The Israeli Nation-State

Political, Constitutional, and Cultural Challenges

Israel: Society, Culture, and History

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INTRODUCTION

The State of Israel is a Jewish nation-state. This was determined by the United Nations Partition Plan as well as by the Declaration of Independence and by two Basic Laws dealing with human rights. The national identification of Israel is anchored also in a great deal of legislation as well as in practices common in many fields.[1]

In this chapter, we shall describe the attitude of the Supreme Court over the past twenty years toward various components of national identity rooted in Israeli law. We examine rulings on the right of return; review rulings on political participation; examine the rendering of the court over the question of the status of the Hebrew language, and deal with its attitude toward allotting land for Jewish settlement and its approach to the provision of economic incentives for such settlement; describe rulings concerning the institutions of the Jewish people; and, finally, examine decisions regarding the naturalization of non-Jews. From the review, a judicial approach is depicted that erodes many of the components of national identity that were customary in Israel before the intervention of the court. The purpose of this chapter is positivist and not normative, we

shall thus suffice with a description of the court's activity on this issue without evaluating it.

RETURN

The Law of Return grants almost every Jew the right to immigrate to Israel and become its citizen. This policy has parallels in other nation-states, but there is no precedent in the world of such a sweeping right as that awarded by the Law of Return.[2]

Many times, the Supreme Court has stressed the importance of the law as reflecting the national identity of Israel. Yet, despite its generally sympathetic approach, on two issues of secondary importance the court ruled in a manner that somewhat reduces this right. The first matter relates to the status of Jews' spouses, who, according to the Law of Return, are also eligible to become citizens of the country. The court determined, in contradiction of the plain language of the Law of Return, that the right to naturalization in Israel will not apply to spouses of Jews, if the Jews are Israeli citizens, with the explanation that granting it would discriminate between Jewish and non-Jewish citizens, in the sense that the former could provide their spouses with automatic citizenship, by virtue of the Law of Return, while the latter would be forced to suffice with conditional arrangements for naturalization that are determined in the Citizenship Law.[3]

The second issue concerns a qualification determined in Section 2(B)(3) of the Law of Return, according to which the right to return is denied to a person with a criminal past who is liable to be a danger to the public welfare. In the first three decades of the state, this paragraph was used only in extremely exceptional cases, with regard to people deeply involved in organized crime who wanted to exploit the country for the continuation of their criminal activity. From the close of the 1990s, the section was applied also to those who have committed serious crimes against persons, as well as to persons whose criminal experience accumulated after they arrived in Israel but before they requested Israeli citizenship. In recent years there have been signs of an additional expansion

in the application of the section. The court considers minor offences—such as crimes against property or street fighting—in which the person requesting the Right of Return was involved, as sufficient reason for denying this right.[4]

Thus, one must distinguish between the core of the Right of Return—which concerns a critical mass of millions of immigrants—which the Court does protect, and two secondary issues—criminals' Right to Return and for the spouses of Jews who are Israeli citizens—in which the court in recent years has weakened the weight of the national consideration.

POLITICAL PARTICIPATION

In 1965, for the first time, a slate was disqualified from running in the Knesset elections, on the basis of its outlook. The Central Elections Committee invalidated the "Socialist List," whose main aims were to "achieve equality for the Arab nation and the granting of all opportunities to the Arab nation, even on Israeli territory, to express solidarity and partnership with the national liberation waves in the Middle Eastern arena to the same extent that the Jewish nation in this country demanded and obtained this right for itself, and all of this for the benefit of the state."[5]

The Supreme Court rejected the petition of the Socialist List against the decision to disqualify it. Court President Agranat and Justice Zussman determined, in the majority opinion, that even though at that time Israel did not have legislation enabling the disqualification of political parties for their ideological basis, it was possible to invalidate a slate interested in harming the very existence of the country or its character as the state of the Jewish people, even with such legislation lacking.

In 1984, toward the elections for the Eleventh Knesset, the Central Elections Committee decided to disqualify the "Progressive List for Peace," with the rationale that it wished to negate the Jewish identity of the state. The decision was overturned by the Supreme Court,[6] which determined that in the abscence of proper legislation it was permissible to disqualify only a list seeking to lead to the destruction of the state and to endanger the lives of its inhabitants, as distinct from a list that wishes to cancel the national character of the state by peaceful means.

As a result of the court's decision, the Knesset amended the Basic Law: The Knesset and added to it Section 7a. The relevant part of the section, as formulated then, determined that "a list of candidates will not participate in elections to the Knesset if its aims or actions, expressly or by implication . . . deny the existence of the State of Israel as the state of the Jewish people."[7] Yet, from the time this reason for disqualification was accepted to today, the court has barred every attempt to make use of it.

In the first elections held after the aforementioned amendment, in 1988, a request was submitted to the Central Elections Committee to disqualify the "Progressive List for Peace," arguing that it denies the existence of the Israel as the state of the Jewish people. The petition was rejected, as was an appeal on the decision made to the High Court of Justice.[8] The court applied the most stringent evidentiary tests and determined that these had not been met, even though it had been presented with explicit statements by the list's candidates that denied the Jewish character of the state.

In 1992, the Parties Law was passed in the Knesset.[9] Section 5 of the law set the tests for Section 7a of the Basic Law: The Knesset as the threshold for registration of a party. From then on, denying the Jewish nature of the state has prevented parties not only from running in the Knesset elections, but even registering (which is a prerequisite for the possibility for presenting a slate of candidates).

In 1996, an appeal was submitted, on the basis of section 5, against the decision of the Registrar of Parties to authorize the registration of the Arab Party for Change, lead by Ahmad Tibi.[10] The petition was rejected, but during the course of the discussion, the court dealt with a number of important questions relating to the cause for disqualification by virtue of denying the existence of the State of Israel as the state of the Jewish people. It was determined that support for the right of Palestinian return is not considered a call for a change in the Jewish nature of Israel. The panel of justices was divided over the question of whether calling for Israel to become "a state of all its citizens" contradicted its being a Jewish state. Justice Heshin thought there was no contradiction, since the meaning of the call is that one must treat all citizens of the country equally. In contrast, Justice Tal felt that one may assume that whoever supports turning the

country into "a state of all its citizens" intends thereby to negate its Jewish character.

Toward the elections to the Fifteenth Knesset, a petition was submitted to disqualify the Balad list. The petition relied upon the positions of the list's leader, Azmi Bishara, who had been quoted in a newspaper interview as saying that in his opinion the Jewish public had no right to self-determination. The Elections Committee rejected the petition and the court denied the appeal. The court determined that in his statements, "MK Bishara had come dangerously close to the border that should not be crossed."[11] Yet, it decided that it could not disqualify the list, owing to other things that Bishara had told the Elections Committee, on the basis of which doubts had been raised that the evidentiary requirements necessary for disqualifying a party had not been met.

In 2002, an amendment was made to Section 7a of the Basic Law: The Knesset, that determined *inter alia* a possibility for personal disqualification of a candidate, when the candidate's actions comprise one of the reasons for disqualification, even without invalidating the list of which the candidate is a member. Another addition was a cause for disqualification of a candidate or list that supports armed struggle against the State of Israel. After the amending of the Basic Law, a number of petitions for disqualification were submitted against lists and individuals for the elections to the Sixteenth Knesset, for the various reasons determined by the law. The Elections Committee decided by a small majority to disqualify the candidacy of MK Tibi for the reason of his support for an armed struggle against Israel, and the Balad list and MK Bishara, who headed that list, by reason of supporting armed struggle and denying the existence of the state as a Jewish state. The Supreme Court invalidated these decisions.[12]

In his ruling, President Barak discussed the meaning of the reason for disqualification owing to denial of the existence of the state as a Jewish state. Barak clarified that this also applies to the desire to harm the Jewish identity of the state, and not only to the wish to harm its security or its existence. Barak further asked, "What are . . . the 'core' characteristics shaping the minimum definition of the State of Israel as a Jewish state," whose negation would be considered denying the Jewish identity of the state? He determined that at the center of these characteristics "stands the

right of every Jew to immigrate to the State of Israel, where the Jews will constitute a majority; Hebrew is the official and principal language of the State and most of its fests and symbols reflect the national revival of the Jewish people; the heritage of the Jewish people is a central component in its religious and cultural legacy."[13]

From the above quote, one could deduce that in the *Tibi* case Justice Barak halted *de jure* the trend to limit Section 7a. Yet, *de facto*, the court refrained yet again from effecting Section 7a, while applying strict evidentiary tests and determining that the factual data presented did not meet these tests.

In 2009, on the eve of the elections for the Eighteenth Knesset, the Central Elections Committee discussed a petition to disqualify the Balad slate, based both on the reason of denying the Jewish identity of the state as well as supporting terrorist organizations.

The petition was based on a collection of statements by the Balad leaders against the Jewish state; on their support for the previous leader of their movement, Azmi Bishara, who had fled the country after being suspected of espionage and aiding the enemy in time of war; and for utterances on the right to a violent struggle by terrorist organizations against the State of Israel. The petition was likewise based on parts of Balad's platform, which supported a state "of all its citizens" and the repeal of the Law of Return. In its response to the petition, Balad denied its endorsement of an armed struggle by terrorist organizations, but did admit wholeheartedly that it opposed the definition of Israel as a Jewish state. It did not deny the Jewish right to self-determination in the State of Israel, but argued that it should be limited to a sub-state level within the framework of a neutral state that allows equal self-determination to different national groups.[14]

The Elections Committee decided to disqualify the list by the most sweeping majority in the history of such decisions: twenty-four members voted to support the disqualification and only three against. Balad appealed to the Supreme Court, which reversed the decision by a vote of eight justices to one.[15]

A central place in the discussion was devoted to the term "a state of all its citizens." The declaration submitted by the party chairman to the

Central Elections Committee avowed that the "vision of a state of all its citizens is not a vision that refers solely to freedoms of the individual but sets out from the starting point according to which no single cultural or national group is superior to another and for this reason Balad supports the principle of complete equality among all groups and peoples."[16] The Balad chairman stated that in line with this vision "not only Hebrew will be the official language. The symbols will not be only Jewish" and the same applied to the days of rest and the state holidays.

In the rendering on the *Tibi* case of 2003, President Barak determined that

> If the purpose of Israel's being "a state of all its citizens" is intended to insure equality between the citizens within its own house, while recognizing the rights of the minority living within it, it does not constitute a denial of the existence of the State of Israel as a Jewish state. If, however, the purpose of Israel being "a state of all its citizens" is aimed at more than that, and it is seeking to harm through the rationale of the term [as] the basis of the establishment of the state, and thereby negate the character of the State of Israel as the country of the Jew people, then it does constitute a means for harming the minimal and core characteristics of the State of Israel as a Jewish state.[17]

Reading the Balad chairman's 2009 declaration in light of the decision of President Barak in 2003 must lead to the disqualification of the list, for Balad explicitly negates many of the "core and minimal" characteristics of the State of Israel as a Jewish state. The refusal of the majority justices to disqualify the Balad list must, therefore, be interpreted as a refusal by the Supreme Court to make use of the cause for disqualification through denial of the Jewish identity of the State of Israel. The question as to whether this refusal is justified and legitimate goes beyond the scope of this chapter. Important for our issue is only the fact that the Supreme Court's refusal to disqualify lists that negate the Jewish character of the state means the *de facto* annulment of a component of Israel's national identity, which is anchored in a Basic Law.

LANGUAGES

In contrast to the two previous areas reviewed, in which the Israeli legislature explicitly granted preferred status to the Jewish national components, the situation in the sphere of languages is not clear. Par. 82 of the "Palestine Order in Council" granted Hebrew, Arabic, and English equal standing as official languages. The Law and Administration Ordinance, enacted immediately after the establishment of the state, annulled the official status of the English language and declared the continuation of Mandatory law.[18] Joining these two facts leads ostensibly to the conclusion that Israel has two official languages with equal status: Hebrew and Arabic. This conclusion is somewhat shaken when one considers various laws that grant exclusivity to the Hebrew language for main issues, a fact from which one may conclude that even though Par. 82 was not directly cancelled, later legislation weakened the official status of the Arabic language. Either way, this chapter focuses on the position of the court, so we will refrain from a detailed analysis of the legislative arrangement and suffice with a review of the court's rulings.

In the early years of the state, the court awarded Hebrew a clearly senior status. For example, in a petition submitted to the High Court of Justice in 1955, a Jewish petitioner, a resident of a Jewish neighborhood in Jerusalem, argued for an exemption from the municipal fee for the construction of infrastructure for sewage, owing to the fact that the municipality had not fulfilled its obligation, as determined by a Mandatory bylaw, to publish an announcement about the obligation to pay the fee in the Arabic language as well. Judge Zilberg rejected the petition. The court examined a thesis according to which the establishment of the State of Israel (as a Jewish state) led to an evident cancellation of the official status of Arabic, leaving Hebrew as the single official language. However, eventually the court based its judgment on a different view, according to which only someone who understands no language other than Arabic is eligible to raise arguments against the authorities refraining from making use of it, a situation that did not exist under the circumstances discussed in the petition. Rulings from the 1960s and the 1970s again anchored the concept according to which Arabic does not enjoy equal status with Hebrew, and the possibility to receive remedy

for breach of duty to publish in Arabic is conditional upon proving that this violation actually prevents the citizen from having access to information.[19]

From the beginning of the 1990s, the trend changed and in a series of rulings the Court eroded the status of Hebrew. We shall now describe in brief a number of milestones indicating this trend.

The *Kastenbaum* case dealt with a stipulation in a contract—made between relatives of a deceased person and the Hevra Kadisha—that forbade the use of Latin letters on a tombstone.[20] During the proceedings the judges addressed, *inter alia*, the question of the status of the Hebrew language. Deputy President Elon and Justice Barak agreed that the Hebrew language enjoys special status in Israel as a national value, yet they were divided as to the bottom line. Elon felt, in a minority opinion, that the value of Hebrew overrode the rights of the deceased and her relatives, so he authorized the paragraph on exclusivity. Barak held, in the majority opinion, that the rights of the individual overrode the interest of protecting the status of Hebrew.

About a year and a half after the ruling in *Kastenbaum*, the court again had chance to deal with the same issue, in the *Re'em* case.[21] This time, the court invalidated a bylaw, passed by the municipality of Upper Nazareth, that determined that private posters published on city bulletin boards must devote at least two-thirds of their space to Hebrew.

Justice Barak determined that freedom of speech includes the right to choose the language in which expression will be carried out, and therefore the request to add a Hebrew caption is detrimental to this right. Opposite the *right* to freedom of speech, Barak set the *interest* in nurturing the Hebrew language as a national value, but he determined that on balance, the right takes precedent.[22]

A comparison between the two rulings informs us of the erosion in the status of Hebrew. In *Kastenbaum*, Justice Barak determined explicitly that if the matter under discussion was a requirement to include an epitaph in Hebrew in the tombstone—rather than an absolute prohibition against adding a foreign-language epitaph—he would have defended it. This was precisely the requirement treated in *Re'em*—a requirement to add a Hebrew phrase alongside an Arabic one—and Justice Barak still decided

to nullify the bylaw. Moreover, in *Kastenbaum*, the value of the Hebrew language was rejected owing to severe harm to human dignity, a right that the court considers extremely important. In contrast, in *Re'em*, the value of the Hebrew language was rejected in favor of freedom of commercial expression, a right that the Supreme Court considers as relatively slight.

The Language on the Paper Election Ballots

The Knesset Elections Law requires the use of a Hebrew letter on the paper ballots in the general elections. A similar arrangement also applies in the elections to the Local Authorities. Towards the end of the 1990s, the court was requested to determine the outcome of elections in a certain local authority that were decided by one vote.[23] One paper ballot on which there was only a handwritten Arabic letter for a given ticket, without the addition of a Hebrew letter on it, had been counted in these elections. Justice Heshin determined, with the majority opinion, that the main purpose of the legislation is the realization of the voter's will, so one is required to respect the wish of the voter who expressed his opinion in the Arabic language. This ruling, too, erodes the senior status granted by the legislature to the Hebrew language.

The *Adalah* Case

In this instance,[24] a petition was discussed to obligate municipalities in which the Arab minority is 6 percent or more to have the street signs throughout the city also in Arabic. The responding cities agreed to include Arabic on street signs in the major thoroughfares and in the side streets in which the Arab population lives. The dispute, therefore, was limited to signs on side streets in areas in which Arab population does not reside. The court granted the petition by a majority opinion.

This petition came after a previous one, submitted against the Public Works Authority, in which the state had pledged to change all the signs directing traffic on intercity highways in Israel, with signage that included the Arabic language, a pledge that led to the petition's withdrawal. In the *Adalah* case, the court accepted as a given the state's previous voluntary pledge, without having recourse to the question of whether this agreement was required by law. The majority justices stated

that—given the state's consent to include an inscription in Arabic on intercity signage, despite the damage to the Jewish identity of the state involved in this decision—it was not justified in refusing similar inscriptions on city signs in which the damage to the state's Jewish identity was less severe.[25]

The minority justice, Mishael Heshin, thought that the petition should be rejected. Heshin explained that underpinning the petition was a request to acknowledge the right of the Arab minority to recognition of its right to culture. He argued that granting this new right was an issue to which the legislature should respond and not the court.

Use of Arabic in the Courts

In 2002, the *Adalah* organization petitioned the High Court of Justice with a request to regularize the use of Arabic in proceedings before the courts in Israel. *Adalah* demanded, *inter alia*, that court proceedings could be conducted in Arabic.[26] In the end, *Adalah* withdrew its petition at the advice of the court, while preserving its rights. However, the fact that the petition was withdrawn and that no order nisi was issued shows us that the court had reservations about this petition.

On the surface, this reservation is at loggerheads with the court's decision on the petition concerning municipal signage in mixed cities, where the court decided that the government must allow Arabic speakers maximum linguistic accessibility. This consideration is no less relevant in relation to court proceedings. The reservation also counters Par. 82 of the "Palestine Order in Council," which makes obligatory the use of the two official languages in "official notices." In the petition on municipal signage, the court raised doubts as to whether street signs are considered official notices. No such doubt arose about judicial proceedings, since Par. 82 determines explicitly that "The three languages may be used . . . in the Government offices and the Law Courts." One may perhaps ascribe the different atmosphere in this decision to the specific composition of the justices, absent from which was President Barak, who sat in judgment on all the renderings described above in which the court eroded the standing of the Hebrew language. It may also be that this is a classical instance of the "principal-agent problem," according to which the agent—in our case,

the court—finds it difficult to reach the same results when the discussion concerns its own realm.

In summary, this description attests to the consistent trend of the Supreme Court to reinforce the status of Arabic in comparison to Hebrew, along with hesitation about taking the final step of granting official, equal status to Arabic.

SETTLEMENT

The issue of land is an example of an area in which the court acted decisively against the long-standing policy of preference for the Jewish nation, while relinquishing what had been considered, at least in the past, a main component in the characterization of Israel as the Jewish nation-state.

The Jewish National Fund (JNF) served for decades as a main instrument in the activity of the Zionist movement for the establishment of the State of Israel. The Fifth Zionist Congress, convened in Basel in 1901, decided to establish the JNF. The JNF was a proprietary limited company and was registered in England in 1907. The JNF Corporate Charter determines that its main aim is to acquire land for the purpose of Jewish settlement in Israel.[27] The Charter likewise instituted a prohibition against transferring the ownership of its lands. The JNF goals were realized to the letter. It purchased tracts in the Land of Israel, refrained from selling them, and leased them solely to Jews.

In its first thirty years, the State of Israel continued with a policy of land administration in the spirit of the JNF goals and allotted a great deal of land for settlement intended for Jews alone. On occasion, the state even expropriated land of Arab citizens for the purpose of founding settlements that were only for Jews. The state granted the JNF statutory status and even authorized it to expropriate land. The state and the JNF signed a pact declaring joint interests, and the administration of the JNF lands was transferred to the Israel Land Administration.[28]

The question as to whether the state was permitted to allot land solely for Jewish settlement was first placed on the Supreme Court's agenda only in 1978. A government company, which dealt with the restoration of the Jewish Quarter in the Old City of Jerusalem, turned to the public with a

proposal to purchase apartments that it had built. The appeal was directed toward an "Israeli citizen who lived in the country and had served in the IDF or had received an exemption from IDF service, or had served in one of the Hebrew organizations that pre-dated May 14, 1948, or was a new immigrant who was a resident of Israel."[29]

Muhamad Said Burqan, an Arab citizen of Jordan who was a permanent resident in Israel, asked to lease one of the apartments in that offer, and his request was denied owing to his not meeting the criteria that had been set. Although the offer did not explicitly state that an Arab was not eligible to lease an apartment in the Old City, Burqan insisted that the practical meaning of the criteria was exactly that. Burqan petitioned the High Court of Justice with the argument that the criterion that prevented him from purchasing an apartment was marred by prohibited discrimination, owing to nationality or religion.

The court rejected the petition unanimously, based on five arguments. Two of these were based upon the fact that the petitioner was not an Israeli citizen, and as such the state was permitted to discriminate against him in relation to an Israeli citizen. The third argument referred to the unique history of the Old City. The court explained that the "need to rehabilitate the Jewish Quarter of the Old City arose only after the Jordanian armies invaded it and drove out the Jews and stole their property and destroyed their houses. Naturally, this rehabilitation was meant to restore the glory of the Jewish Yishuv in the Old City, so that the Jews will again, as in the past, have their own quarter, alongside the Muslim, Christian, and Armenian Quarters." The fourth argument recognized the right of separate housing on the basis of nationality for members of all religions, including the members of the Jewish majority group. The fifth argument was based on the fact that the petitioner considered himself obliged to the commandments of Islam, which forbid him from selling land to Jews. The court decided that the petitioner had thereby lost his right to demand that the State of Israel refrain from discriminating against Muslims in allotting land.

A bit more than two decades later, the court again discussed this topic, but this time it adopted a different approach. The Kaadans, an Arab couple who were citizens of Israel, sought to lease a house in the town community of Katzir. Katzir was established on state land that had been

allotted to the Jewish Agency, through a cooperative association whose aim was to establish a rural community settlement that would be based on organizing its members as a community, maintaining cooperation among its members. The request by the Kaadans was refused with the explanation that they did not meet the regulations of the cooperative association, which stipulated acceptance of a person to the association on his having "completed mandatory military service according to the Security Service Law 1959 [Consolidated Version] or exempted from mandatory service according to this law or that his military service was postponed according to this law."[30] The Kaadan family petitioned the High Court of Justice, which granted the petition.

The heart of the decision was written by President Barak. Barak set on one side of the equation the principle of equality, which in his opinion supported the position of the Kaadan family, and examined whether there were any values that were likely to tilt the balance in favor of the respondents. First, Barak traced the specific goals standing at the basis of the legislation regularizing the activity of the Israel Land Administration and determined that the main goal of the relevant legislation was the preservation of the lands of Israel in the ownership of *the state*. Barak ignored the fact that at the foundation of the JNF policy lay another principle: namely, preservation of the land in the ownership of the Jewish *people*. This principle is stressed at the opening of the pact signed between the JNF and the State of Israel: "Since its founding over fifty years ago, the Jewish National Fund has worked to acquire lands in the Land of Israel and transfer them to the ownership of the [Jewish] people . . . The government of Israel and the Jewish National Fund have reached a decision . . . to support the Jewish National Fund in achieving its goal."[31]

Barak also mentioned in brief the interest in preventing the transfer of the ownership of the land to "undesirable elements," but he did not make clear who those elements were. The same goes for other aims that Barak cites, such as "security policy," "national projects," "population distribution," and "agricultural settlement." These purposes do not receive elucidation in the statements by Barak, who chose to ignore the fact that in their basic meaning they are closely connected to the interests of the Jewish nation. By ignoring this, Barak was enabled to reach the conclusion that the terms

of the relevant legislation do not contain any goal that justified, let alone obligated, allotting land for settlement intended solely by Jews.

At this stage, Barak moved on to the identification of the general purposes at the base of the Israeli legal system, which owing to their supreme status stand also at the basis of all legislation derived from this system. In this context, Barak mentioned the principle of equality, but ignored the possible claim that Israel's status as the Jewish nation-state results in another general purpose of encouraging Jewish settlement in the country. Barak determined that the Jewishness of the state had influence on its main language, on the days of rest customary in it, on its cultural and religious heritage, and even on its immigration policy, but the national nature of Israel could not justify any discrimination among its citizens, including even the area of settlement.

The ruling on the Kaadan matter served as an introduction to a series of decisions that reinforced and expanded the prohibition against allotting land for Jewish settlement. Owing to limitations of space, we will mention briefly, without going into detail, two issues. First, the court tended to extend its policy not only to state land but also to JNF land, which at least in the past had been described as a kind of trust, the purpose of which was settlement of Jews only. As a result, the attorney general published a directive that led to a change in JNF policy in a manner that insures equal participation of non-Jews in tenders for its lands. The second ruling determined severe criteria for participating in government tenders in a manner that prevents even a private association that wins a tender for residential projects from marketing apartments to only one national group. Such renderings led cumulatively to complete erosion of the practice customary in Israel for more than fifty years of allotting lands for exclusive Jewish settlement, a practice underpinned by the premise that this was necessary owing to the national character of the state.[32]

INCENTIVES FOR SETTLEMENT

Another issue related to settlement is that of providing economic incentives for Jewish settlement in outlying districts, among other things by granting the status of national priority areas for settlement in these regions.

The State of Israel grants priority to settlement in certain areas in a variety of ways. It invests in the development of infrastructure, assists in private building, gives supplements to the salaries of civil servants, and provides tax benefits for all workers living in these areas, and supplies subsidized education for preschoolers. In the past, this policy was adopted many a time, declared as a means for realizing the goal of "Judaizing" parts of the country—mainly in the Negev and Galilee. Yet, also in the past, the government refrained from setting national identity as a criterion for eligibility for the benefits, but rather fashioned the criteria in a manner that insured preference for the Jewish settlements located in those regions of the country.[33]

The court invalidated the government decision whereby the settlements included in areas of national priority are determined, by its deciding, inter alia, that the criteria posed for it contradict the principle of equality between Jews and Arabs. The court explained that the criteria should be examined not only by its aim but also by its result. Hence, even if the court had been convinced that the criteria had not been "custom-made" with the aim of preferring Jews, this would not have changed its decision, because the application of the criteria had led in reality to an unequal result.[34]

The political system acted according to the directives of the court, and the Knesset adopted a map of national priority regions that led to the result that from then on, 40 percent of those eligible for incentives were Arab citizens.[35] It turns out, therefore, that here too, the court's decision led to an erosion of the Jewish characteristics of the state in that it resulted in the cancellation of the policy of encouraging Jewish settlement in outlying regions or in areas with a definite Arab majority, which stimulates the possibility for irredentism. It can also be argued that the state "helped" the court lead to this result by its refraining from openly declaring the national consideration.

NATIONAL INSTITUTIONS

The State of Israel granted special statutory standing to institutions of the Jewish people as they were fashioned by the Zionist movement. In 1952,

the Knesset enacted a law on the status of the World Zionist Organization and the Jewish Agency for Israel that determines principles for cooperation between the State of Israel and the Zionist Organizations.[36]

The beginning of the law states the following: "1. The State of Israel considers itself as a creation of the entire Jewish people, and its gates are open, according to its laws, to every Jew who wishes to immigrate to it," and "2. The World Zionist Organization since its establishment fifty years ago has led the movement of the Jewish people and its efforts to realize the vision of generations to return to its homeland, and with the help of other Jewish circles and bodies bore the main responsibility for the establishment of the State of Israel." From the law, one sees that the State of Israel considers the Zionist bodies as a type of emissary for the promotion of the goals to which it is obligated. One of the means for effecting the aims of the law is the pact made between the state and the Zionist bodies, which is granted the status of secondary legislation. The pact was signed in 1954 and was accepted again with a few changes in 1979.[37]

The special status of the Zionist organizations was anchored in the wording of a great deal of legislation. They are considered "a public institution" for certain matters, exempted from taxes, a representative on their behalf serves on various governmental bodies, their workers are permitted to vote in Knesset elections at the Israeli representations abroad, similar to civil servants, and even the Israeli penal code acknowledges their special status by setting up a specific prohibition (extended even abroad) against damaging, "the property, rights or orderly functioning of . . . the World Zionist Organization, the Jewish Agency for Israel, the JNF and Keren Hayesod . . . The public status not only provides them with rights but also levies upon them quite a few obligations.[38]

From all the foregoing, a picture is depicted according to which the Zionist institutions enjoy a "quasi-governmental" status. However, this reality reached a turning point with the decision over Beit Rivka.[39] In this instance, the court was requested to decide whether the Jewish Agency was "a body fulfilling a public role according to law," a relative piece of data for deciding the question of whether the agency was obliged to honor a series of human rights. The court decided that the law recognized Zionist bodies, but only in the guise of voluntary organizations working

on behalf of themselves to encourage *aliyah* (immigration to Israel). As for the agreements made between the state and Zionist institutions, the court attributed to them the status of a private law contract, and even the exemption from taxes was not considered by the court as sufficient for recognizing the agency as a body fulfilling a public role. In our opinion, the court's stance does not coincide with the variety of legislative arrangements sampled above, from which, as noted, one gains a clear picture of mutual relations and mission. The ruling on Beit Rivka thus constitutes another step in the gradual process, led by the court, of erosion of Israel's identity as a nation-state.

IMMIGRATION

The issue of immigration has serious implications for the national identity of Israel. The interesting fact regarding the court's treatment of this issue is that on this matter, the court did not reject the national consideration, or weaken its standing on balance with other considerations, but rather chose to ignore it completely. The conduct of the court in this field expresses, in a sense, a further step in the erosion of Israel's national identity.

Israeli legislation in the area of immigration deals, *inter alia*, with the situation called in jargon "reunification of families," in which a citizen of the state requests to bring into the country a foreign spouse and grant that person citizenship. The Citizenship Law facilitates the naturalization processes of the spouse and releases him or her from most of the conditions that must be met for regular naturalization.[40] The law leaves to the discretion of the Minister of the Interior, in this case too, whether to accede to the request for citizenship, but, in reality, the Minister of the Interior usually approves the vast majority of these requests, and, following the directives of the High Court of Justice, even designated clear criteria on this matter.

After the signing of the Oslo Agreements between Israel and the PLO, a very sharp increase occurred in the number of marriages between Palestinian residents of the Territories and Arab citizens of Israel. Under these circumstances, the lenient family reunification policy led to a highly significant rise in the number of Palestinians who became naturalized

citizens of Israel. According to Ministry of Interior statistics, between 1994 and 2002 some 130,00–140,000 Palestinians became naturalized citizens of Israel.[41]

In March 2002, the Minister of the Interior froze the graduated process of family unification of Israelis with Palestinian spouses. The declared motivation was security, after a Palestinian who held an Israeli identity card, which was given to him as a result of his parents' family unification process, carried out a terrorist act that injured many. In May 2002, the policy was anchored by a government decision, against which a number of petitions were submitted to the High Court of Justice. While the proceedings in the High Court of Justice were pending, the Knesset anchored the policy in law.[42] The law was enacted as a temporary order and explained through the exigencies of security. During the period of the law's validity, the Minister of the Interior and the military commander are prohibited from granting temporary permits to state in Israel, residency permits, and Israeli citizenship to residents of the Territories, other than in the most limited exceptional cases as specified in the law. The law established an apparatus for extending the validity of the temporary order by the government with the approval of the Knesset.

The government made use of this apparatus a number of times, and each time extended the validity of the law for a few months. A number of petitions against the legality of the law were submitted to the High Court of Justice, which discussed them with an expanded panel of eleven justices and rejected them by a difference of one vote (the *First Reunification of Families* decision). Taking into consideration the court's comments during the course of the discussions of the petitions, the Knesset amended the law even before the decision was rendered, and relaxed a number of its conditions. After the decision was given, the Knesset amended the law again (the third version). The third version of the law further expanded the exceptions to the prohibition, defined precisely the security considerations that the Minister of the Interior was permitted to take in account, and ordered the establishment of a committee that the Minister of the Interior is to avail himself of when he is about to authorize family reunification for humanitarian reasons.[43]

A number of petitions were submitted to the High Court of Justice against the third version of the law. The court heard the petitions in an expanded panel of eleven justices, and on January 2012 handed down its decision, rejecting them, again by a difference of one vote (the *Second Reunification of Families* decision).[44] Let us turn now to summarize the various opinions in the *First Reunification of Families* decision.

The minority justices thought that the petition should be granted and invalidation of the law should be declared. The main minority opinion was written by Justice Barak. Barak examined the issue from the viewpoint of the Israeli spouse, while noting the need to investigate the question of whether the foreign spouse has relevant constitutional rights as well.

In the first part of the ruling, Barak examined whether the law infringed upon constitutional rights. He argued that the right to dignity, anchored in the Basic Law: Human Dignity and Liberty, should be interpreted as also including the right to establish a family. Barak argued further that this right entails the right of the Israeli citizen to bring his or her spouse to Israel and to conduct their mutual life there. In light of this, Barak determined that the law was detrimental to the constitutional right to establish a family. He further decided that the law infringed upon the right to equality of the Arab citizens of Israel, since in practice it was directed almost exclusively toward them.

In the second part, Barak examined whether it is possible to justify the infringement on rights to a family life and equality. The state argued that that the purpose of the law was to prevent terror attacks, and Barak determined that this goal was worthy. It should be noted that the state did not present any other goal, and especially not the demographic one, to which we shall return shortly. At this point Barak turned to the proportionality balancing test. There are three assessments of proportionality: the means-goal link, selection of the means that achieves the goal while harming the right to the smallest extent, and benefit—in terms of attaining the goal (which overrides the harm)—in terms of infringement upon the right. Barak determined that a rational link exists between the means adopted by the law—sweeping limitation of the entry of Palestinians—and the goal—prevention of terror. Barak also determined that it was, of course, possible to employ less harmful means—individual examination of requests for

family reunification—but this means would not yield the same degree of security as sweeping limitation on immigration, so the law passed the second assessment of proportionality. Yet, in Barak's opinion, the law failed the third test, in the sense that the increase in security deriving from the mechanism that the law determines, in comparison to the alternative of individual examination, was not of greater weight than the additional harm deriving from the mechanism rooted in the law. In other words, Barak felt that it would be worthwhile to pay in terms of security so as to lower the detriment to human rights.[45]

Concurring with Barak's minority opinion were four justices, among whom Justice Procaccia's opinion deserves note as it differed from those of her colleagues over the question of the purpose of the law. Procaccia did not accept the state's claim according to which the law's goal was only security, and she referred—as a reason for her lack of belief—to a discussion held in the Knesset as part of the legislative process in which various Knesset members presented demographic considerations as the purpose of the law. As additional support for her doubt, Procaccia indicated the fact that the state was refraining from instituting a sweeping prohibition against the Palestinians who were seeking temporary work permits in Israel and the fact that the state managed to cope with the danger of terror among Israeli Arabs with methods of individual treatment. These facts led Procaccia to the conclusion that defending the security of the state was not the only aim the law was seeking to promote and that, in addition, it aimed to maintain the demographic balance between Jews and Arabs among the citizens of the state. Procaccia refrained from expressing an unequivocal opinion over the question of whether the demographic goal could serve as a proper one, and she sufficed with the incongruence between the declared aim and the goal that could be deduced (as stated, in her opinion) as the reason for determining that the law did not pass the test of a worthy goal.

What did the other members of the panel think about the demographic aim? On the surface, one cannot know, since they did accept the state's claim that the purpose of security, and not the demographic one, lay at the base of the law; therefore, they did not have recourse at all to the issue of the legitimacy of the demographic purpose. Support for this

reply can be found in the words of Justice Heshin, who rebuked Justice Procaccia for having incidentally touched upon the demographic issue.[46] Yet, on second thought, it may be that the refraining of the justices from referring to the question of the legitimacy of the demographic aim can inform us somewhat about their position on the subject. Had they been convinced that the demographic goal was legitimate, they would have said so explicitly.

Two facts reinforce this possible conclusion. First, the court rejected the request of an association called The Jewish Majority in Israel to join the case as a respondent. This association argued that the demographic consideration definitely underpinned the foundation of the law, that this consideration constituted a worthy goal and that the law effected this aim proportionally. Second, in his response to the High Court of Justice, the attorney general indeed argued that "even if the dominant goal of the law was demographic—which does not seem to be the case—then this goal is likely to coincide with the values of the State of Israel as a Jewish and democratic state."[47] The fact that the court chose to ignore this statement strengthens the feeling that the demographic consideration hovered in the courtroom, but the judges were afraid to deal with it. This conclusion should be moderated in light of the fact that the state was the one that refrained from pressing the demographic consideration. Conversely, one may argue that this avoidance derived from the state's presumption that presenting this consideration in an explicit manner would greatly weaken the chance that the court would authorize the law.

Either way, the state's not raising of the demographic goal in the context of immigration policy has become a pattern. In April 2011, the Supreme Court invalidated an accepted practice of the Ministry of the Interior, according to which a foreign worker who gave birth in Israel had to leave the country within 90 days of the birth. The State Attorney's office sought to justify the practice by arguing that it was intended to prevent permanent settlement of foreign workers in Israel beyond the period of their work permit, and that giving birth and raising children in Israel were a recipe for long-term settlement.[48] The state, however, explained the need to prevent the permanent settlement in Israel of foreign workers by the necessity of preserving available jobs for Israelis and by the necessity of

enforcing the laws of immigration into Israel. As a result, the court dealt only with these arguments, which are correct for every country and not necessarily to a nation-state, and completely ignored the consideration of preventing a blow to the Jewish majority in the State of Israel.

Before concluding this point, it should be noted, though, that the majority opinion in the *Second Reunification of Families* decision might signal a change in the court's attitude towards the demographic goal. Indeed, operatively, the majority based its conclusion again on the security goal only. However, this time, several justices emphasized clearly that their lack of reference to the demographic goal stemmed from the state's abstention from relying on this rationale. These justices pointed out that should the state explicitly raise the demographic aim in the future, they would consider it favorably.[49]

CONCLUSION

The picture formed from the rulings examined in this chapter is of a court that is eroding components of national identity that existed in Israel before its decisions. Yet the various issues are distinct from one another in the extent of erosion evident in each of them. On the issue of return, which perhaps constitutes the main component in the identity of Israel as a nation-state, the court refrained almost entirely from eroding the national dimension. The court has gradually eroded the superior status of the Hebrew language but avoided granting equal status to Arabic, formally and practically. On four issues the court almost totally wore away the component of national identity: on the matter of invalidating political parties that deny the Jewish identity of the state, on the matter of allotting land for Jewish settlement, on the matter of providing economic incentives for Jewish settlement, and on the question of the public status of the institutions of the Jewish people. In the area of immigration of non-Jews, a new phenomenon seems to be forming, according to which the court completely ignores the consideration of maintaining the Jewish identity of the state, although a recently published decision might indicate that the court will consider the national goal positively in the future, should the state explicitly rely on it.

The fact that the state has chosen in recent years to bypass the national consideration and to justify before the High Court of Justice the decisions of the Knesset and the government for other reasons is likely, perhaps, to serve as one explanation for the change in the direction of the High Court of Justice rulings. In our opinion, however, the tendency toward erosion of the components of national identity in the decisions of the Supreme Court cannot be ascribed only to a change in the mood of the political branches (the Knesset and the government). This tendency also expresses a change in the outlook of the court itself. Even if the regime is no longer certain of the justice of policy the aim of which is the preservation of the national character of Israel, the court constitutes a leading factor in the conceptual and practical change, in a manner that points the way for the political system and the public in Israel. Does the court deserve praise for having taken this role upon itself, or should it be criticized for doing so? We shall leave discussion of this question for another time.

NOTES

1 Partition Plan: UN General Assembly Resolution 181, November 29, 1947. See also at *The Knesset: The Israeli Government*, "UN General Assembly Resolution 181," http://www.knesset.gov.il/process/docs/un181_eng.htm (accessed June 12, 2012). Declaration of Independence: Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel [L.S.I.] 3, 4 (1948). Basic Laws: Section 1A of Hok Yesod: Kevod Ha-Adam Ve-Heruto (Basic Law: Human Dignity and Liberty), Sefer Ha-Hukim S.H. 150 (1992); Section 2 of Hok Yesod: Hofesh Ha-Issuk (Basic Law: Freedom of Occupation), [S.H.] 114 (1992). Legislation: see, for example: Section 1 of Hok Hashvut (Law of Return), 5710-1950; Section 2 of Hok Haezrachut (Citizenship Law), 5712-1952; World Zionist Organizations and Jewish Agency for Israel Status Law, 5713-1952; Jewish National Fund Law, 5713-1953; Hok Yesodot Hamishpat (Law of Legal Foundations), 5740-1980; section 18a(1) for government and law order, 5708-1948. Common practices: many formal announcements, for example, are published only in Hebrew and most government forms are in Hebrew only. See Ilan Saban "(Bilingual) Sound Alone In the Dark?," *Iyunei Mishpat* 27 (2003): 109n1 and text near it.

2 See section 1 of Law of Return for the right to immigrate to Israel; for other nations, see Alexander Yakobson and Amnon Rubinstein, *Israel and the Family of Nations: The Jewish Nation State and Human Rights* (New York: Routledge, 2009).

3 Examples of law reflecting national identity: HCJ 442/71 Lanski v. Minister of the Interior, PD 26(2) 337, 399 (1972). Limitation of rights for spouses: HCJ 3648/97 Stamka v. Minister of the Interior, PD 53(2) 728 (1999).

4 Use in exceptional cases: HCJ 442/71 Lanski v. Minister of the Interior, PD 26(2) 337 (1972); HCJ 48/58 Yanovici v. Minister of the Interior, PD 12 646 (1972); HCJ 94/62 Gold v. Minister of the Interior, PD 16 1846 (1962); HCJ 186/62 Vaider v. Minister of the Interior, PD 16 1547 (1962). Application to serious crimes: HCJ 1227/98 Malevski v. Minister of the Interior, PD 52(4) 690 (1998). Application to active criminals before citizenship application: HCJ 5067/02 Gulaiev v. Government ministry of the Interior, Tak-Al 2003(3), 1100 (2003). Extension to minor offences: HCJ 5033/06 Gilvanov v. The State of Israel, Tak-Al 2007(2), 3342 (2007); HCJ 6624/06 Peshko v. Government Ministry of the Interior, Tak-Al 2007(2), 2183 (2007).

5 Disqualification of slate: HCJ 1/65 Yardor v. Chairman of the Sixth Knesset Central Elections Committee, Tak-Al 2003(3), 1100 (2003) (*Yardor*). The Central Elections Committee is headed by a Supreme Court justice and consists of representatives of the various political parties. Final quotation from *Yardor*, at 371.

6 EA 2/84 Neiman v. Chairman of the 11th Knesset Central Elections Committee, PD 39(2), 225.

7 Hok Yesod: Hakneset (Basic Law: The Knesset), as amended at S.H. 5725-1965. This version was revised later on.

8 EA 2/88 Ben-Shalom v. Chairman of the 12th Knesset Central Elections Committee, PD 43(4), 221.

9 Parties Law 5752-1992.

10 CA 2316/96 Isakson v. The Political Parties Registrar, PD 50(2) 529.

11 EA 2600/99 Erliche v. Chairman of the Knesset Central Elections Committee, PD 53(3), 38, 41–42 (quoting an interview with Bashara in *Haaretz*, May 29, 1998), 44.

12 EA 11280/02 16th Knesset Central Elections Committee v. Achmad Tibi et al., PD 57(4), 1 (*Tibi*).

13 Ibid., 22.

14 Written answer on behalf of Balad in FR 1/18 Furman et al v. Balad. The document [Hebrew] is available at *The Knesset: The Israeli Government*, http://knesset.gov.il/elections18/heb/list/6.pdf (accessed June 12, 2012).

15 EA 561/09 Balad Group v. 18th Knesset Central Elections Committee (unpublished, March 7, 2011).

16 Written answer on behalf of Balad in FR 1/18 Furman et al v. Balad, sections 8–9.

17 *Tibi*, Justice Barak's Ruling, section 13.

18 Three official languages: Article 82 of the Palestine Order-in Council, 1922–1947. English no longer official: Section 15(2) for Government and law order, 5708-1948 and for continuation of Mandatory law, section 11.

19 1955 case: CA 148/54 Khaa v. Jerusalem Municipality, PD 9, 1247. 1960s ruling: HCJ 297/65 El-Chuari v. Chairman Of Nazareth Municipality Election committee, PD 19(3), 279 (1965). 1970s ruling: HCJ 527/74 Chalaf v. The North County Committee for Planning and Construction, PD 29(2) 319 (1975).

20 CA 294/91 Jerusalem Community Burial Society v. Kastenbaum, PD 46(2) 464 (1992) (*Kastenbaum*).

21 CA 105/92 "Re'em" Engineers v. Nazareth Eilit Municipality, PD 47(5) 189 (1993) (*Re'em*).

22 Ibid., 209.

23 Requirement for use of Hebrew letter: Sections 61 and(3)ec 2(a) 76(b) of The Knesset Elections Law (Consolidated Version) 5729-1969. Knesset Elections Law—

Arrangements for local authorities: Section 51 of Local Authorities (Elections) Law, 5725-1965. Contested case: PCA 12/99 Mareei v. Savek, PD 53(2) 128 (1999).

24 HCJ 4112/99 Adalah v. Tel-Aviv-Jaffa Municipality, PD 56(5) 393 (2002) (*Adalah*).

25 Previous petition: HCJ 4438/97 *Adalah* v. Public Works Authority (petition deleted, February 25, 1999) (*Adalah v. PWA*). Majority justices opinion: section 24 of Justice Barak ruling in *Adalah.*

26 HCJ 792/02 *Adalah* v. Courts Administrator (unpublished).

27 JNF background: see JNF reply to the petition at HCJ 9010/04 Arab Center for Alternative Design et al v. Israel Land Administration. Jewish National Fund Corporate Charter, Yalkut Hapirsumim [Y.P.], 5714-1954, 345, section 3a.

28 Authorization for expropriation: Jewish National Fund law, 5713-1953. Joint interest pact: Y.P. 5728, 1597. Transfer of administration: Israel Lands Administration Law, 5720-1960.

29 HCJ 114/78 Muhammad Saaid Burqan v. Finance Minister, Tak-Al 2003(3), 1100 (2003) (*Burqan*).

30 HCJ 6698/95 Adal Kaadan et al. v. Israel Land Administration, PD 54(1), 258 (*Kaadan*), 265

31 Goals of the legislation: ibid., 272. The Treaty between JNF and the State of Israel, Y.P. 5728, 1597.

32 Further decisions expanding on *Kaadan*: see, for example, HCJ 8060/03 Kaadan v. Israel Land Administration, Tak-Al 2(2006), 775 (2006); HCJ 9818/02 Abu-alhigga v. Minister of Finance et al., (unpublished, 2003); HCJ 7574/06 Hasolelim Young Maccabi Group for Agricultural communal settlement Ltd v. Israel Land Administration, Tak-Al 2007(1) 758 (2007); FHCJ 1107/07 Hasolelim Young Maccabi Group for Agricultural communal settlement Ltd v. Israel Land Administration, Tak-Al 2007(1) 4183 (2007). Extension to JNF land: HCJ 9010/04 Arab Center for Alternative Design et al. v. Israel Land Administration et al. (decision from October 11, 2004). Attorney general's directive: see documentation of state commitment facing the High Court of Justice at HCJ 9010/04 Arab Center for Alternative Design et al. v. Israel Land Administration et al. (decision from October 20, 2004). Criteria in government tenders: APA 1789/10 Esther Saba v. Israel Land Administration (unpublished, November 7, 2010).

33 David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder, CO: Westview Press, 1990), 107.

34 HCJ 11163/03 Supreme Supervision Commission for Arab Issues in Israel v. Prime Minister, Tak-Al 2006(1) 2562(2006); section 23 for Justice Barak's ruling.

35 See Economic and Efficiency Law (Legislative Amendments to implement the economic program for 2009–2010) chap. 26; The 32nd Government Decision No. 1060 dated December 13, 2009.

36 World Zionist Organization and Jewish Agency Status Law, 5713-1952.

37 Ibid., sections 1–2. YP, 5715, 386, 187; YP, 2172.

38 Special status in legislation: examination of the legislation in Israel as updated for April 2010, found 54 occurrences of the World Zionist Organization and 88 occurrences of the Jewish Agency. Representative on government bodies: see, for example, Section 8 of Authority for the Development and Advancement of Culture, Tourism and Foreign Relations of Jerusalem Law, 5766-2005. Voting rights: Section 116g of the Knesset Elections Law (Consolidated Version) 5729-1969. Special status in penal

code: sections 13(1)(5) and 13(3) of the Penal Law, 5737-1977. Oligations: see, for instance, section 13(8) of Defamation (Prohibition) Law, 5725-1965; sections 1(1)(4)(3) and 1(1)(4)(4) of the Income Tax Ordinance [New Version].

39 HCJ 4212/91 "Bet-Rebecca" Educational Institution v. The Jewish Agency, PD 47(2) 661(1993).

40 Section 7 of the Citizenship Law. For this purpose it is immaterial whether their spouse citizen is Jewish or not. See, HCJ 3648/97 Stamka v. Minister of the Interior, PD 53(2) 728 (1999).

41 From Deputy Attorney General, Menachem Mazuz, presentation in a session at the Knesset Interior Committee on July 14, 2003 regarding to The Citizenship and Entry into Israel (temporary provision) bill 5763-2003. See *The Knesset: The Israeli Government*, http://www.knesset.gov.il/protocols/data/html/pnim/2003-07-14-01.html [Hebrew] (accessed June 12, 2012).

42 Government Decision No. 1813 dated May 12, 2002. Petitions: see, for instance, HCJ 4022/02 Association for Civil Rights in Israel v. Minister of the Interior, Tak-Al 2007(1) 188(2007). Law: The Citizenship and Entry into Israel Law (temporary Order) 5763-2003. For background and critical analysis, see G. Davidov, Y. Yuval, A. Saban, and A. Reichman, "State or Family? The Citizenship and Entry into Israel (Temporary Order), 5763-2003," *Mishpat U'mimshal* 8 (2005): 643 [Hebrew]; Amnon Rubinstein and Liav Orgad, "Human Rights, National Security, and Jewish Majority—the Case of Migration for Marriage," *Hapraklit* 48 (2006): 315 [Hebrew].

43 *First Reunification of Families* decision: HCJ 7102/03 Member of Knesset, Zehava Galon v. Attorney General; HCJ 8099/03 Association For Civil Rights in Israel v. Minister of the Interior; HCJ 8263/03 Aschafi v. Minister of the Interior; HCJ 7052/03 Adalah v. Minister of the Interior, Tak-Al 2006(2), 1754 (2006). Relaxed conditions: the Citizenship and Entry into Israel Law (Temporary Order) (Amendment), 5765-2005. Third version of the law: Section 3d of the Citizenship and Entry into Israel Law (Temporary Order) (Amendment) 5767-2007.

44 HCJ 466/07 Galoen v. Attorney General (forthcoming).

45 For similar ruling of Justice Barak on another case, see HCJ 7102/03 Beit-Surick Village Council v. Israel Government (June 30, 2004).

46 Section 135 for Justice Cheshin's ruling.

47 Section 169 of the State summary dated December 13, 2003 in HCJ 7052/03 Adalah v. Minister of the Interior, Tak-Al 2006(2), 1754 (2006) as quoted in section 14 for Justice Procaccia's ruling.

48 HCJ 11437/05 Kav LaOved v. Ministry of the Interior (forthcoming); section 7–11 for Justice Procaccia's ruling.

49 See, for example, *Second Reunification of Families* decision, section 16 for Justice Rivlin's ruling.