CASE LAW COVER PAGE TEMPLATE

Name of the court [1] (English name in brackets if the court's language is not English):			
Beit HaMishpat HaElion BeShivto KeBeit Mishpat Gavoah LeTzedek (Israeli Supreme Court of Justice)			
Date of the decision:	**(2013/09/16)**	**Case number:[2]**	7146/12, 1192/13, 1247/13

Parties to the case:

Petitioners/Appellants

Bagatz 7146/12:

1. Najat Serj Adam
2. Zamzam Bushra Ahmad
3. Abraham Masgena
4. Gevermiriam Mahari
5. Amsalem Negusa Taklo
6. Assaf – Aid organization for refugees and Asylum seekers in Israel
7. Hotline for Migrant Workers
8. Association for Civil Rights in Israel
9. Kav LaOved
10. African Refugee Development Center

Baram 1192/13:

1. Jane Doe
2. Jane Doe

Aam 124/13

1. Taami Tahangas
2. Jane Doe
3. John Doe

VS.

Respondents

Bagatz 7146/12:

1. The Knesset (Israeli Parliament)
2. Minister of Interior
3. Minister of Defence
4. Attorney General

Baram 1192/13:

1. Ministry of Interior
2. Jane Doe
3. John Doe
4. John Doe
5. John Doe
6. Jane Doe

Aam 1247/13: Ministry of Interior

Requested to join the petition as friend of the Court:

1. UNHCR Israel
2. Kohelet Forum

Decision available on the internet? ☒Yes ☐No If yes, please provide the link: http://elyon2.court.gov.il/files/12/460/071/B24/12071460.B24.htm (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Hebrew	
Official court translation available in any other languages? ☐Yes ☒No (If so, which): Please see Annexed unofficial summary in English.	
Countr(y)(ies) of origin of the applicant(s): Eritrea and Sudan	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Israel	
Any third country of relevance to the case:[3] Egypt	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees ☒**Yes** ☐**No**	Relevant articles of the Convention on which the decision is based: Articles 1(2), 26 and 33. In addition, reference is made to articles 9 and 12 of the ICCPR and to Article 3 of the Convention against Torture.
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons ☐**Yes** ☐**No**	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness ☐**Yes** ☐**No**	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa ☐**Yes** ☐**No**	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision:

Topics / Key terms: (see attached 'Topics' annex):

- **Detention of asylum seekers**
- **Non-refoulement**
- **Right to liberty and freedom of movement**
- **Access to employment**
- **Access to welfare services**
- **Access to education**
- **Illegal entry**

Key facts (as reflected in the decision): [No more than 200 words]

Background

In December 2011 the Government of Israel adopted a strategic decision to take measures to stop the illegal infiltration into Israel from the border with Egypt, including:

1. Building a physical barrier (a fence) along the Egypt border (currently almost completed).
2. Negotiating with countries of origin or third countries to facilitate voluntary return or departure.
3. The Amendment of the Law on the Prevention of Infiltration (to enable the immediate arrest and prolonged detention of illegal aliens) and establishment of the Saharonim detention center.

According to Article 30A of the Amendment, an infiltrator is defined as a person who entered Israel illegally and not through an official border control, and may be held in detention, based on an order of deportation issued against him, for up to three years or until he is deported, except in specific exceptions (limited to humanitarian grounds, medical or age circumstances; UAMs; when the release may promote the deportation, at the discretion of the border control officer).

The application of amended law as of June 2012 led to detention of some 1,750 infiltrators in Saharonim and Ketziot detention centers.

1,400 of the detainees have submitted asylum requests (however by the time the petition was heard only a few of these requests have been examined by the State).

Civil Society organizations petitioned the Supreme Court of Justice claiming that the Amendment is unconstitutional and should be declared null and void.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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Decision

The Supreme Court found (unanimously – nine Justices) that Article 30A(c)(3), which authorizes the detention of infiltrators for three years is unconstitutional, as it violates the right to liberty enshrined in the Basic Law: Human Dignity and Liberty, and should be therefore declared null and void. All nine Justices concurred that the prolonged detention of illegal aliens, without the feasibility of deportation, is a disproportional violation of their right to liberty and this extreme measure is not justified by the promotion of a proper purpose (such as public interest or security).

The Supreme Court decided (majority of eight judges against the descending opinion of Justice Hendel) that it is not possible to nullify Article 30A(c)(3), without striking down the entire Amendment, since this is the core provision of the Amendment. Therefore the entire Amendment has been declared null and void by the majority of the Court.

In its place, the previous legislation that was in place the eve of the Amendment will take effect (The Law of Entry into Israel).

The Court ordered that the Amendment's annulment should take effect immediately, given its grave infringement on the right to liberty. In order not to create a legal void, the deportation and detention orders that were issued based on the Amendment should be seen as if they were issued according to the Law of Entry into Israel and reviewed accordingly.

The Court stressed that the Authorities should "begin the release procedures *immediately*."

Legal reasoning

Several Justices stressed that detention according to the Amendment contradicts accepted international principles with regard to deprivation of liberty of illegal aliens: firstly, it enables detention in the absence of an effective deportation process; secondly, it enables detention for a substantive period of time (for example paras. 32, 34, 35 of the decision of Justice Fogelman). According to International Law, administrative detention of an illegal alien, in the absence of an effective deportation process, is considered arbitrary detention. (para. 91 of Justice Arbel's decision).

Justice Arbel:

Examination of international law reinforces this doubt, even assuming we are dealing with illegal immigrants and not asylum seekers, who enjoy broader protection. The State of Israel signed and ratified the International Covenant on Civil and Political Rights. Article 9(1) of the Covenant states:

> *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.*
> *The interpretation given to this Article by the United Nations High Commissioner for Human Rights of the United Nations (OHCHR) is broad. According to this interpretation, the clause applies to all types of deprivation of liberty, including the denial of liberty in the context of a country's immigration policy (General Comment No. 8: Right to liberty and security of persons (Art. 9), 06/30/1982, para. 1 http://www.unhchr.ch/tbs/doc.nsf/0/f4253f9572cd4700c12563ed00483bec?Opendocument*

In one of the cases discussed by the UN Human Rights Committee of the UN (HRC) it was determined that holding an illegal immigrant in custody could be considered arbitrary under Article 9(1) of the Convention, if custody is not necessary under the circumstances. Detention cannot continue beyond the period in which the state can provide legal justification. The Committee presents examples for such justification, with regard to an illegal immigrant, the need for an investigation, and other justifications regarding the specific detainee, such as flight risk or disappearance or lack of cooperation of the detainee. In the absence of such justifications detention may be considered arbitrary, even if it is a person who entered the country illegally. In that case Australia tried to argue that the detention of an illegal immigrant for a period of four years was justified, after he entered Australia illegally and that his release might lead to his evasion or escape. The Human Rights Committee rejected these claims and stated that Australia has not established any specific grounds relating to the specific circumstances of the detainee, and therefore his detention was arbitrary under Article 9(1) of the Convention. (A. v. Australia, CCPR/C/59/D/560/1993, UN Human Rights Committee (HRC), 3 April 1997, http://www.refworld.org/docid/3ae6b71a0.html.) International law also directly addresses infiltrators to the non-refoulement principle applies. In such cases, it is stated that, since the barrier preventing the expulsion of the infiltrator is not related to the infiltrator himself, he should be released, otherwise his detention would be considered arbitrary (Report of the Working Group on Arbitrary Detention, para. 63 , U.N. Doc. A/HRC/13/30 (18 January 2010) can be found at: http://www.ohchr.org/EN/Issues/Detention/Pages/Annual.aspx. Generally speaking, international law states that the administrative detention of an illegal alien, in the absence of an effective deportation process is arbitrary detention. (Baban v. Australia, UN Doc . CCPR/C/78/D/1014/2001, 18 September 2003, para. 7.2). It can be concluded that international law indicates the need for a justification for the detention on grounds related to the specific infiltrator, and it does not allow holding an infiltrator in custody for general reasons that do not concern the circumstances of the case. It should be noted also that the European Court of Justice (ECJ) ruled that detention in the absence of deportation proceedings contradicts the goals and purpose of the European Union Return Directive. See Case C-61/11 PPU, El Dridi, 28 April 2011, OJ C 186, 25.06.2011; Case C-357/09 PPU, Kadzoev, Judgment of the Court (Grand Chamber) of 30 November 2009). Also see report submitted to the UN Human Rights Council: Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, para. 54 - can be found at: http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.23.46.doc. We can assume that this applies a fortiori with regard to detention based on the grounds of deterring others. (para 91)

Justice Fogelman

To this I wish to add that this rule also deviates from the accepted principles in Israel and the world with regard to the denial of liberty of the illegal aliens within immigration laws, in two aspects: firstly, the Amendment sets the rule of detention for a long period of time in the absence of an effective exclusion procedure. Secondly, the Amendment allows for the detention of asylum seekers for a considerable time.

(a) Holding illegal aliens in custody for a long period in the absence of an effective expulsion procedure

Already during the early days of the State the Court held that the validity of detention under a deportation order (according to the Entry into Israel Law) cannot hold in the absence of an effective expulsion procedure (Bagatz 199/53 A v. Minister of the Interior,

PD 243, 247-248 (1953). On the principles laid down in decisions of this Court with regard to the detention of illegal aliens (according to the Entry into Israel Law before amendment No. 9), my colleague, Justice Hayut noted, in the Sayidi *case:*

Detention prior to deportation is intended to ensure the effectiveness of the deportation order and is not intended to serve any penal or deterrence purpose [...] in implementing its detention authority, as in the implementation of any governmental authority, the State must act proportionally, in this sense that, if the deportation is not carried out within reasonable time, the continued detention can only be justified if there is a threat that the purpose of deportation will not be realized, for example because the deportee will escape or because there is a threat that, if released, he will pose a harm to public security and safety. [...] Holding a designated deportee does not have to be in conditions of detention and other holding alternatives should be considered, in accordance with the purpose of holding" (there, Paragraph 24 ; see also HCJ 1468/90 Ben-Israel v. Minister, PD 44(4) 149, 151-152 (1990).

From the outset, I noted that the Amendment before us is actually intended to apply to "infiltrators" that cannot be expelled from Israel at this point. I reached this conclusion on the basis of background for the enactment of the Amendment, comparing it to previous normative arrangement and its implementation in practice. Indeed, the language of the statute may imply that detention is related to the deportation purpose. Section 30(a) of the Law provides that "the [deportation] order will serve as the legal basis for holding the infiltrator in detention up to his deportation" [emphasis added, A. P.]. This completely overlooks the existence of an effective deportation process. The rule is clear and simple. A "normal" infiltrator can be released only after three years from the date of being placed in custody.

This difficulty becomes more acute when examining parallel arrangements across the globe. The use of detention as part of immigration laws is a permissible means in other countries, where legislation exits which authorizes authorities to arrest illegal aliens. However, this authority is related to the deportation authority and derived from it. For example, in the U.S. and Britain immigration laws that allow the detention of illegal aliens up to deportation (without specifying a maximum detention period) were interpreted to limit the detention period to the reasonable period necessary for the deportation. (Zadvydas v. Davis, 533 US 678 (2001); Tan Te Lam v Superintendent of Tai A Chau Detention Centre [1996] UKPC 5). This principle also exists in the EU countries. Article 15(4) of the 2008/115/EC Directive on guidelines concerning the the detention of illegal for the purpose of deportation (hereinafter "the Directive") states that "when it appears that there is reasonable chance of deportation for legal or other reasons [...] detention is not justified and the prisoner shall be immediately released". Furthermore, even when an effective deportation procedure is in place the Directive extremely narrows the cases in which detention should be implemented and stipulates that a less offensive alternative reduces the cases where detention authority shall be preferred (Article 15(1)). In addition, a maximum period for detention is set at 6 months (Article 15(4)), that can be extended to up to one more year in cases in which deportation is being delayed due to lack of cooperation by the detainee or due to delay in receipt of required documents from the country of origin (Article 15(6)). (paras. 32, 34, 35)

With regard to asylum seekers, the difficulty of holding them in detention while their asylum request is reviewed is even bigger and contradicts international standards (referring to UNHCR detention Guidelines). (para. 37 of Justice Fogelman's decision, para 92 of Justice Arbel's decision).

(b) Detention of asylum seekers

Further difficulty arises from the arrangement in the Amendment, relating to detention of

asylum seekers. Given the difficulty involved in holding asylum-seekers in detention during the consideration of their asylum applications and their unique status, the Amendment establishes additional basis for release with regard to asylum-seekers in detention. The Border Control Officer may release a person if "three months have passed from the date the infiltrator filed an application for a visa and residency permit in Israel under the Law of Entry into Israel, and the processing of the application has not commenced" and if "nine months have passed from the date on which such request was filed [...] and a decision has not been rendered yet." (Article 30A(c)(1)-(2)) The time frame set by the Amendment is designed to incentivize the authorities to take an appropriately speedy decision on individual applications; this is to be welcomed. However, this cannot imply that by default, asylum-seekers can be held in custody for the entire length of the application review process. As my colleague (Arbel) notes in her decision, it is doubtful whether this arrangement complies with the acceptable standards of international law and of civilized countries (See UNHCR Guidelines on applicable criteria and standards regarding the detention of asylum seekers and alternatives to detention (2012)).

The State in this case claimed that the majority of infiltrators are economic migrants, while the petitioners claimed the majority are asylum seekers, entitled to State protection. The Court referred to these opposite positions, but was unable to make a positive finding, in the absence of sufficient information (particularly since the State only reviewed a handful of asylum requests so far). The Court also referred in this context to the States' position to apply the non-refoulement principle to Eritrean and Sudanese nationals: (See for example para. 104 of Justice Dantziger's decision)

As my colleague, Justice Fogelman, I too believe that the factual picture is more complicated. Indeed, we can assume that there is an economic element at the base of the choice of thousands of Sudanese and Eritreans to undertake a hardship journey, in order to reach Israel. However, we cannot ignore the fact that some of the ambiguity with regard to the categorization of these "infiltrators" – whether illegal work migrants or refugees entitled to asylum – is related to the way the State has dealt with this population so far. For years, the State has avoided examining individual asylum requests submitted by Eritrean and Sudanese citizens, on the one hand, and on the other – refrained from deporting them to their countries of origin…" (p. 104).

Justice Arbel (para 104-107) and Justice Fogelman (para 39-41) both refer in detail to possible alternatives to detention, including limiting the residential areas; exchanging some of the work migrants currently employed in Israel with asylum seekers.

Justice Arbel

As for the additional purpose of preventing the infiltrators from settling in Israel and preventing the negative effects of the infiltration phenomenon on the Israeli society. As I mentioned I do not believe that in the current situation there is a rational connection between the placement of infiltrators in detention for three years and the achievement of this purpose. Even if there were a rational connection, it is doubtful if this arrangement would have complied with the condition of the "least offensive measure". Indeed, possibly this measure is the cheapest means for the State or the simplest one to implement, but as we well know, this is not the criterion of the "least harmful measure test." (See the first Kav LaOved case, p. 396). As was done in other cases that involve the deprivation of liberty, the state is obligated to seriously consider alternative, less offensive, options; such is the case in criminal law as well as administrative law (see for example the Federman case, p. 188; Article 21(b)(1) of the Detention Law).

I believe that there are a number of alternative means available that can be adopted and can achieve the aimed purpose in a less harmful manner. For example, creating reporting obligations and various guarantees (compare with the second KAl LaOved case, para. 63 Justice Procaccia's verdict); implementing residence restrictions on infiltrators that will allow the State

to control and monitor places of residence and population dispersal in different places (similar procedure existed in the past and was abolished by the Minister of Interiior. See Bagatz 5616/09 ARDC v. Minister of Interior (26.8.099)); one can consider requiring infiltrators to reside during the night in a facility prepared for that will provide their needs, and prevent other difficulties. It should be noted that in parallel with the legislative proceeding of the Amendment, the legal adviser of the Knessed Interior Committee prepared an alternative draft Bill (bill to fight the Southern border infiltration (Temporary Order), 2011)). According to this proposal an open residential facility for infiltrators will be established, to be run by the Interior Ministry, which will provide its occupants appropriate conditions, including housing, food, medical services, clothing and other basic needs. In general, the bill states that an infiltrator that was not granted residency permit in Israel but cannot be deported should be transferred to this open residency center; another idea that was raised in the Knesset was to replace some of the foreign workers with infiltrators and thus solve many problems in these two sectors and assist employers who need working hands (See Minutes of the Knesset Committee examining the issue of foreign workers, 11/6/2012, http://www.knesset.gov.il/protocols/data/rtf/zarim/2012-06-11.rtf); another suggestion was to intensify the fight against smugglers who aid infiltrators to penetrate the country's borders and to reimburse local authorities for their expenses related to the treatment of infiltrators (ibid.); in addition, police supervision of areas in which infiltrators are concentrated may be increased, in order to address crime and mainly to increase the sense of personal security of local residents; labor laws may be more closely enforced so there will not be a preference for infiltrators cheap labor; etc. Such measures can be implemented alongside measures of control and punishment for those who do not abide by them, and of course side by side with Israel's attempts to facilitate the deportation of infiltrators. (para. 104)

Israel is not the only country dealing with the effects of illegal immigration and with an influx of asylum seekers and refugees knocking on its gates. It is possible that Israel's unique geopolitical reality places it in a more complex situation, but the basic struggle is similar with many other countries around the world:

> *Many countries in the western world were forced in recent decades to establish various arrangements relating to the appropriate treatment of asylum-seekers knocking on their doors, in accordance with refugee law. At the basis of these arrangements lies a complex balance – preserving the State's sovereignty to determine who will come through its gates on the one side, and on the other side – the obligation to protect the human rights of this population that time and again is fleeing famine, war or persecution and seeks to create for itself an alternative for a better life" (the Hotline case, paragraph 13; also see the Farida case, para. 6(1)).*

We can therefore learn from the experience of other countries in dealing with phenomena similar to the infiltration phenomenon. (para. 105)

Quick glance across the sea
First I will note that international law, as previously mentioned, requires that the detention of an immigrant and certainly on an asylum-seeker will be a non-arbitrary detention. UNHCR Guidelines state that one of the criterions of arbitrary arrest is the absence of an examination of less harmful alternatives to detention, especially when the detention period is extended (Detention Guidelines, para . 18; also see eg Decision of the Human Rights Committee: Shams et al v. Australia, UN Doc. CCPR/C/90/D/1255/2004, 11 September 2007, para. 7.2; D & E v. Australia, UN Doc. CCPR/C/87/D / 1050/2002 , 9 August 2006 , para. 7.2). The Guidelines specify and sort a series of alternatives to detention in accordance with their level of violation to individual liberty. The Guidelines refer to (from easiest to the most stringent): deposition of documents, deposition of financial guarantees , reporting obligations, conditions of release into the community, living in a designated area , electronic monitoring and house arrest (Detention Guidelines , para . 35-42). The Guidelines also mention the option of residential centers (open or

semi-open) requiring registration of entry and exit and similar restrictions and the requirement of a guarantor to ensure the presence of the asylum seeker in proceedings relating to his case (Detention Guidelines, Annex A). (para. 106)

In a detailed document of UNHCR the issue of alternatives to detention is reviewed in detail. Among other things, the measures taken by various countries as an alternative practice to detention of asylum seekers is examined (U.N. High Commissioner for Refugees [UNHCR], Legal and Protection Policy Research Series: Alternatives to Detention of Asylum Seekers and Refugees, UN Doc. POLAS/2006/03 (April 2006) (prepared by Ophelia Field)). The document mentions various alternatives including guarantees, deposits and other collateral required from asylum-seekers. It also mentions reporting requirements from asylum seekers. For example, in the UK there is a mandatory reporting obligation to reporting centers for any asylum-seeker in receipt of State support but who lives independently. In France, Luxembourg and South Africa, asylum-seekers are required to report in person once a month to renew their legal documents. Many times this means is implemented in addition to other requirements. Another means is to regulate the residential places of asylum-seekers. This includes open or semi-open residential centers, limiting residential areas, distribution of the residential spaces of asylum-seekers and so on. For example, in Germany there are concentrated residential centers for asylum-seekers limit the freedom of movement of the residents to the center compound. Anyone who violates these restrictions faces arrest. Even Switzerland scatters the asylum-seekers between open residential centers in the different cantons, but does not impose restrictions on their freedom of movement. Different residence centers are also operated in Bulgaria, Hungary, Poland, Denmark, Sweden, Greece and Italy. In many countries the obligation on asylum-seekers to live in residential centers depends on the support they receive from the state. Another means employed by many countries is the identification and documentation of asylum-seekers, including the use of electronic and biometric means, which facilitates easier and more certain identification. A number of countries have electronic monitoring of asylum-seekers, using electronic handcuffs, often accompanied by house arrest. (para. 107)

Justice Fogelman

The existence of proportionate alternatives

As noted by my colleague Justice Arbel, there is arsenal of measures that may assist in achieving the purposes the State wishes to pursue, that will have a significant less offensive impact on the right to liberty. The verdict that the current means is disproportionate is enhanced in light of the existence of alternative measures that have not been implemented, which can achieve – at least partially – part of the purpose of the Amendment, while considerably less infringing on the right to liberty. When we expand our view to the rest of world, as well as to existing arrangements in Israel in other contexts, we can think of other measures, less offensive that could be taken to deal with the consequences of the existence of illegal infiltrators that cannot be deported at this point. Some also may reduce the economic incentives that sometime stand at the background of irregular migration. I will clarify that the following list is not without difficulties. Some measures involve significant costs and change in budgetary priorities, but let's not forget that detention also involves considerable financial costs. Other measures may help address one problem by creating another. However, the presentation of all these alternative is important to the scope of this verdict, in order to illustrate that there are other means - not taken – that should be considered and tried out before employing such an offensive measure as the one implemented in this case. (para. 39).

My colleague reviews some of the alternative measures available in paragraphs 107-104 of her opinion. It may be considered to impose geographical restrictions on the residence location of infiltrators so that not only specific local authorities and their residents will be required to deal with the challenges that this phenomenon sets before us (See: UNHCR guidelines on detention and its alternatives, Appendix A (iii)); it is possible to require infiltrators to live in open or semi-

open residential, while imposing proportionate restrictions on freedom of movement (there, Appendix A (iv)); labor market integration may be considered in a manner consistent with the needs of the economy; combatting smuggling is possible, through domestic law and through inter-state cooperation; it is possible to increase the involvement of welfare authorities when dealing with the infiltrators population; it is possible to increase law enforcement efforts to enhance the sense of personal security of local residents; it is possible to increase efforts at the international level in order to absorb infiltrators in other countries, while adhering to Israel's obligations under international standards. (para. 40)

The States makes the case as if only two alternatives exist: one - the implementation of the Amendment and the detention of infiltrators for a long period of time until (and if) they can be deported; the other - the continued presence of many infiltrators in South Tel Aviv and other regions without regulation, supervision or treatment. This binary representation is problematic in my view…We cannot but wander whether the negative implications of the infiltration phenomenon…are not enhanced by the State's avoidance to implement other alternatives for regulating their presence and the treatment thereof. How can the State use the negative implications of the infiltration phenomenon in recent years as a justification for the implementation of offensive measures without even attempting to deal with these implications in a less detrimental manner? I assume that the question I pose, together with the results of these proceedings, with lead to a reconsideration by the relevant authorities." (para. 41)

The Court also extended a call to the Executive Branch to adopt a National Immigration Strategy and to implement a holistic integration policy towards the illegal aliens currently residing in Israel:

The phenomenon of illegal migrants flooding the country in recent years, and now amounting (according to the data presented to us) to almost one percent of the population, demonstrates how much Israel needs to adopt an immigration policy and to define objectives, targets, and rules that will enable the authorities to implement it. This reality also demonstrates the negative outcomes of the absence of such an immigration strategy…For example there is no clear legislative (or to the very least – regulatory) arrangement with regard to the acute question of the right of thousands of infiltrators to work in Israel. The solution that the State has come up with…is to deny them work permits but also not to enforce this legal prohibition …This kind of ad hoc solutions cannot replace a clear policy…

The need for an appropriate normative arrangement has been dealt with by the legislator in a problematic, sweeping, ad hoc move, by adding the 3rd Amendment to the Law on the Prevention of Infiltration. This Amendment has two faults. First, it provides no answers to the complex problems that have been created by the arrival of thousands of infiltrators to Israel and their largely dense concentrations in various cities and settlements. The detention of infiltrators that have just arrived and are few in numbers is completely ineffective in this regard. Secondly, as has been previously mentioned by my colleagues, the Amendment…magnifies and amplifies the violation of the constitutional right to liberty of the illegal aliens; a violation of this magnitude is not commensurate with the need for their deportation…." (para. 1 and 2 to Justice Hayut's opinion).

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

The Decision nullifies legislation of the Israeli Parliament – the 3rd Amendment to the Law on the Prevention of Infiltration, 2012.

The Court recalls that the jurisprudence on the Law of Entry states that conditions of bail should not be so unreasonable as to prevent the possibility of release, particularly after a long period of detention (Administrative Appeal 7267/09 Abdulai vs. Ministry of Interior).

Referring to the Amicus Curiae requests submitted (including by UNHCR Israel), the court found that there is no need to rule on these requests. The information submitted in these briefs was taken into account (as well as oral briefs presented during the hearings) and form part of the basis for the decision (para. 64-65 to Justice Arbel's decision).

Note: It is important to stress that although reference is made to the 1951 Convention and International Human Rights Law, as well as to the UNHCR Detention Guidelines, these serve only as the basis for *interpretive* guidance of legislation, since the 1951 Convention has not been adopted as national legislation. The legal analysis therefore focuses on the compliance of the Amendment with the national Basic Law: Human Dignity and Liberty and not with the State's international human rights obligations (para. 7 of Justice Arbel's decision).

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.

2. Where applicable, please follow the court's official case reference system.

3. For example in situations where the country of return would be different from the applicant's country of origin.

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