

The Supreme Court  
HCJ 7146/12 Adam v. the Knesset  
Regarding the Constitutionality of Amendment no. 3 to the Prevention of  
Infiltration Law

Summary of the Judgment

In a judgment given on 16 September 2013, an extended panel of nine Justices of the Supreme Court of Israel decided the question of the constitutionality of the arrangement enacted by the Knesset in 2012, in amendment no. 3 of the Prevention of Infiltration Law (Offenses and Adjudication), 5714-1954, which allows holding infiltrators in custody for a period of three years.

All nine Justices of the panel held, unanimously, that the arrangement is unconstitutional because it disproportionately limits the constitutional right to liberty determined in Basic Law: Human Dignity and Liberty.

Regarding the scope of constitutional relief the court held, by a majority of President *A. Grunis*, Deputy President *M. Naor* and Justices *E. Arbel*, *S. Joubran*, *E. Hayut*, *Y. Danziger*, *U Vogelman* and *I. Amit*, that all the arrangements determined in the various provisions of section 30a of the Prevention of Infiltration Law must be annulled. Justice *N. Hendel* dissented, holding that only the provisions of section 30a(c) of the Prevention of Infiltration Law should be annulled. The Court further held that at the time of the annulment of the law, the provisions of the Entry into Israel Law, 5712-1952 will enter effect, such that the custody and deportation orders issued will be seen as if they were given pursuant to it. It was additionally held that the process of individual examination and release of all being held in custody must commence immediately. The process of examination of all those in custody was limited to a period of 90 days from the day of the judgment.

The Essence of the Opinion of Justice E. Arbel

Justice *E. Arbel*, who wrote the central opinion in the case, surveyed the phenomenon of infiltration into Israel in recent years, noting that there

are approximately 55,000 infiltrators present in Israel. Justice *Arbel* discussed that most of the infiltrators originate from the countries of Eritrea and Sudan, and discussed the difficulties that people from those countries experience. She also clarified that regarding citizens of Eritrea, the State of Israel today applies the international principle of non-refoulement, meaning that the state will not send a person to a place where his life or liberty are in danger. Sending people back to the Republic of Sudan is not possible due to the lack of diplomatic ties with Israel. That means that the state is confronted with a significant phenomenon of tens of thousands of infiltrators into its territory, who at this stage cannot be deported from its territory, for practical or normative reasons.

Justice *Arbel* further discussed the implications of the infiltration phenomenon for society in Israel. Regarding crime committed by infiltrators, she noted that there is disagreement regarding the factual situation, whereas there are studies that show that the level of crime committed by infiltrators is lower than that in society in general. She however emphasized that the distressful feeling of the residents of South Tel Aviv that the level of security in their neighborhoods has decreased considerably, should not be underestimated. Also mentioned were implications for the Israeli labor market, as well as budgetary implications. Justice *Arbel* noted that as of the end of 2010, the infiltrators constituted only 20% of the non-Israelis working in Israel without a permit, such that the difficulties on that issue stem only partially from the infiltration phenomenon. In conclusion, Justice *Arbel* noted that the picture is complex and contain hues of grey, in contrast to the black and white with which the parties wish to color it.

Justice *Arbel* further discussed the normative situation on the eve of the amendment to the Prevention of Infiltration Law, the background behind its legislation, and the amendment's provisions. She noted that the amendment began to be implemented in June 2012, and that at the time of the case approximately 2,000 infiltrators were in custody pursuant to it.

In the framework of the constitutional examination of the amendment, Justice *Arbel* determined that it limits the right to liberty enshrined in Basic Law: Human Dignity and Liberty. She discussed the importance of this right,

which is one of the basic rights of the individual and is based upon the values of the state as a Jewish and democratic state.

At the next stage, Justice *Arbel* examined whether the limitation of the right to liberty withstands the conditions of the limitations clause in the basic law. It was held that the limitation is made by a statute, and that the point of departure should be that the amendment befits the values of the State of Israel.

As for the condition regarding a proper purpose, Justice *Arbel* discussed the two purposes of the amendment. One purpose is preventing infiltrators from settling in Israel, and the state's need to deal with the implications of the phenomenon. It was held that this purpose does not raise difficulty. The second purpose, as presented by the state, is to curb the infiltration phenomenon. Justice *Arbel* clarified that the meaning of this purpose is actually deterrence. In other words, the very placing of infiltrators in custody deters potential infiltrators from coming to Israel. Justice *Arbel* emphasized that this purpose creates difficulties that are not negligible. A person is taken into custody not because he personally presents any danger; but rather in order to deter others. He is treated not as an end, but rather as a means. That treatment is undoubtedly an additional limitation of his dignity as a person. Justice *Arbel* discussed the caselaw of the Supreme Court, and the standpoint of international law, which reinforce the doubt whether this purpose is a proper one. However, Justice *Arbel* was willing to assume that the purpose is proper, noting that in an extreme situation in which this purpose becomes most necessary for the state and the preservation of its most basic interests, it may be possible to justify such a purpose.

Justice *Arbel* then progressed to the proportionality test. Regarding the first subtest, it was held that theoretically, there is a rational nexus between taking infiltrators into custody and preventing their settling in Israel and the negative implications stemming from their presence in the cities of Israel. However, the way the amendment is actually implied should be considered. According to the data, there are 55,000 infiltrators in Israel. Of them, only 1,750 are in custody, whereas, at the time of the case, that was

the maximum volume that could be held. That means that there is great doubt whether that purpose is actually fulfilled.

The picture regarding the rational nexus between the deterrence purpose and the taking of infiltrators into custody is not clear. The difficulty stems, *inter alia*, from the disagreement whether the infiltrators are mere labor immigrants, or refugees fleeing from atrocities in their countries. Nor does the numerical data, which indicate a drastic reduction in the number of infiltrators reaching Israel since the middle of 2012, lead to a clear conclusion. The main difficulty stems from the fact that taking infiltrators into custody was carried out simultaneously with the completion of the border fence between Israel and Egypt. The simultaneity of these processes creates a lack of clarity regarding the contribution of each factor to the decrease in the number of infiltrators. Justice *Arbel* thus assumed that this proportionality subtest is satisfied.

Justice *Arbel* held that the second subtest, regarding choosing the least harmful means, is not satisfied. To the extent that the purpose of the amendment is deterrence, there are considerable chances that the border fence between Israel and Egypt will be sufficient. As for the purpose regarding settling in Israel and the negative implications of the infiltration phenomenon, a variety of alternate means that will fulfill that purpose in a less harmful way can be formulated. Thus, for example, duties to report can be created; area of residence can be limited; infiltrators can be required to stay at a facility at night; some of the foreign workers can be replaced by infiltrators; enforcement against human smugglers can be intensified; the local authorities can be reimbursed for their expenses in handling the infiltrators; police monitoring can be intensified in areas with high concentrations of infiltrators; labor laws can be more strictly enforced; and more. Such means can be employed alongside means of monitoring and punishment, as well as actions taken in order to allow the deportation of infiltrators from Israel. Justice *Arbel* also surveyed the way other countries in the world confront similar phenomena via various means, without denying liberty for a long period of time.

In *obiter dictum*, Justice *Arbel* also examined the third subtest of proportionality, regarding the existence of a reasonable ratio between the limitation of the constitutional right and the benefit stemming from the limitation. It was held that this subtest is also not satisfied. Imprisoning the infiltrators and denying their liberty for a long period of three years is a critical and disproportionate blow to their rights, their bodies and their souls. The limitation is a most severe one, of high and great intensity. It is uncontroversial that most of the infiltrators arrive from countries in which their living conditions are most difficult, and where the human rights situation is very bad. This fact should also be taken into account when measuring the intensity of the limitation.

On the benefit side of the scales, it was held that in light of the severe limitation of the right to liberty, the state must be prepared to take on the economic burden involved in confronting the infiltrators. Regarding the implications for the local population: they continue to deal with the difficulties now, as most of the infiltrators in Israel are not in custody. Considering that there are many alternative means that the state can employ, and considering the border fence with Egypt and the possibility of improving its efficiency, it cannot be said that the benefit attained by taking infiltrators into custody is greater than the severe limitation of their rights.

Justice *Arbel* emphasized that an unbearable situation might occur, in which infiltrators continue to swarm into the State of Israel despite all the other means employed, putting the state in danger of severe harm to its vital interests. In such a situation it will be possible to say that the benefit is not less than the damage, and Israeli society cannot endanger itself for the people of other countries. However, in her opinion we are very far from that dark forecast.

Justice *Arbel* noted, in conclusion, that the result of this judgment will not be easy for the Israeli public, and will be particularly difficult for the residents of South Tel Aviv, whereas the distress reflected in their cry sounds heartfelt, and evokes empathy and understanding regarding the need to assist them in the situation in which they find themselves. She further added: "I want to believe that the state will be able to find the way to deal

with the situation that has arisen through means it has at its disposal and to ease their distress. Woven like a thread in this opinion is the attempt to clarify and persuade that it is not correct to choose a solution that, *prima facie*, seems simple – a long period of custody – as it is a most harmful means toward any person, certainly most harmful to infiltrators held in custody for a long period. I reiterate that one of the most important basic rights of a person, which is at the tip of the pyramid of rights, is the right to liberty. Since ancient times, people always have fought for freedom. Limitation of the right to liberty is one of the most severe limitations that one can think of. Denying the freedom of the infiltrators by imprisoning them for a long period is a critical and disproportionate limitation of their rights, their bodies and their souls. We should not solve one injustice by creating another injustice. We cannot deny fundamental basic rights and at the same time coarsely limit human dignity and liberty in the framework of a solution to a problem that requires a fitting comprehensive political solution. I have noted in the past in another context that 'the needs of one group, important as they may be, cannot be satisfied by limiting the needs and rights of another group in the population" (FH 10007/09 *Gluten v. The National Labor Court*, par. 29 of my judgment (18 March 2013)). We must not forget our basic principles that flow from the declaration of independence, and our moral duty toward every person, as a person, as they are etched on the basic pattern of the state as a Jewish and democratic state."

The relief granted in the petition is annulment of section 30a(c)(3) of the Prevention of Infiltration Law, that determines the taking into custody of infiltrators for a period up to three years. No separation can be made between the parts of the amendment when its central provision is void. The conclusion is therefore that in actuality, all of section 30a will be annulled, and the existing arrangement in the Entry into Israel law will take its place.

#### The Essence of the Opinion of Justice U. Vogelman

In his judgment, Justice *U. Vogelman* concurred in the conclusion of Justice *Arbel* that the custody arrangement determined in amendment no. 3 of the Prevention of Infiltration Law is unconstitutional, and that it must be annulled. Justice *Vogelman* held that the amendment was in fact intended to deal with

immigrants that the State of Israel does not deport to their countries of origin at the present time: citizens of Eritrea and citizens of North Sudan. The factual picture regarding this group is complex. Although the economic motivations of these immigrants should not be ignored, their claims of international protection, against the backdrop of information regarding their states of origin as well as policy employed regarding them *de facto* by the State of Israel and the countries of the world, cannot be aloofly brushed aside. In the framework of the constitutional examination, Justice *Vogelman* concurred in Justice *Arbel's* determination that the amendment severely limits the infiltrators' right to personal liberty. Similar to Justice *Arbel*, Justice *Vogelman* did not wish to rule on the question whether the purpose behind the amendment is a "proper purpose", although that question raises difficulty, because in any case the provisions do not withstand the proportionality tests, as they were outlined in caselaw.

It was held that the critical limitation of the right of those held in custody to personal liberty does not have a proportional relationship to the alleged benefit of the amendment. In addition, the arrangement set out deviates from the accepted principles in immigration law in Israel and the world regarding denying the liberty of persons who are in the country illegally. It was further noted that there are other alternatives (including those employed in the rest of the world) for dealing with a phenomenon of infiltration, which can fulfill the purposes of the amendment – albeit not fully – while limiting the right to personal liberty to a considerably lesser extent. Justice *Vogelman* wondered whether the state can rely upon the negative implications of the infiltration phenomenon of recent years as a justification for employing harmful means, without making any attempt to confront those implications through alternative means that are less harmful. On the plane of relief, Justice *Vogelman* opined that there is no choice but to annul the possibility of employing the custody arrangements determined in section 30a of the law entirely, as according to his line of reasoning, annulment of only section 30a(c)(3) of the law would not lead to the desired result. Due to the critical limitation of the infiltrators' right to personal freedom, the declaration of voidness of the amendment provision should not be delayed. As a result of the declaration of voidness, the cases of all of the infiltrators upon which the amendment was employed shall be examined according to the

arrangement set out in the Entry into Israel Law. The authorities must examine the cases of those who are in custody immediately, and those who can be released – should be released immediately. The period of ninety days determined for examining the causes for release set out in the Entry into Israel Law and their caveats is the maximum period for examining the cases of all of those in custody, due to their large number. As noted, a person whose examination has been completed and regarding whom there is no cause to prevent release – shall be released without delay.

The end of the judgment states: "the challenge which the State of Israel must confront and has had to confront in light of the unarranged immigration of tens of thousands of people from Africa into its borders is a difficult one. In my judgment, I have laid an extensive framework regarding the societal, economic and other difficulties it entails. No one disputes that the state cannot stand by and do nothing, and that it must confront this complex phenomenon. That is not only a discretionary power granted to the state; it is a duty imposed upon it, toward its citizens and residents. There are no magical solutions. At the center of our discussion is the issue of the constitutionality of the means chosen to do so. In a democratic society, not all means are legitimate. That is also the case regarding the arrangement which has been put forth for our constitutional examination. As difficult as the mission that the State of Israel is required to confront against its will may be, we must remember that those who have already passed through our gates are now among us. They are entitled to the right to liberty and the right to dignity granted in the basic law to any person, as a person. Limitation of these rights is possible only for a proper purpose and to an extent that is not excessive. The means chosen by the state does not withstand that standard, and does not successfully pass constitutional review. The arrangement determined in the amendment, the annulment of which we declare here, limits the right to personal liberty, which is a basic right of every person as a person, in a critical and disproportionate way, deviating from the principles accepted in Israel and in the rest of the civilized world. Thus, the custody arrangement set out in the amendment must be annulled".

### The Essence of the Opinion of Deputy President M. Naor

Deputy President *M. Naor* concurred in the opinions of Justices *Arbel* and *Vogelman*, noting that at the time of legislation of the amendment to the law under discussion in the petition, a well rooted principle already existed in the caselaw of the Supreme Court according to which a person cannot be held in detention if he cannot be deported within a certain time. The means of detention for a long period is not a proportionate one.

The Deputy President further noted that there is no doubt that the state has the right to hold the "keys to the house" and determine who enters its gates. Due to its geopolitical situation, the State of Israel found itself dealing with a very large number of infiltrators, well beyond its size in relation to other democratic states. The infiltrators are guests for a time, although that time is becoming longer. The infiltrators are not entitled to make *aliya* [the right of Jews to return to Israel and receive citizenship]. The state is allowed to find *legal* ways to deport them; ways that befit the caselaw of the Supreme Court of Israel and accepted international law.

The Deputy President further wrote: "the State faces a reality – forced upon it against its will – which it must confront. That confrontation poses difficulties that entail challenges. Those challenges require creative solutions. This could be the state's finest hour, if, in a reality forced upon it, it is wise enough to find humane solutions, solutions that comport not only with international law, but also with the Jewish worldview. At the same time, this could also be the finest hour of human rights organizations and supporters of human rights. My colleague Justice *Arbel* referred (in par. 66 of her opinion) to possible cooperation between the agencies of the state and human rights organizations. I wish to concur in that. Human rights organizations can show that beyond the (justified) activity to annul the statutory provision, they also have great ability for constructive activity: to enlist volunteers, to guide and train infiltrators, and to assist them while they are here".

### The Essence of the Opinion of Justice I. Amit

Justice *I. Amit* concurred in the opinions of Justices *Arbel* and *Vogelman*, according to which the statutory arrangement under discussion contradicts Basic Law: Human Dignity and Liberty, and must therefore be annulled.

Justice *Amit* determined that regarding those requesting asylum who have already entered the gates of the country, the state must treat them with open hearts and compassion regarding work, welfare, health and education, particularly in light of the march of tribulations they suffered on their way to Israel.

Justice *Amit* emphasized that the content of his opinion relates to the situation today, in which the number of infiltrators stands at approximately one percent of the population of Israel, as a *fait accompli*. At the same time, Justice *Amit* commented that one wonders about the numerical "red line" of what the state can bear without concern for a real limitation of its sovereignty, its character, its national identity, its cultural-societal character, the makeup of its population and the entirety of its unique characteristics, and without concern for its stability and of "breaking its neck" in terms of crowding, welfare and economy, internal security and public order. Against that backdrop, Justice *Amit* noted that when balancing between various basic rights or between basic rights and the vital interests of the state, we must be aware of the data, the assessments and the forecasts, as there are situations in which "quantity makes quality".

In any case, Justice *Amit* clarified that this is not the situation today, but assuming other situations and data, the result might change on the legal plane as well.

### The Essence of the Opinion of Justice S. Joubran

Justice *S. Joubran* is of the opinion that at the stage of examination of the constitutionality of the purpose of the amendment to the law (in our case, curbing the phenomenon of infiltration), the Court must refrain, to the

extent possible, from constitutional examination of the means to achieve it (in our case, detention of the infiltrators). In his opinion, the role of the proper purpose test is to provide an answer to the question whether the purpose of the statute provides sufficient justification for the limitation of the constitutional right.

The state's position was that the infiltrators' very awareness of the legal tools for confronting labor immigration influences their decision whether to immigrate into its borders. Justice *Joubran* was of the opinion that it is conceivable that the normative situation in a given country is a consideration that influences the decision of labor immigrants whether to "infiltrate" into it. In his opinion, there is no principled reason preventing means that constitute a "normative block" against labor immigrants. He is of the opinion that the desire of a country to formulate legislation that does not encourage labor immigration is not illegitimate; it does not deviate from its prerogative to determine who passes through its gates; it comports with its sovereignty, subject, of course, to the limitations clause, and its commitments pursuant to international law. This question becomes more complex regarding persons who are entitled to refugee status. In the current circumstances he is of the opinion that there is no need to decide that question.

The amendment to the statute allows holding infiltrators in custody for three years until their deportation; however, *de facto* their deportation is not possible, and they are destined to remain in custody. In the opinion of Justice *Joubran*, that situation limits the infiltrators' right to liberty, which cannot at this time be tolerated. Therefore, he concurs that the amendment must be annulled.

#### The Essence of the Opinion of Justice Y. Danziger

Justice Y. *Danziger* was also of the opinion that the arrangement determined in the Prevention of Infiltration Law (Offenses and Adjudication)(Amendment no. 3 and Temporary Provision), 5772-2012 is unconstitutional and must be annulled.

Justice *Danziger* wished to add that even if it can be assumed that there is an economic element to the choice of thousands of citizens of Sudan and Eritrea to come to the State of Israel, they cannot be categorized as mere illegal labor immigrants. It must be assumed that in some of the cases, they are refugees entitled to political asylum. However, the State of Israel chose not to examine individual asylum applications submitted by some of the Sudanese and Eritrean citizens, but at the same time refrained from deporting them back to their countries, either due to the "temporary non-deportation" policy, or due to other constraints.

The challenge the state is required to confront when dealing with unorganized immigration of a large scope intensifies due to the distress of the residents of the neighborhoods of South Tel Aviv, in which many of the immigrants live. The cry of the residents of the neighborhoods echo in our hearts, and their pain is our pain. However, the solution to that distress is not to be found in holding thousands of people – men, women and children – in custody in prison facilities for an indefinite period of time, without them being accused – needless to say put on trial – for anything, when there is no foreseeable possibility of deporting them. That is an extreme limitation of their basic right to liberty. The state has the duty to confront this complex problem in ways that comport with constitutional norms accepted in Israel and in the countries of the civilized world.

#### The Essence of the Opinion of Justice E. Hayut

Justice *E. Hayut* concurred in the judgment of Justice *Arbel*, and in the judgment of Justice *Vogelman*. She further commented that the State of Israel remains the only western democracy in the world with no organized immigration policy, and that *ad hoc* solutions are no substitute for such needed policy. According to Justice *Hayut*, the legislature responded to the need for a fitting and comprehensive normative arrangement with a very specific act that is problematic and extreme, by adding amendment no. 3 to the Prevention of Infiltration Law. That amendment has two faults. First, it contains no solution for the complex problems created as a result of the arrival of tens of thousands of infiltrators into Israel who have concentrated themselves in large groups in big cities and various communities.

Imprisoning the infiltrators who have just arrived, and whose number is relatively small, is in this context a completely ineffective means. Second, she determined that the provisions of the amendment to the statute and the detention arrangement set out in it substantially enlarge and intensify limitation of the constitutional right to liberty of those illegally in the country, and a limitation of such an intensity exceeds the extent necessary in order to complete the process of their deportation. Justice *Hayut* further emphasized that the conclusion regarding the voidness of the statute does not mean that the legal situation prior to its legislation was satisfactory. The opposite is the case. The immigration policy issue cries out for a comprehensive legislative arrangement and long term thinking that might provide a proper solution for the many challenges it poses for Israeli society.

#### The Essence of the Opinion of Justice N. Hendel

The position of Justice *N. Hendel* is that the reality that led to amendment of the statute cannot be ignored: a flood of tens of thousands of illegal infiltrators, which mainly harmed the weaker socio-economic strata of society. That is the ground upon which the amendment to the statute grew, and that should not be forgotten. Of course, one cannot ignore the duty – which also stems from Jewish law – to act compassionately toward any person, as a person, "for the sake of paths of peace". However, alongside that duty there is also an additional duty in Jewish law: "the poor of your city come before the poor of another city". Balancing between both sides of the coin – on the public plane – is delicate, dependent upon the circumstances of reality, and is for the most part the domain of the legislature and the elected government.

When an infiltrator enters the country while clearly violating the law, the authorities may hold him in custody. However, a distinction must be made between the very act of holding him in custody, which is, in and of itself, necessary, and the length of the period of custody. That is the heart of the matter of this petition: does the maximum period of three years' custody withstand constitutional examination. The Court has the duty to examine the issue with strict constitutional review (strict scrutiny), which is familiar to us from American law. The significance of that is mainly that the issue must be

examined not only at the time of the legislation of the statute, but also at the present time.

From data relayed by the state it appears that there has been a drastic reduction in the number of infiltrators: from thousands of infiltrators per month, to tens or even a single digit number of infiltrators per month. That decrease "shouts" for itself. There can be no comparison between a situation in which 10 infiltrators enter the country each month and a situation in which 10,000 infiltrators enter the country each month. In addition one must consider the fact that the section under discussion is defined as a temporary provision, which *ex definitio* responds to a certain reality – a reality which no longer exists. In the new circumstances which have been created, and until a change occurs in them, a more proportional means is sufficient: a maximum period of custody that does not reach, or even approach, 3 years. Comparative law that shows various solutions for the period of custody was presented. That does not obligate or limit Israel, but it may be of assistance to the Israeli legislature.

Thus, section 30a(c)(3) must be annulled. Along with it, the entirety of section 30a(c) must be annulled, as its provisions are derived from the maximum period of 3 years. That annulment is sufficient, and there is no need to annul the entire temporary provision as proposed by the majority in this case. There are two reasons for this. First, the other parts of the statute contain positive components, such as the causes for release, which are not subject to conditions regarding time. Second, that requires the legislature to concentrate upon the main issue – determining a different maximum period for custody, and will allow it to complete the job without deviating from the 90 day deadline which has been determined. Unnecessary pressure, which might not result in any benefit, should not be put on the legislature. The time remaining until the expiration of the temporary provision – 15 months – will grant the legislature time to think and to study the implementation of the temporary provision on the ground, and thus determine a proper alternative.

#### The Essence of the Opinion of President A. Grunis

President A. *Grunis* concurred in the opinions of Justice *Arbel* and Justice *Vogelman*, according to which the Prevention of Infiltration Law (Offenses and Adjudication)(Amendment no. 3 and Temporary Provision), 5772-2012 (hereinafter – the "Law") contradicts Basic Law: Human Dignity and Liberty, and thus must be annulled. President *Grunis* based his opinion upon reasons that are different, to a certain extent, from those raised by Justice *Arbel*. According to his line of reasoning, the law is faulty not because it does not withstand the second subtest of proportionality, but rather because it does not withstand the third subtest, known as "*proportionality stricto sensu*". In other words, it must be annulled because it does not maintain a reasonable relationship between the period of custody and the advantages stemming from the law. According to his opinion, in the current reality, the arrangement in the law, which allows holding the infiltrators in custody for a period of three years, is constitutionally repugnant, particularly in light of the fact that it is not at this time possible to deport most of those in custody, who are citizens of Eritrea and Sudan.

Nonetheless, the President emphasized that the voidness of the statute is proper at this time, that is, in the existing circumstances. In his opinion, a substantial negative change in the circumstances, e.g. a significant rise in the number of infiltrators crossing into Israel's borders, would justify renewed judicial examination of the issue, should the Knesset again enact a similar statute. Moreover, according to his approach, even in the existing circumstances there is nothing preventing legislation of a new statute that allows holding the infiltrators in custody for a period of time significantly shorter than three years.