At the Jerusalem District Court
Sitting as a Court for Administrative Affairs

AP 47538-01-14

In the matter of:

1. **_____ Shweiki, ID No. _____**
2. **_____ 'Aish, born on April 16, 2003, stateless**
3. **_____'Aish, born on August 16, 2004, stateless**
4. **_____ 'Aish, born on May 21, 2006, stateless**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Sigi Ben Ari (Lic. No. 37566) and/or Noa Diamond (Lic. No. 54665) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448) and/or Abir Jubran-Dakawar (Lic. No. 44346)

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. **Appellate Committee for Foreigners**
2. **Legal Advisor to the Population, Immigration and Border Authority**
3. **Director of the Population Administration Bureau in East Jerusalem**

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

The Respondents

Administrative Petition

The honorable court is hereby requested to order the respondents to make a decision in petitioners' application for the arrangement of the status of petitioners 2-4, children at risk who are treated by the social affairs authorities, and grant them a permanent residence visa in Israel. Petitioners' application has been pending before the respondents for seventeen months, and despite the fact that it is an exceptional case, which should be handled urgently, the respondents fail to respond to the application.

Preface

1. This petition is filed with the honorable court following many months, too many, of respondents' outrageous conduct, jointly and severally, in the matter of petitioners 2-4 (hereinafter: the **children**), children at risk from a broken home, who constantly need the close assistance and support of the social affairs authorities so as to enable them to function and develop properly.

2. The young children suffered greatly during their short lives. They have experienced a severe neglect by their parents, to the point that the intervention of the social affairs authorities was required and there was no alternative but to remove them from their home by a court order, as will be described below. The three children were born in Jerusalem. Their mother, petitioner 1 (hereinafter: the **mother** or the **petitioner)** is a permanent resident of Jerusalem. The children are raised in out-of-home placements in Jerusalem, according to the decision of the social services authorities.

3. The children are not familiar with any place other than the city of Jerusalem, where they were born and lived their entire lives. Nevertheless, an application for the arrangement of the status of the children in Israel, which was submitted following the joint effort of the social services authorities, the foster family and the mother of the children – was not handled as expeditiously as required, contrary to the clear directives set forth in respondents' procedures, particularly in view of the fact that the case concerns children at risk, who need more than anything else, stability and protection.

4. This petition is filed after a lengthy and outrageous failure, on the part of the three respondents, to provide a response. Respondent 3, the director of the Population Administration Bureau (hereinafter: the **director of the bureau**), to whom the initial application for the registration of the children was submitted as early as August 12, 2012, failed to respond to the application which remained unanswered until this very day. As no response has been received from the director of the bureau for a long time, an appeal against the failure to respond was filed on March 14, 2013 with respondent 1, the Appellate Committee for Foreigners (hereinafter: the **appellate committee**). However, no answer has been provided to the petitioners within the framework of the proceedings before the appellate committee and respondent 2 (hereinafter: the **legal advisor to the population authority**) has not even submitted his response to the appeal. Hence, one year and five months passed from the date the application for the registration of the children was submitted to respondent 3's bureau and ten months passed from the date the appeal against the failure to respond was filed with the appellate committee.

5. Beyond the requested remedy – the registration of the children as permanent residents in the population registry – this petition is filed in view of the inappropriate conduct of all respondents, jointly and severally, as an administrative authority, which acts in an insensitive and unfair manner, mainly when children at risk are concerned.

The Factual Part

The Parties

6. **Petitioner 1**, the mother of petitioners 2-4, is a permanent resident of Jerusalem.

7. **Petitioners 2-4**, are the children of a permanent Israeli resident who were born in Israel. Petitioners 2-4 have no status anywhere in the world.

8. **Petitioner 5**, a registered not for profit association, has taken upon itself, *inter alia*, to assist residents of East Jerusalem, victims of cruelty or deprivation by state authorities, including by defending their rights in court, either in its own name as a public petitioner or as counsel to persons whose rights had been violated.

9. **Respondent 1,** the Appellate Committee for Foreigners, reviews applications for the grant of status in Israel. The power of the commissioners of the appellate committee is regulated by procedure No. 1.5.0001 of the population authority and of the respondents. During the relevant period, two chairpersons presided over the Jerusalem committee: Advocate Sara Ben Shaul Weiss, and Advocate Zvi Gal.

10. **Respondent 2** is the legal advisor to the Population, Immigration and Border Authority. The lawyers on behalf of respondent 2 present the authority's position to respondent 1 and to the appellants.

11. **Respondent 3** is the regional population administration bureau in East Jerusalem. In accordance with the Entry to Israel Regulations, 5734-1974, the Minister of the Interior has delegated to respondent 3 some of his powers to handle and approve applications for the arrangement of status in Israel, submitted by residents of East Jerusalem.

Petitioners' Story

12. Petitioner 1 (hereinafter: the **petitioner** or the **mother**), Mrs. _____ Shweiki, is a permanent resident of Israel. In 2002 the petitioner married Mr. _____ 'Aish, resident of the Occupied Palestinian Territories (OPT), and they lived in Shuafat. Over the years the spouses had four children: _____, born in 2003, _____, born in 2004, _____, born in 2006 and _____, born in 2012. All children were born in Jerusalem. The father of the children left home about two years ago. The father is frequently in and out of prison and he is in an unstable condition.

    Birth notices for _____, _____ and _____ are attached and marked **P/1**.

13. The children are of the less fortunate. They were neglected by their parents who were unable to take care of them and provide them with their basic needs. The following is a concise description of the condition of the family, according to the report of the social services officer dated July 27, 2009, which was submitted to the Juvenile court in support of a 'needy child' application: this case concerns a family with serious socio-economic and functional complexities of both parents and children with late developmental issues. The father was convicted in the past on drug charges; he was often in and out of prison and was wandering between Jerusalem and Hebron. The mother is unable to care for the children properly and neglects them. The relations between the parents are strained. The father acts violently towards the mother and the children are exposed to a strained and violent atmosphere at home. The three children suffer from severe emotional, educational and behavioral difficulties. Therefore, the Honorable Judge Avital Chen was requested, a request which was approved by him, to recognize the children as 'children in need', remove them from the custody

of their parents and appoint the social services authority as their guardian, for the purpose of locating an out-of-home placements for them.

The report of the social services officer dated July 27, 2009 is attached and marked **P/2**.

The report of the social services bureau concerning the petitioners dated January 15, 2014 is attached and marked **P/3**.

14. Thus, according to the order issued by the Juvenile Court, the children were removed from their parents' home and in 2010 the children _____, and _____ moved to live with a foster family, the Mughrabi family, which resides in Ras al-Amud neighborhood in Jerusalem. According to a report prepared by the Summit institute regarding _____, and _____'s condition in the foster care, the family functions in a satisfactory manner, the parents love the children deeply, take care of them and act in their best interests.

The report of the Summit institute dated December 15, 2013 is attached and marked **P/4**.

15. Since the children's removal from the custody of their parents, the order which was issued by the Juvenile Court under which they were declared as 'children in need' and were removed from their parents' custody, has been extended. To date, the order is in force until July 1, 2015.

The decision of the Juvenile Court dated October 2, 2013 is attached and marked **P/5**.

16. The son _____, who was diagnosed as suffering from a medium level intellectual disability, lives in the Rand Home in Abu Ghosh, which is a live-in facility for people with intellectual disabilities and special needs.

A confirmation of the Rand Home that _____ lives in the institution, is attached and marked **P/6**.

The Applications to Register the Children

17. As part of the neglect and inappropriate care of the children, their mother failed to submit an application for their registration at birth. Therefore, in 2012 the welfare personnel from the Summit institute, together with the petitioner and Mrs. Mughrabi (the foster mother of the children), turned to HaMoked and requested it to assist in the registration of the children in the population registry.

18. On August 12, 2012 an application for the registration of the children _____, _____ and _____ was submitted. The application explained that the children were living in out-of-home placements for a number of years according to an order of the Juvenile Court under which they were declared as 'children in need' and were removed from their parents' custody. The application was supported by court documents and a report concerning the condition of the children in the foster care, which were attached thereto. In addition, center of life documents for the biological mother and for the foster parents were attached to the application.

The application for the registration of the children dated August 12, 2012, without its exhibits, is attached and marked **P/7**.

19. On August 27, 2012 a letter was received from Ms. Ikhlas Kheiri of respondent's bureau in East Jerusalem (hereinafter: the **bureau**), which was sent on the same day, according to which the application was in process.

The letter of Ms. Kheiri is attached and marked **P/8**.

20. Reminders concerning the application were sent on September 13, 2012, October 16, 2012, November 18, 2012, December 18, 2012, January 20, 2013, February 20, 2013.

Copies of the reminders which were sent are attached and marked **P/9A-F**.

21. In addition, on January 24, 2013, a general letter was sent to Ms. Hagit Weiss, the director of the bureau, concerning applications for registration of children which remained unanswered for a protracted period of time. The letter mentioned the application for the registration of petitioner's children.

The letter to Ms. Weiss dated January 24, 2013 is attached and marked **P/10**.

22. Notwithstanding the reminders, and despite the fact that the letters repeatedly stated that the case concerned children at risk, who were under the close supervision of the social services authorities, and who were living in out-of-home placements, no response was received from respondent 3 who continued to disregard the registration application, other than his laconic letter dated August 27, 2012.

The Proceedings in Appeal 177/13

23. In view of the fact that more than seven months passed from the application submission date, on March 14, 2013, the petitioner filed an appeal against the failure to respond with respondent 1, within the context of which they requested to order respondent 3 to register the children _____, _____ and _____ - as permanent residents, forthwith. In addition, within the context of the appeal, an interim order was requested according to which no measures for the removal of the children from Israel would be taken for as long as the appeal was pending.

Appeal 177/13 dated March 14, 2013 (without its exhibits) is attached and marked **P/11**.

24. On March 19, 2013 a decision of the chair of respondent 1 was given according to which the response of respondent's counsel regarding the main relief would be given within 28 days. With respect to the interim order, the chair of respondent 1 wrote that "the premise that minors under the age of 10 would be removed from Israel without their parents while their application is pending is unacceptable and is not possible."

The decision of the chair of respondent 1 dated March 19, 2013 is attached and marked **P/12**.

25. On March 19, 2013, the petitioners-appellants applied to petitioner 1 and requested it to reconsider the application for an interim order. They argued that it was appropriate, in view of previous decisions of the Appellate Committee for Foreigners, to grant an interim order in an appeal which concerned children at risk. Respondent 1 decided that its previous decision would remain unchanged.

The request to reconsider the application for an interim order in the appeal dated March 19, 2013 and the decision of the commissioner dated March 20, 2013 are attached and marked **P/13**.

26. On May 13, 2013, after the date which was scheduled for the submission of respondent's response elapsed and no response was given, the petitioners-appellants applied to respondent 1 and requested that a decision be given in the absence of response.

Appellants' request dated May 13, 2013 is attached and marked **P/14**.

27. On May 13, 2013 the decision of the chair of respondent 1 was given, according to which respondent's counsel would update, within 14 days, of the date on which his response to the appeal would be given.

The decision of the chair of the committee is attached and marked **P/15**.

28. On June 11, 2013, once again, as no response has been given by the respondent, the petitioners-appellants applied to the chair of the appellate committee and requested that a decision in the appeal be made. In the request, the appellants pointed out that even a simple notice concerning the date on which a response to the appeal would be given – has not been provided by the respondent, not to mention any response to the appeal on its merits. In addition, the appellants noted that there was no room to enable the respondent to establish his own time frames while an explicit procedure to that effect was in force.

Appellants' request dated June 11, 2013 is attached and marked **P/16**.

29. On June 12, 2013 the respondent submitted a request for a 45-day extension. The extension was granted as requested and the position of appellants' counsel was not requested.

Respondent's request for extension and the decision of the chair of the committee to grant it is attached and marked **P/17**.

30. On July 30, 2013, as the date scheduled for the submission of respondent's response elapsed and no response was given, the appellants requested once again that a decision in the appeal be made by the chair of the committee in the absence of respondent's response.

Appellants' request dated July 30, 2013 is attached and marked **P/18**.

31. On July 31, 2013 a decision was given by the chair of the committee according to which a response would be submitted by respondent's counsel forthwith.

The decision of the chair of the committee dated July 31, 2013 is attached and marked **P/19**.

32. On that very same day the respondent submitted a request for an additional 45-day extension, until September 17, 2013. The chair of the appellate committee transferred said request to appellants' counsel, for response, notwithstanding her decision dated July 31, 2013 that a response should be submitted by the respondent forthwith.

Respondent's request for extension dated July 31, 2013 and the decision of the chair of the appellant committee dated August 1, 2013 are attached and marked **P/20**.

33. In their response dated August 1, 2013 the appellants described the chain of events in the appeal and stated that no additional extension should be granted to the respondent as follows:

> The appellants are no longer willing to endlessly wait for respondent's response that violates their right to receive a response within a reasonable time frame, while the committee refuses to protect the children in whose matter this proceeding is pending, and issue an interim order in their matter.
>
> Therefore, the appellants reiterate their clear position that **the respondent should not be granted any extension and not even one additional moment for the submission of a response to the appeal.**

Appellants' response dated August 1, 2013 is attached and marked **P/21**.

34. On that very same day a decision was made by the chair of the appellate committee which gave the respondent an extension to respond until September 1, 2013. The chair noted that there was no laziness or willful conduct on respondent's behalf but rather a practical inability to meet the time table.

The decision of the chair of the appellate committee dated August 1, 2013 is attached and marked **P/22**.

35. More than 130 days passed since the date on which the respondent should have submitted his response to the appeal. Ten months passed from the date on which the appeal was submitted. More than seventeen months passed from the date on which the application for the registration of the children was submitted to the bureau. However, until this day the children have no status and it is unclear whether and when they will receive a response.

36. It seems that the factual description specified above speaks for itself and explains why the petitioners have no alternative, but to turn to this honorable court and request relief.

The Legal Framework

37. We shall herein argue that respondents' conduct in connection with petitioners' application, children at risk whose status in Israel is not regulated, is scandalous. Respondents' failure to respond, jointly and severally, brazenly contradicts their duties as an administrative authority and the procedures which they themselves have established.

Respondents' failure to respond is contrary to their duty, as an authority, to act expeditiously

38. The respondents, like any administrative authority, are obligated to handle applications submitted to them fairly, reasonably and expeditiously. It was so ruled by the Honorable Justice D. Levin in HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451:

> A competent authority must act reasonably. Reasonableness also means upholding a reasonable schedule.

On this issue see also: HCJ 758/88 **Kandel v. Minister of the Interior**, IsrSC 46(4) 505; HCJ 4174/93 **Wialeb v. Minister of the Interior** (not reported), paragraph 4 of the judgment; HCJ 1689/94 **Harari v. Minister of the Interior**, IsrSC 51(1) 15.

39. Respondents duty to handle applications submitted to them expeditiously is also entrenched in section 11 of the Interpretation Law, 5741-1981:

> Any empowerment, and the imposition of any duty, to do something shall, where no time for doing it is prescribed, mean that it shall or may be done expeditiously and be done again from time to time as required by the circumstances.

40. The obligation to act within a reasonable time, and not to neglect and delay applications which are pending before the authority, is one of the foundations of good governance.

See on this issue CA 4809/91 **Local Planning and Building Committee, Jerusalem v. Kahati**, IsrSC 48(2) 190, 219.

41. Respondents' conduct in petitioners' matter, does not only fail to be expeditious or efficient, but rather exceeds in an extreme and outrageous manner the conduct expected of a reasonable administrative authority, which is responsible for significant aspects of life of those who need its services.

The appellate committee acts contrary to law and procedure

42. Furthermore, in this case and as will be specified below, respondents 1-2 have brazenly deviated from the provisions of section 5 of respondents' procedure 1.5.0001 "Procedure of the Appellate Committee for Foreigners" which provides that:

> Respondent 2's response to the appeal will be given **within 30 days** from the date of its receipt by the respondent (emphasis added, the undersigned).

The procedure of the appellate committee for foreigners is attached and marked **P/23**.

43. Said conduct is even more outrageous in view of the current law and case law which apply, in addition to the above procedure, to the appellate committee for foreigners, and which unequivocally direct the respondents how they should act in the context of an appeal. We shall specify.

44. The appellate committee was established, according to the statements of the population authority, to make the handling of applications submitted to the population bureau more efficient and alleviate the load imposed on the district courts sitting as courts for administrative affairs[1]. However, in fact, it turns out, that respondent's deviation from the administrative directives concerning an expeditious response, as specified above, is not unique to this case. As will be further specified below, the courts have already extensively criticized the procedure before the appellate committee, which, during the period of its existence (since the beginning of 2009), became notorious for its protracted and delayed proceedings.

45. Human rights organizations, which assist applicants to file appeals, have already expressed their dismay of the deficient manner by which the committees function and of their notorious foot dragging.

46. Thus, for instance, petitioner 5 has already protested against this state of affairs, in a letter which was sent to respondents' Head of the Population, Immigration and Borders Authority, dated April 26, 2011.

Petitioner 5's letter dated April 26, 2011 is attached and marked **P/24**.

47. This letter was coupled by another letter which was sent on August 19, 2012 concerning this matter, on behalf of the Association for Civil Rights in Israel. The letter states, *inter alia*, with respect to the conduct of respondents 1 and 2 in the appeal proceedings, as follows:

> The hearing before the appellate committee, ostensibly, takes place like a judicial hearing (in as much as a judicial hearing can take place without ever hearing the parties orally): the appeal is similar in form to a petition;

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[1] On this issue see notice dated January 14, 2009 in the website of the Ministry of Justice "A commissioner for the appeals of foreigners was appointed in the Ministry of the Interior" at http://www.justice.gov.il/MOJHeb/News/News_84132009_01_14.htm

> the response thereto is similar to a response which is submitted to the court; and by the end of the process a reasoned decision is rendered, similar to a judgment.
>
> All of the above, as aforesaid, is in theory, since, in fact, the hearing before the committee and the judicial hearing are at odds. **All parties – the committee's chairpersons, the legal counsels who represent the population and immigration authority , the committee's secretariat, as well as the procedure – are all governed by the population and immigration authority which controls them**.
>
> The time schedules which are established in the committee's procedure and which are determined by the committee's chairpersons in their decisions, are enforced only on the appellants. The latter must submit their appeals within 30 days, and respond on dates prescribed for them, otherwise their appeals would be deleted. **The "respondent" to the proceeding – the population and immigration authority – is ordered to respond within 30 days, but the dates established in the procedure, as those prescribed by the committee's chairpersons in their decisions, have no meaning**. (emphases added by the undersigned)

The letter of the Association for Civil Rights in Israel dated August 19, 2012 is attached and marked **P/25**.

48. As specified above, the courts have also criticized, more than once, respondents' conduct in the appeal proceeding. Thus, *inter alia*, it was stated by the court in its decision dated September 12, 2010, in AP (Jerusalem) 294-10 **Salem v. Minister of the Interior** (hereinafter: **Salem**):

> The committees were established, *inter alia*, to serve as a filter for petitions on the above issues. **Regretfully, the protracted proceedings before these committees result in double and triple proceedings, since eventually petitions are also filed against the lengthy proceedings in the committees themselves as well as against the decisions on their merits**.
>
> (emphasis added by the undersigned)

And also:

> **With all the understanding we have for the budgeting and regulations' difficulties which encumber the committee's work, they cannot justify such a long procrastination in its decision making**. Furthermore, it should be noted, that a major part of the delay stems from the procrastination in obtaining the responses of the Ministry of the Interior to the appeals, rather than from a delay in the committees' decision making. On this matter, **it is difficult to accept a situation whereby a very significant gap exists between the time period during which the Ministry of the Interior responds to petitions concerning citizenship and residency issues which are filed with the courts, as opposed to the time period during which it responds to appeals on the same issues which are submitted to the appellate committee. It should be noted on this matter, that it seems, that the conduct of the**

> **Ministry of the Interior in the appeal proceedings before the committees, as opposed to its conduct, when an administrative petition is filed on the same issue, and when the attorney's office enters the picture as an intermediary, constitutes, to a large extent, an incentive for petitioners to file petitions with the court**. (emphases added by the undersigned).

49. Another judgment which refers to the delays in the proceedings before the appellate committee was given on May 21, 2013 in AP (Jerusalem) 54853-01-03 **Ilham Sarhan v. Minister of the Interior** (reported in Nevo). In said judgment the court has broadly discussed the unreasonable procrastination and the violation of petitioners' right to have their matter heard within a reasonable timeframe:

> **There is no and there can be no dispute that the respondent breached the procedure of the appellate committee** by having submitted his response to the appeal more than eight months after its submission, while the initial term which was available for this purpose was about one month. However, respondent's conduct is not characterized only by a significant delay, in view of the fact that **it was coupled by an additional layer (which is difficult not to define as serial in our case)** of disregarding the decisions of the appellate committee, which directed him time and time again to submit his response to the appeal, as of petitioners' right to have their case heard by the appellate committee within a reasonable and foreseeable period of time.
>
> […] In this matter I also accept petitioners' position according to which the unfortunate situation, whereby the court for administrative affairs constitutes a "reception desk" for the respondent and that only when an administrative petition is filed with the court, the wheels of bureaucracy start moving faster, is unacceptable.
>
> All of the above is reinforced by the duty of the administrative authority to act reasonably, and reasonableness also means upholding a reasonable schedule (see on this issue HCJ 5931/04 **Mazurski et al. v, Ministry of Education** (December 8, 2004) and the references made there. Emphases were added by the undersigned).

50. In addition, the judgment refers to the arguments which were also raised by respondent 2 in the appeal which was filed by the petitioners in said case, according to which the delay in providing a response to the appeals derived from respondent 2's heavy work load:

> **Respondent's heavy work load** (as was argued in his requests for extension for the submission of response to the appeal) **cannot justify such a long delay in the submission of his response to the appeal, either.** One of the central objectives underlying the establishment of the appellate committee was to reduce the load imposed on the courts for administrative affairs in issues in which it had jurisdiction. Unreasonable delays in the submission of responses to appeals, contrary to the term which was prescribed in the procedure of the appellate committee, may necessarily cause a proliferation in administrative petitions, which will frustrate the purpose underlying the establishment of the appellate

committee. In AP (Jerusalem) 38244-03-10 **Aramin v. Ministry of the Interior** (published in Nevo) the court referred to the argument raised by the Ministry of the Interior, according to which the load imposed on the legal department did not enable them to give the response of the Ministry of the Interior on time and according to the procedure:

> **The load of hearings imposed on the appellate committee does not justify respondents' omission**, and the time period which is required to receive their response, after repeated comments of the chair of the appellate committee, **is inconceivable**. (Emphases were added by the undersigned).

51. The need to file petitions with the district court, sitting as a court for administrative affairs, due to the unreasonable delay in the proceedings before the appellate committee, was also expressed in the awarding of costs in favor of the petitioners.

52. An additional judgment in which the court refers to the unreasonable duration of the proceedings in the appeal is AP (Jerusalem) 39303-03-10 **Faraun v. Ministry of the Interior** (published in Nevo), in which the court holds that:

> Indeed, the duration of the proceedings before the committee in petitioner 2's matter was unreasonable, to say the least, even when all of respondents' explanations are taken into account […]. **The correct solution is found in expediting the hearings before the committee** and in striving to meet the schedule established by the procedure itself for the receipt of respondent's responses **and for making a decision** (Emphasis was added by the undersigned)

53. So we see: the conduct of the respondents in the appeal is well known and the case at hand is only one of many examples of respondents 1-2's brazen and arbitrary attitude encountered by appellants when they submit appeals to respondent 1, which is nothing but an internal mechanism of the population authority, imposed on those who submit applications to the authority. It is currently clear to all that the mechanism which was created by the respondents does not function properly and is infected by severe foot-dragging, which eventually impinges the persons who turn to the appellate committee.

54. The petitioners regret the fact that the declared purposes underlying the establishment of the appellate committee were not attained, and like many others, they were also deprived of an efficient proceeding which would have saved them the need to turn to this honorable court. However, in view of the above, they were left with no other option.

<u>The failure to respond constitutes a violation of the child's best interests</u>

55. According to the principle of the child's best interest, in all actions concerning children, taken either by the courts, administrative agencies or legislative bodies, the child's best interest is a primary consideration. For as long the child is a minor and for as long as his parent or guardian functions properly, his best interest requires to give him the opportunity to grow-up in the family unit which supports him.

56. In Israeli law, the principle of the child's best interest is a basic and well rooted principle. Thus, for instance, in CA 2266/93 **A. v. A**., IsrSC 49(1) 221, Justice Shamgar held that the state should intervene and protect a child against a violation of his rights.

57. Furthermore. The principle of the child's best interest was 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 judicial matter concerning minors, in which the minor's best interest does not constitute the primary and major consideration."

58. In international law the principle of the child's best interest has also been granted the status of a superior principle. The above is expressed, *inter alia*, in the Convention on the Child's Best Interests. The convention, which was ratified by the state of Israel on August 4, 1991, establishes a host of provisions which impose an obligation to protect the child's family unit. (See: the preamble to the convention and Articles 3(1) and 9(1) of the convention). Particularly, Article 3 of the convention provides that the best interests of children will be taken into account as a primary consideration in all governmental actions. Hence, any enactment or policy should be construed in a manner which enables to protect the rights of the minor child.

59. In the case at hand, respondents' conduct – which commenced in procrastination and failure to give a response to the application for the registration of the children, contrary to the law, case law and procedure, and continued in procrastination and failure to render a decision in the appeal – constitutes an extreme violation of respondents' obligation to use the principle of the child's best interest as a guiding principle. The respondents are aware of the difficult circumstances of the children and of the intensive involvement of the social services authorities in their matter. Instead of promoting their matter efficiently and sensitively, they have repeatedly postponed the rendering of a response in their matter.

60. It seems that the respondents should be reminded of the fundamental principle, that within the framework of status application proceedings the Ministry of the Interior must show sensitivity and refrain from putting obstacles, which may turn into "a hopeless and weary ordeal" (HCJ 7139/02 **Abbas-Bassa v. Minister of the Interior**, IsrSC 57(3) 481, 489) and also:

> **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)(Emphasis added by the undersigned).

61. The above comments apply even more forcefully when minors are concerned, and have an even greater effect when the case concerns children at risk, with such a severe life story, who need more than anything else, the support and assistance of the state authorities, certainty and stability in their life.

Conclusion

62. The court is requested to order the respondents to put an end to the protracted saga of petitioners' applications to them, and direct them to immediately approve the application of the children for the arrangement of their status as permanent residents in Israel.

63. In addition, and in view of the conduct of all respondents in handling petitioners' application as described above, the honorable court is also requested to obligate the respondents, jointly and severally, to pay **exemplary** costs of trial and legal fees in favor of the petitioners.

Jerusalem, January 23, 2014.

_____
Sigi Ben Ari, Advocate
Counsel to the petitioners

(File No. 72011)