitioner's shoulders.

A copy of Mr. Mansur's death certificate is attached and marked **P/8**.

25. On February 14, 2008, the petitioner was appointed as the guardian of petitioners 2-5.

A copy of the guardianship decree issued by the Sharia Court in Jerusalem, along with a certified translation thereof, is attached and marked **P/9**.

26. In addition to the family's tragedy, Mr. Mansur's death had "bureaucratic" implications as well: upon his death, in the absence of a "sponsor" in the family unification procedure, the graduated procedure was severed in one blow.

27. On February 27, 2008 the head of "Khalil Sakakini" school (where petitioner 4 was studying at that time), members of the educational staff and the students of class 7/1 of the school wrote to respondent 3. In their letters, they requested that petitioner's matter be reviewed and that an Israeli identification card be granted to her.

Copies of the application letters are attached and marked **P/10**.

28. In response to the above letters, Mrs. Tekutiel from the bureau of respondent 3 wrote on March 6, 2008 that "in view of the humanitarian case referred to in your above letters, Mrs. Mansur's case will be referred to the inter-ministerial committee that reviews humanitarian cases and exceptions as soon as possible." In addition, it was stated that Mrs. Mansur would be able to receive stay permits in Israel until a decision was made in her case by the inter-ministerial committee.

A copy of the response letter dated March 6, 2008 is attached and marked **P/11**.

29. A discussion held between an employee of petitioner 6 and a clerk from the bureau of respondent 3 on May 12, 2008 indicated that petitioner's file had been transferred to the inter-ministerial committee and that it would be reasonable to expect that a decision would be made within one month.

30. On June 18, 2008, in a meeting held in the bureau of respondent 3, the petitioner was told that the decision of the inter-ministerial committee would be made during December of that year.

31. On December 11, 2008, a discussion held with a clerk from the bureau of respondent 3 revealed that petitioner's application had been transferred to the headquarters of respondent 1, where it was decided in the month of June 2008 to transfer the matter to the humanitarian committee established in accordance with the temporary order (hereinafter: the "**humanitarian committee**").

32. The humanitarian committee was established in December 2007, to review humanitarian cases of residents of the OPT that did not meet the humanitarian exceptions set forth in the law. As specified above, the death of petitioner's husband had "severed" the graduated procedure leaving her suddenly "outside the criteria" under the temporary order law.

33. On January 15, 2009, a reminder was sent to the humanitarian committee.

A copy of the reminder letter is attached and marked **P/12**.

34. On March 4, 2009, an additional reminder was sent.

A copy of the reminder is attached and marked **P/13**.

35. On April 2, 2009, another reminder was sent.

A copy of the reminder is attached and marked **P/14**.

36. On May 17, 2009 a discussion was held between Adv. Bechor from the office of petitioner 6 and the coordinator of the humanitarian committee, Mrs. Anna Feinberg. This discussion indicated that petitioner's case had not yet been reviewed by the committee and that no one could estimate when such a review would take place. It also turned out that according to Mrs. Feinberg's notes, the petitioner had requested the humanitarian committee for stay permits only. Adv. Bechor corrected Mrs. Feinberg's mistake and pointed out that the letters sent from the school of petitioner 4 stated that the requested status was that of permanent residency. In response, Mrs. Feinberg explained that the humanitarian committee did not have the power to grant permanent residency status to applicants, but only stay permits or temporary residency.

37. On June 14, 2009, Mrs. Sha'ar from the bureau of respondent 3 called and requested to have petitioner's *curriculum vitae* form sent to the humanitarian committee.

38. On July 21, 2009, an application to receive a temporary residency visa for the petitioner was sent to the bureau of petitioner 3. In the application it was argued that the petitioner was entitled to temporary residency status back in February 22, 2002, long before the death of her husband. It was also argued that the appropriate framework for reviewing petitioner's status was the "Procedure for the Cessation of a Proceedure for the Arrangement of Status of Spouses of Israelis" (procedure 5.2.0017 of respondent 1). In view of the above it was further argued that the decision to refer petitioner's case to the humanitarian committee (rather than to the inter-ministerial committee for humanitarian affairs, to which referrals are made in accordance with the above procedure 5.2.0017) was erroneous, since the humanitarian committee was established only for the purpose of processing the cases of applicants who were precluded from obtaining status under the temporary order law, and petitioner's case did not fall within that category.

A copy of the application dated July 21, 2009, to which petitioner's *curriculum vitae* form was attached, is attached and marked **P/15**.

39. On September 15, 2009, a reminder was sent to the bureau of respondent 3 concerning the application to receive a temporary residency visa.

A copy of the reminder is attached and marked **P/16**.

40. On October 1, 2009, a response to the letter dated July 21, 2009 was received from the bureau of respondent 3. According to the response, petitioner's case would be referred to the humanitarian committee.

A copy of the response is attached and marked **P/17**.

41. On November 16, 2009, a copy of the application to receive a temporary residency visa (dated July 21, 2009) was sent to the humanitarian committee, along with a cover letter, demanding an immediate decision in petitioner's application.

A copy of the letter dated November 16, 2009 is attached and marked **P/18**.

42. On December 13, 2009, petitioner's *curriculum vitae* form was sent again, and this time, directly to the humanitarian committee.

43. On December 21, 2009, a letter of the chair of the humanitarian committee dated December 13, 2009 was received. The letter stated that "since the husband of the sponsored individual has passed away, he cannot serve as a sponsor. Someone else is required, and for that purpose her daughter was registered as the sponsor."

A copy of the letter dated December 13, 2009 is attached and marked **P/19**.

44. On February 28, 2010, a letter of the coordinator of the humanitarian committee dated February 21, 2010 was received, pursuant to which "some details were missing from the *curriculum vitae* form transferred to us: cellular phone numbers were not filled in as requested."

A copy of the letter dated February 21, 2010 is attached and marked **P/20**.

45. On March 11, 2010, a response to the application dated February 21, 2010 was sent. The response letter stated that as it had already been noted in writing on the *curriculum vitae* form itself, the petitioner did not have any contacts with the listed persons and therefore she neither had their cellular phone numbers at her disposal, nor did she have the ability to obtain them. It was also noted that this issue did not create any issues in other cases handled by the advocates of petitioner 6.

A copy of the response of petitioner 6 dated March 11, 2010 is attached and marked **P/21**.

46. On April 8, 2010, following a discussion held with the substitute coordinator of the humanitarian committee, a response concerning the completion of details in the *curriculum vitae* form was re-sent.

A copy of the letter dated April 8, 2010 is attached and marked **P/22**.

47. A reminder was sent on April 21, 2010.

A copy of the letter is attached and marked **P/23**.

48. An additional reminder was sent out on May 12, 2010.

Copy of the letter is attached and marked **P/24**.

49. Another reminder was sent out on June 14, 2010.

A copy of the letter is attached and marked **P/25**.

50. On June 21, 2010, the letter of the committee's coordinator, Lital Mishan, dated June 15, 2010 was received. According to the letter, petitioner's application would be scheduled for review in accordance with the order of its submission date.

A copy of Ms. Mishan's letter is attached and marked **P/26**.

51. On August 30, 2010 an additional reminder was sent out.

A copy of the reminder is attached and marked **P/27**.

52. On September 29, 2010, another reminder was sent out.

A copy of the reminder is attached and marked **P/28**.

53. On October 25, 2010 another reminder was sent out.

A copy of the reminder is attached and marked **P/29**.

54. On December 1, 2010 another reminder was sent out.

A copy of the reminder is attached and marked **P/30**.

55. On January 4, 2011 another reminder was sent out.

A copy of the reminder is attached and marked **P/31**.

56. On February 13, 2011 another reminder was sent out.

Copy of the reminder is attached and marked **P/32**.

57. On March 8, 2011 another reminder was sent out.

A copy of the reminder is attached and marked **P/33**.

58. Thus, about two years and nine months following the referral of the application to the humanitarian committee and almost three years after the school letters were forwarded to the bureau of respondent 3, after many written reminders and telephone inquiries made by staff members of petitioner 6, the petitioner wishes to have some certainty and stability in her life, which suddenly and painfully changed upon the death of her husband. Indeed, it is high time petitioner received an answer to her painful question: "what shall become of me?"

59. In view of the prolonged silence of the humanitarian committee, the petitioners have no alternative but to file a petition with this honorable court.

The Legal Framework

The legal arguments raised before the committee

60. The petitioners will argue, that although the law generally provides that temporary residency in Israel is granted to a resident of the Area[i] "for special humanitarian reasons", in petitioner's case, the humanitarian committee should exercise its discretion in accordance with certain provisions of the law which should guide and even

obligate it to grant temporary residency status to the petitioner. It should be pointed out that as specified in section 3a1 of the temporary order, granting such status is within the powers of the minister of interior.

61. Section 3a1 of the temporary order provides as follows:

> (a) Notwithstanding the provisions of section 2, the minister of interior may, for special humanitarian reasons, with the recommendation of a professional committee appointed by him for that purpose (in this section – the committee) –
>
> (1) **Grant a permit for a temporary residency in Israel to a resident of the Area** or a citizen or resident of any one of the countries specified in the addendum, whose relative is legally present in Israel;
>
> (Emphases added, N.D.).

62. The above statutory provisions, which should guide the humanitarian committee in exercising its discretion while reviewing petitioner's matter, are that statutory provisions that relate to status upgrades and cessation of the graduated procedure. It should be noted that the fact that there are explicit statutory provisions that guide the humanitarian committee in exercising its discretion in petitioner's matter, only exacerbates the long delay in providing a response to the petitioner and makes it that much more outrageous.

Legal Developments concerning Status Upgrade

63. The description in the factual chapter indicates that even if the **three years and eight months** which were required for approving the second family unification application submitted by Mr. Mansur and the petitioner are disregarded, and even if the **nine years** that have elapsed since the first family unification application was submitted (to which no response was ever given) are disregarded, **Mrs. Mansur should have been granted temporary residency status back in February 22, 2002**, prior to government resolution 1813, had the respondent followed its own timetables.

64. As is known, government resolution 1813 provided that the status of Palestinian spouses of Israeli residents and citizens who were going through the process of a family unification procedure, would not be upgraded.

65. Nevertheless, recently, there have been some legal developments on the issue of the entitlement of individuals whose status should have been upgraded prior to the government resolution of May 2002, but

was not upgraded as a result of a delay in the processing of the application. We shall specify.

66. In AAA **Dufish v. Head of Population Administration** (not published, rendered on June 2, 2008) (hereinafter: **Dufish**) – a judgment in two appeals filed with the supreme court by individuals whose status should have been upgraded prior to the government resolution – it was held as follows:

> **Following our comments in the previous hearing, the respondent agreed that it would be possible to upgrade an applicant's status although his status was not upgraded prior to the due date, if the failure to upgrade resulted from a mistake or from an unjustified delay caused by the respondent**. The question whether the appellants come under the terms of the above criterion should be examined by the court for administrative affairs based on the facts of each case. Therefore, both proceedings will be remanded to the court for administrative affairs for re-examination. Each one of the litigants will be given the opportunity to bring additional evidence so as to enable the court to make its decision in the matter.
>
> (Emphasis added, N.D.)

67. In addition, in a judgment which was concerned with the very same issue, AAA 5534/07 **Rajub v. Minister of Interior** (not published, July 16, 2008), it was held as follows:

> With the recommendation of the court and the parties' consent, the case will be remanded to the court for administrative affairs, for further consideration in view of the policy (established after the judgment of the lower court was rendered) expressed in the approach pursuant to which "an applicant's status may be upgraded even if his status was not upgraded prior to the due date, if the failure to upgrade resulted from a mistake or an unjustified delay caused by the respondent" (AAA 8849/03 **Dufish v. Head of Population Administration** (not published, rendered on June 2, 2008)). The court will examine whether the case at hand comes under the terms of the above criteria. We would like to draw attention to petitioners' argument that they reside beyond the separation wall and, therefore, experience difficulties travelling to Jerusalem as holders of DCO permits only rather than A/5 status. Secondly, petitioner 2 is not in good health, following an accident. **We would also like to draw**

> **attention to the passage of time and the history of the processing of the case, commencing in 1995 (the administrative petition was filed in 2003), as well as to the circumstances of the time tables in 2002, which should obviously be taken into consideration** - and we make no conclusive determinations in this matter - by the respondents while formulating their position in the court for administrative affairs. Finally, we especially ask the court to schedule the hearing on a close date, in view of all of the above. The appeal is therefore accepted with the parties' consent in accordance therewith.
>
> (Emphasis added, N.D.).

We would like to point out that in the above cases, the file was remanded to the district court, where it has been held that the status of the appellants should be upgraded to A/5 status.

68. On September 14, 2008, judgment was rendered in AP (Jerusalem) 8436/08 '**Aweisat v. Minister of Interior** ([published in Nevo], September 14, 2008). Similar to the case at hand, the petitioner in that case was also entitled to have his status upgraded prior to the government resolution, in accordance with the duration of 27 months of the graduated procedure. The court held that petitioner's status should be upgraded.

69. In addition, in a judgment rendered under similar circumstances – AP 8228/08 **Hirbawi Magdi v. Minister of Interior** – in which the court also ordered to have petitioner's status upgraded, the court mentioned the fact that petitioners' family unification application was approved more than four years after its submission. Taking this fact into consideration, it was held as follows:

> **A period of about four years and four months for the purpose of approving the application constitutes an unreasonable delay by all standards**, and especially taking into consideration the special circumstances of this case and the fact that the petitioners are only four months short of complying with respondent's procedures which require a twenty-seven-month stay in Israel with DCO permits. **Shortening the duration of the processing of petitioners' application by four months or more (out of the entire period of four years and four months) could have helped the petitioners comply with the requirements of the procedure.**
>
> (Emphasis added, N.D.).

70. The court emphasized the fact that the delay of four years directly affected petitioner's ability to comply with the requirements of the procedure and have her status upgraded.

71. As we have noted above, the failure to have petitioner's status upgraded, resulted, in its entirety, from delays originating in the conduct of the bureau of respondent 3: As held in the above AAA 5534/07 and in AP 8228/08, the passage of time from submission of the application to the present day should be taken into consideration. In our case too, the application was submitted back in 1996 and approved only **three years and eight months** after its submission.

72. The conduct of the bureau of respondent 3 in the beginning of 2002, when petitioner's access to the bureau was completely blocked as a result of which she was unable to submit her application for an upgrade, should also be taken into consideration.

73. Consequently, the application to have petitioner's status upgraded, which had already been prepared on January 17, 2002, before the estimated upgrading date, was submitted only on August 13, 2002, **seven months** later. Due to the above specified delays, the petitioner was prevented from having her status upgraded prior to the government resolution date. If it were not for this conduct, the petitioner could have obtained temporary residency status many years ago.

74. Had petitioner's upgrade application been submitted in January 2002, there would have been no impediment to having it approved prior to the government resolution. As indicated in AP 8436/08, "the period of time required to make a decision (on the upgrade issue), in accordance with the procedures of the ministry of interior itself, is two months." It has also been held, in AP 413/03 **Ibtesam Sa'ada v. Head of the Population Administration in East Jerusalem,** that "the fact that the respondent instructs the applicants to submit their applications to extend their permits and/or to upgrade their status two months before the permit expiration date, indicates that he also assumes that the processing of the application should take about two months." In addition, it was held in that judgment, that even if the delay in approving the application resulted from the response of other parties, it could not justify such a long delay.

75. Consequently, in view of the above, the petitioner was entitled to the status of temporary resident, in accordance with the prolific and consistent judgments of this honorable court and the district court. It should be pointed out that **such entitlement entered into effect almost six years prior to her husband's death**.

Procedure for cessation of the procedure for the arrangement of status of spouses of Israelis

76. Respondent's procedure number 5.2.0017, known as "Procedure for Cessation of the Procedure for the Arrangement of Status of Spouses of Israelis" (updated on May 11, 2009), governs the arrangement of the status of the non-Israeli spouse in the event that the marital relationship is severed due to the death of the Israeli spouse (hereinafter: the "**procedure**").

77. The procedure sets criteria "mainly intended to examine the ties of the non-Israeli spouse to Israel." **(see** HCJ 4711/02 **Hillel v. Minister of Interior** (interim decision dated October 12, 2008) (hereinafter: **Hillel**).

78. In accordance with the procedure, if the couple has shared children, the file is referred for the review of the inter-ministerial committee under the following conditions:

a. The spouse was in a sincere marriage and his/her marriage was registered in the population registry and he/she received an A/5 stay permit in Israel within the framework of the graduated procedure.

b. The spouse has commenced the graduated procedure (received A/5 temporary stay permit).[1]

c. The spouses' shared children are in the custody of the non-Israeli spouse. If the children are not in the custody of the non-Israel spouse, the welfare services will be approached for the purpose of obtaining relevant information concerning the placement and custody of the children.

79. The petitioner complies with all the ***material*** provisions of this procedure. There is no doubt that prior to the tragic death of Mr. Mansur, the spouses had a sincere marriage. Since their marriage, the spouses lived together throughout the years, lead a joint household and had daughters together.

80. The additional condition of the procedure (obtaining a temporary status) should also be regarded as if met in our case. In accordance with the above described judgments, the petitioner should have obtained temporary residency status on February 22, 2002, at the latest. **Therefore, for purposes of the procedure and according to**

[1] The previous condition that the sponsored spouse spend more than half of the duration of the graduated procedure was omitted from the current version of the procedure.

common sense, she should be regarded as if she has obtained an A/5 stay permit in Israel.

81. It should be further noted that prior to the petition in **Hillel**, the procedure required that the sponsored spouse had remained in Israel with a permit, for a period exceeding half the duration of the graduated procedure. Following comments made by the honorable court in **Hillel**, this demand no longer applies in cases where the spouses have shared children. In addition, it is evident that special significance should be given to the fact that the petitioner has been staying in Israel with a permit for almost a decade (while the entire duration of the graduated procedure is five years and a quarter) which attests to petitioner's strong ties to Jerusalem.

82. Furthermore. In accordance with the spirit of the procedure, the demand to obtain an A/5 permit should not be regarded as a rigid requirement, but rather as a demand that the sponsored spouse stay in Israel with permit at least during the first six months of the graduated procedure. This interpretation is in accordance with procedure 5.2.0008, "Procedure for Granting Status to a Non-Israeli Spouse Married to an Israeli Citizen", which provides that a non-Israeli spouse married to an Israeli citizen will receive a B/1 permit or a six-month DCO permit, and, upon the approval of the application, a one-year temporary stay permit, for an overall period of four years. Indeed, for a non-Israeli spouse married to a citizen, the condition of obtaining an A/5 permit is fulfilled after a few months. There is no doubt that the petitioner met the first-six-months [requirement] back in 2000.

83. Appropriate to our case are the words of Honorable Judge Sobel in AP (Jerusalem) 8799/08 **Yamana Abu Lama v. Minister of Interior** (published in Nevo) concerning the implementation of the procedure on a non-Israeli spouse married to a **permanent resident** rather than to a **citizen:**

> With respect to a family unification procedure of a permanent resident in Israel with his non-Israeli spouse, **there is a discrepancy between this provision and the requirement of the procedure that a non-Israeli spouse receive an A/5 temporary stay permit. Such permit is given to the non-Israeli spouse only after twenty seven months of the graduated procedure** whereas **the requirements of the procedure are satisfied if the non-Israeli spouse took part in the graduated procedure during a period of one year only**. Since the A/5 permit requirement does not apply only when the spouses have shared children, but also when the spouses do not have shared children, (in which case the requirement is for half of the duration of the graduated procedure), **the specific provision requiring**

> **one year only may possibly be regarded as superseding the general provision requiring receipt of an A/5 permit**.
>
> (There, Emphases added, N.D.).

84. Support for the argument that the petitioner complies with the requirements of the procedure, being the widow of an Israeli, may be found in the statements of Adv. Yochi Genesin, Head of the Administrative Affairs Division of the HCJ Department at the State Attorney's Office, made in a discussion held by the Internal Affairs and Environment Committee of the Knesset on January 8, 2007 (protocol number 89):

> The ministry of interior has a procedure concerning a widow with children. The procedure concerning **a widow with children, whether she is a resident of the Palestinian Authority or not, enables her to obtain status**. Inasmuch as a widow without children is concerned, an examination over time is into whether or not the spousal relationship was valid *ab initio*.
>
> (*Ibid.*, page 22. Emphases added, N.D.).

The relevant pages of the protocol of the discussion held by the Internal Affairs and Environment Committee of the Knesset are attached and marked **P/34**.

85. As aforesaid, the above procedure was discussed by this honorable court in **Hillel**. The general petitions in this matter, which were joint, , were concerned with the status of widows whose husbands, Israeli citizens, passed away prior to the termination of the graduated procedure.

86. In the review conducted in **Hillel**, claims were raised against the rigidity of the procedure in its former version. In particular, the court referred, within the framework of an interim decision dated October 12, 2008, to the rigidity of the requirement that the non-Israeli spouse pass more than half of the duration of the graduated procedure. And indeed, the requirement has been omitted from the current version of the procedure, following the comments of the court.

87. The court found, that beyond the criteria set forth in the procedure:

> **There is room for allowing an individual which includes various factors** such as the duration of the marriage and the duration of the joint life prior to the marriage, the duration of the stay in Israel, the sincerity of the marriage and the center of life in Israel, according to relevant ties. **It should be noted that such factors may suit the purpose of the procedure more**

appropriately than certain factors included in the current procedure. (Ibid., interim decision dated October 12, 2008, emphasis added – N.D.).

88. On August 2, 2009, judgment was rendered in **Hillel**. In the judgment it was pointed out that:

> A case in which the Israeli spouse passes away prior to the termination of the graduated procedure **requires special attention and consideration** in view of the harsh implications that the cessation of the naturalization procedure may have on the non-Israeli spouse, who has established the center of his life in Israel following a valid and sincere marital relationship with an Israeli citizen.
>
> (Ibid., paragraph 2, emphases added, N.D.).

89. Although the decision of the honorable court concerns widows of Israeli citizens, whose status applications are based on section 7 of the Citizenship Law, whereas the petitioner at hand was married to a permanent resident of the State of Israel and her application is submitted for humanitarian reasons, the above rationale is equally adequate for her case. Furthermore, particularly in the case of the petitioner, whose children are permanent residents of the state, **the damage caused to the children may be even greater**. In view of the provisions of the Entry to Israel Law, if petitioners 2-5, minors, are forced to leave Israel with their mother, they may lose their status in Israel, and be left without status in the world and without their rights. In such an event, petitioner's daughters would not be allowed to visit their homeland or live therein in their home, as opposed to children who are citizens, whose status remains valid even if they follow their mother or father to their homeland, a status which enables them to return to live in Israel when they grow up, at any time, if they so wish.

90. Another petition brought before the honorable court concerned a widow of an Israeli resident, a Palestinian from the West Bank, whose status had not been arranged as she was the second wife of her late husband (HCJ 10041/08 **Hijaz v. Minister of Interior**). There, in a decision dated February 10, 2011, the honorable court held that, in the framework of its considerations, the committee should consider "the duration of stay in Israel, the fact that the petitioner is a widow and that all her children live here in Israel", and referred to the guiding considerations set forth in **Hillel**. This, despite the fact that petitioner's status in that case had not been arranged. Whereas in the case at hand, petitioner's status was arranged within the framework of the graduated procedure.

The decision of the honorable court in HCJ 10041/08 is attached and marked **P/35**.

91. In summary, in view of the above judgments and the revised procedure, the petitioner may be regarded as having the right to continue to live in Israel as a temporary resident. The petitioner married her husband on May 2, 1990, lived together with him in Israel for more than 17 years, has been receiving stay permits in Israel for the past ten years and, to this day, has been living here with her daughters, who were born and raised here all their lives. As stated above, almost eight years elapsed between the commencement of the graduated procedure and Mr. Mansur's death.

92. In view of her long stay in Jerusalem – twenty years – the petitioner has the right to receive A/5 status and this right should not be violated because of her husband's death.

93. There is no dispute that in the traditional world in which the petitioner lives, a widow who raises her children by herself (let alone – her daughters) may be pushed, almost automatically, to the fringes of society.

94. The above indicates that a decision not to grant the petitioner status in Israel means substantially adding to her current suffering and forcing her to shift her life to a place to which she has no real ties, a place that offers her no support network. Evidently, this situation will result in the disintegration of her family.

Summary: the legal arguments raised before the committee establish the legal requirements

95. Indeed, due to the limitations prescribed by the law, petitioner's case was referred to a committee which reviews humanitarian affairs. However, as we have seen so far, it is consistent and unequivocal case law that must guide the committee in exercising its discretion. As this case law indicates, the respondent should arrange petitioner's status in Israel and grant her temporary residency status.

96. All the humanitarian committee has to do is **comply with legal requirements** in making a decision concerning the petitioner:

> Indeed, no special humanitarian grounds have been found by respondent in petitioner's case. However, **the hearing before us concerns petitioner's compliance with conditions prescribed by the respondent in a procedure** for the purpose of completing her

naturalization process**, rather than with the existence of *ex gratia* humanitarian considerations**.

AP (Jerusalem) 295-10 **Ludmila Vernowski v. Minister of Interior** (rendered on July 18, 2010, published in Nevo. Emphases added, N.D.).

97. Despite of the fact that the legal requirements have long since been established and presented to the committee, it has delayed for a long time, in a clearly unreasonable manner, thus causing the petitioners grave injury. We shall elaborate.

The committee for humanitarian affairs acts contrary to law and procedure

98. As aforesaid, the humanitarian committee that reviewed petitioners' case was established pursuant to section 3a1 of the temporary order law. This section provides, *inter alia*, that **the minister of interior render his decision in applications referred to the committee within six months**.

99. The respondent has published a procedure which governs the committee's operations. In accordance with the procedure, the committee should convene twice a month (section 3.1 of the procedure) and record its recommendations and the grounds for them accurately and in detail (section 10 of the procedure). The procedure further provides, in section 4.3, that if an application has been found to have special humanitarian grounds, the committee's coordinator shall send the applicant a request to provide a *curriculum vitae*. Following receipt of the *curriculum vitae* a hearing will be held at the ministry of interior parallel to a security check which will be conducted.

A copy of procedure 5.2.0039 is attached and marked **P/36**.

100. The humanitarian committee does not comply with the rules prescribed for it in the procedure. Many applications submitted receive no response for a long time. These flaws in the committee's work were put on the agenda (in an expedited discussion) in a session of the Internal Affairs and Environment Committee held on October 25, 2010. In the discussion held by the committee, with the participation of Mr. Amos Arbel, director of the Registration and Status department in respondent 1's office, the foot-dragging and prolonged proceedings in the committee were not denied:

Chair, David Azoulay:

A person applies to the humanitarian committee, a discussion is held. How long can it take from the time he applies until he gets a positive or negative response?

Amos Arbel:

If the file is simple, three – four months may elapse and then we finish it and he receives a negative response, because the only issue is the spousal relationship and there is no humanitarian issue. **In the more complicated cases it may take us nine or ten months**.

Chair, David Azoulay:

Amos, does this period of time seem reasonable to you? So much time in order to receive an answer? And I do not refer to the contents of the response but I speak only of a response.

Amos Arbel:

The committee has a very heavy work-load. The chair of the committee hardly manages to attend the committee's meetings twice a week, on her free, personal time. It should be remembered that all members of the committee hold other positions in addition to their membership in the committee. **On such a day, to coordinate the schedules of all five members of the committee, to find the time outside their positions, and arrive ---**

We know that we are heavily burdened. We are somewhat behind.

(…)

Amos Arbel

By the way, we have presented all data to any forum which has requested us to do so. We gave all the data to the assistant to the attorney general and to the state attorney's office in preparation for the extension of the temporary order, including in preparation for the present discussion in the Knesset regarding the extension of the temporary order and a year ago too, and so forth. We have presented all the data to any official of the State of Israel who has requested them.

As of last week, the data are as follows and if you wish I will give you a document with all the numbers later. **A total of 770**

applications have been submitted since the committee commenced operations. Two hundred and ninety applications have been reviewed, 157 applications were denied, 45 were approved and appropriate status has been granted in each case, and an additional portion – 72 applications are in processing. In processing, [means] that the application has most likely been approved but is still waiting for ISA approval. Usually these are ISA approvals of security checks. By the way, this is not an easy part which also causes a delay in making the decision and giving a formal answer to a person, because an applicant who receives a positive answer should fill in a *curriculum vitae* form which is a long form, and one may say, a tiring one. This form is about 30 pages long and all details concerning the family members of the sponsored spouse and the sponsor should be specified therein. This is transferred for serious security screening by the ISA as required by their work, and accordingly it also takes a long time to receive an answer.

(…)

Taleb El-Sana

You see that out of 770 applications only 290 have been reviewed. This is less than 50%. Is this reasonable?

Amos Arbel:

What is "reasonable"? Nobody does there because this is a humanitarian exceptions committee etc. (*[sic]*, N.D.).

(From the minutes of the discussion. Emphases added, N.D.).

Due to the importance of the above, the protocol is attached in its entirety and marked **P/37**.

101. During the discussion, Adv. Bechor of petitioner 6, pointed out that a significant portion of the applications to the committee receive no response and therefore there is a need to petition the High Court of Justice. It was also argued that although the procedure governing the committee's operations provides that a hearing should be held in the applicant's presence, in fact, this is not implemented (see page 15 of the protocol of the meeting, ibid.).

102. At the conclusion of the meeting, Committee Chair, MK David Azoulay, emphasized the importance of the proper operation of the committee. Additionally, MK Azoulay also stated that the Internal Affairs and Environment Committee shall:

a. Request the Head of Population Administration to assign additional manpower to reinforce the exceptions committee until the backlog in the review of the files referred to the committee is closed.

b. Demand that the exceptions committee act in accordance with the procedure by which it is bound.

c. **Insist that applicants receive responses within six months, as required by the procedure**.

A copy of the press release, summarizing the meeting dated October 25, 2010 and the resolutions adopted therein is attached and marked **P/38**.

103. So we see: the committee does not comply with the rules set for it in law and procedure. It does not convene in the required frequency; it does not provide response to its applicants within the timeframe by which it is obligated. In petitioner's case, the committee's failure to operate is outrageous: Her application was referred to the humanitarian committee **in June 2008**, more than two and-a-half years ago. Petitioner's *curriculum vitae* form requested by the committee was transferred to it back **in December 2009**, more than a year ago. How do these facts conform to the above cited statements made by Mr. Amos Arbel that "**in the more complicated cases it may take us nine or ten months**"?

104. One may ask: have the instructions of this honorable court in HCJ 7052/03 **Adalah v. Minister of Interior**, TakSC 2006(2), 1754 (hereinafter: the "**Adalah judgment**") been properly followed by the establishment of the above committee? Does this committee deserve the name "humanitarian committee", in view of the fact that it neglects the persons applying to it with their urgent and sensitive matters leaving them without any response for more than two and-a-half years?

105. Furthermore. As has been clarified and specified in the beginning of the legal chapter of this petition, there are laws and judgments which clearly guide the committee in petitioner's case. This is not an exceptional, unique and complex humanitarian case requiring documents, evidence and testimonies. **This is a widow of an Israeli resident, who is entitled to temporary residency status in accordance with judgments concerning status upgrades within the framework of the graduated procedure as well as in accordance with the procedures and judgments concerning the cessation of the graduated procedure. <u>What caused the review of petitioner's case to "last" two years and more!?</u>**

106. It should be noted, that the establishment of the committee involved considerable delays, a fact which was severely criticized by this

honorable court. In a decision dated December 5, 2007 in HCJ 5964/07 **Physicians for Human Rights - Israel v. Minister of Interior** the court stated as follows:

> We regard with great concern the fact that the legal provision meant to provide a humanitarian solution to alleviate the rigid conditions of the law has not been fulfilled and the committee has not yet been established. Section 3a1 of the law which provides for the establishment of the committee is an amendment of the law enacted in March 2007, and now, eight months after the enactment of the law, the committee has not yet been established. **This bold violation of the law denies remedy to individuals who require it and have no alternative route to solve their difficult problems**. This prolonged violation of the law is unacceptable.
>
> Therefore, the state will inform the court within ten days whether the committee has been established as provided by the law.
>
> (Ibid., emphases added, N.D.).

107. The committee was indeed established on December 17, 2007, but by its conduct it continues to violate the law and due to the considerable delays in its operations, it "denies remedy to **individuals** who require it" today too. **It seems that the establishment of the committee, eight months after the enactment of the law in this matter and following pressure from the court, turned out to be a mockery**.

108. The failure to respond to applications such as petitioner's application is an unacceptable phenomenon. Beyond violating the principles of good governance, it violates material rights. It forces the applicant to take legal action as a condition for exercising his fundamental rights. The court should exercise judicial scrutiny over the decisions of the respondent and the grounds for them. This is an unacceptable situation - where only petitions to the court yield responses to applications and where a person who cannot obtain legal representation and raise the required resources – is deprived of his rights:

> The obligation of the court is to ensure that the principle of service is well rooted and is complied with by state authorities. This principle obligates the court to prevent unnecessary delays in proceedings at the expense of those who receive the service. This principle requires that applications made by individuals are taken seriously, abuse is prevented, values of equality are assimilated and privileges afforded to parties having governmental or other power are uprooted. The rights of

> the individual are not exhausted by festive declarations. The rights of the individual are a daily matter. If these rights are not upheld in practice, they will soon turn into empty words that are thrown around, creating a passing illusion of honored rights which fades away due to un-surmountable bureaucratic obstacles placed every step of the way. (Remarks of Honorable Judge Okon in AP (Jerusalem) 769/04 **Amina v. Ministry of Interior**).

109. The respondent should handle petitioners' case fairly, reasonably and expeditiously. This is so in general, this is so in humanitarian cases such as the case at hand and this is particularly so when a specific provision of the law imposes upon the respondent a fixed timetable.

110. Even beyond the specific provisions of the law, the obligation to act within a reasonable timeframe and not to neglect and delay the processing of applications pending before the authorities, is one of the basic principles of good governance. An administration that neglects applications, ignores them and allows them to be forgotten on the shelf – is a poor administration, an administration estranged from the population which it should serve. See on this issue CA 4809/91 **Local Planning and Building Committee Jerusalem v. Kahati et al**., IsrSC 48(2) 190, 219.

Lack of reasonableness and fairness

111. The court has held that within the framework of the procedure for obtaining status the respondent and his clerks must show sensitivity and abstain from creating difficulties that could turn into a "hopeless journey of attrition" (HCJ 7139/02 **Abas-Basa v. Minister of Interior**, IsrSC 57(3) 481, 489). In procedures for obtaining status in Israel the respondent should act with sensitivity and care:

> It is important to remember that each one of the applicants submitting an application for status in Israel to the respondent constitutes an entire world of his own and that any decision made in his regard – by the respondent or any other authority on its behalf – may have a devastating and dramatic effect on the life, dignity and other rights of the applicant. Consequently, it is imperative that any application for status in Israel submitted to the respondent is handled by the respondent and those acting on its behalf, with sensitivity and care…
>
> (HCJ 394/99 **Maximov v. Ministry of Interior**, IsrSC 58(1) 919, 934-935).

112. We would also like to note that in exercising its discretion, the respondent should also take into account humanitarian considerations. In HCJ 794/98 **Sheikh Abd al-Karim Obeid v. Minister of Defense**, IsrSC 55(5), 769 pages 773-774, judgment rendered by President Barak:

> The State of Israel is a state of law; The State of Israel is a democracy which respects human rights and seriously weighs humanitarian considerations. We make these considerations because compassion and humanity constitute an integral part of our nature as a Jewish and democratic state; we make these considerations because the dignity of each person is valuable to us, even if he is our enemy (compare HCJ 320/80 **Qawasmeh v. Minister of Defense**, IsrSC 35(3), page 113, 132).

Violation of the right to family life and disregard for the principle of the child's best interest

113. The prolonged delay in processing petitioner's application to the humanitarian committee is causing her and her daughters, petitioners 2-5, severe damage. They have neither certainty nor stability in their lives and they do not know what will become of them.

Under these circumstances, it is impossible to lead a normal family life. In its conduct and attitude towards petitioner, the committee is causing severe harm to the family unit and violating the principle of the child's best interest, two values which are afforded increased protection in our legal system.

Right to family life

114. Israeli jurisprudence regards the value of normal family life as a central and fundamental value which should be protected by society:

> […] protection for the integrity of the family constitutes part of public policy in Israel. The family unit is the 'primary unit… of human society' (Justice Cheshin in CA 238/53 **Cohen v. Attorney General**); It is 'an institution recognized by society as one of the foundations of social life' (President Olshan in CA 337/62 **Rizenfeld v. Yaakobson**). Protection for the family institution is part of public policy in Israel. Furthermore: within the framework of the family unit, protecting the institution of marriage is a central social value, which constitutes part of public policy in Israel.

(Honorable Justice Barak, as then titled, HCJ 693/91 **Efrat v. Head of Population Registry at the Ministry of Interior**, IsrSC 47(1) 749, 783).

On this issue see also:
CA 238/53 **Cohen v. Attorney General**, IsrSC 8(4) 35; HCJ 488/77 **A. v. Attorney General**, ISrSC 32(3) 421, 434; CA 451/88 **A. v. State of Israel**, IsrSC 49(1) 330, 337; CFH 2401/95 **Nachmani v. Nachmani**, IsrSC 50(4) 661, 683; HCJ 979/99 **Pavaloaya Carlo v. Minister of Interior**, TakSC 99 (3) 108.

115. The right to family life is regarded as a natural constitutional right. In HCJ 3648/97 **Stamka v. Minister of Interior** IsrSC 53(2) 728, Honorable Justice Cheshin discussed the importance of the family unit which amounts to a basic right, as well as Israel's commitment to this right, *inter alia*, following its signing of international conventions recognizing the importance of the right to family life:

> Our case, it should be remembered, concerns a basic right of the individual – any individual – to marry and establish a family. It need not be reminded that this right was recognized by international conventions acceptable to all…
>
> (Ibid., page 782).

116. International law attributes great importance to the family and imposes a duty on the states to protect it. Accordingly, for instance, Article 10(1) of the International Convention on Economic, Social and Cultural Rights, ratified by Israel on October 3, 1991, provides that:

> The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children…

See also: The Universal Declaration on Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948, Article 8(1); Article 17(1) and Article 16(3) of the International Convention on Civil and Political Rights, entered into effect in Israel on January 3, 1992.

117. In the judgment given in **Adalah** it was held that the right to family life is a basic constitutional right in Israel which is part of the right to human dignity. This position received the sweeping support of eight out of the eleven justices presiding in that case.

118. The courts, in their judgments, have set constitutional limitations on state intervention in the family unit and in the autonomy of the parents to make decisions concerning their children.

> The parents' right to keep their children and raise them, and all matters associated therewith, is a constitutional, natural and primary right, reflecting the natural bond between parents and their children (CA 577/83 **Attorney General v. A.**, IsrSC 38(1) 461). This right is expressed in the privacy and the autonomy of the family: the parents have autonomy in making decisions concerning their children – education, way of life, place of residence etc., and the intervention of society and the state in such decisions is an exception that should be reasoned and justified (see the above CA 577/83, page 468, 485). This approach stems from the recognition that the family is "the most ancient and basic social unit in human history, which was, is and will be the foundation serving and safeguarding the existence of human society" (Justice Elon (as then titled) in CA 488/77 **A. v. Attorney General**, IsrSC 32(3) 421, page 434).
>
> (CA 2266/93 **A. v. B.** IsrSC 49(1), 221 page 237-238).

119. In **Adalah** it was held, concerning a child's right to family life, that this right is based:

> ... on the independent recognition of the human rights of children. These rights are given in essence to every human being in as much as he is a human being, whether adult or minor. The child 'is a human being with rights and needs of his own' (LFA 377/05 *A v. Biological Parents* [21]). The child has the right to grow up in a complete and stable family unit..
>
> (**Adalah**, paragraph 28 of the judgment of President (emeritus) A. Barak).

120. Justice Cheshin held that:

> The law of nature is that the biological mother and father keep their son, raise him, love him and nurture him until he grows up and becomes a man… this bond is stronger than all strengths and is beyond society, religion and state… state law did not create the rights of the parents towards their children and the entire world. State law arrived to what had already existed, and should protect an innate instinct inside us. It makes a

parental "interest" into a "right" recognized by law, the right of the parents to keep their children.

(CFH 7015/94 **Attorney General v. A.**, IsrSC 50(1) 48, 102).

The principle of the child's best interest

121. The determination that children should be afforded the opportunity to grow up in a stable and loving family unit, serves a larger principle recognized in Israeli and international jurisprudence – the principle of the child's best interest. According to this principle, in all actions concerning children, whether by courts of law, administrative authorities or legislative authorities, the best interests of the child should be taken into account as a primary consideration. For as long as the child is a minor and for as long as his parent functions properly, it is in his best interest to let him grow up in a family unit which supports him.

122. In Israeli jurisprudence, the principle of the child's best interest is a basic and well-rooted principle. Accordingly, for instance, in CA 2266/93 **A. v. B.**, IsrSC 49(1) 221, Justice Shamgar held that the state should intervene to protect the child from having his rights violated.

123. Furthermore, the principle of the best interest of the child has been recognized in many judgments as a guiding principle whenever rights should be balanced. As stated in CA 549/75 **A. v. Attorney General** IsrSC 30(1), 459, pages 465-466, "There is no juridical matter concerning minors in which the best interest of the minors is not the first and main consideration."

124. In international law too, the principle of the best interest of the child is afforded the status of a governing principle. Among other things, this is reflected in the Convention on the Rights of the Child. The Convention, which was ratified by the State of Israel on August 4, 1991, sets a number of provisions imposing an obligation to protect the child’s family unit (see: Preamble of the Convention and Articles 3(1) and 9(1) of the Convention). In particular, Article 3 of the Convention provides that the best interests of the child should be taken into account as a primary consideration in any governmental act. Accordingly, any piece of legislation or policy should be interpreted in a manner allowing for the protection of the rights of the minor.

Conclusion

125. Petitioner's application was submitted to the humanitarian committee more than two and-a-half years ago. Regretfully, petitioner's case is not the only one that is not being processed within the reasonable time frame set forth by law and procedure. The delays in the operation of the committee are well known – Mr. Arbel of the respondent has also admitted this fact in the session of the Knesset Internal Affairs and Environment Committee. However, it is not enough to admit that a problem exists, especially when the fate of people is at stake, let alone when humanitarian matters are concerned. **The committee must act in accordance with its procedures and the law governing its operations.**

126. Meanwhile, the petitioners are *in limbo,* waiting for the humanitarian committee to finally seal their fate. Leaving the petitioners in such a difficult situation of uncertainty and instability is even more outrageous in view of the fact that their case is neither complicated nor complex, but may be solved in view of current case law and the procedures of the respondent himself. It is not clear how respondent has taken the liberty to drag their matter for so long.

In view of the aforesaid, the honorable court is hereby requested to grant an *Order Nisi* as requested in the beginning of this petition, and after hearing the respondent's response, make it absolute. The court is further requested to order the respondents to pay attorneys' fees and trial costs.

Jerusalem, April 17, 2011.

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Noa Diamond, Adv.

Counsel for the Petitioners

(File No. 14060)

[i] Area – term commonly used in Israel to refer to the Occupied Palestinian Territories, translator's note.