LAA 7216/18

Petitioner: Lara Alqasem

v.

Respondents: 1. Ministry of Interior – Population and Immigration Authority

2. The Hebrew University

Request to Join: Im Tirtzu

Attorney for the Petitioner: Adv. Yotam Ben Hillel; Adv. Leora Bechor

Attorney for Respondent 1: Adv. Yonatan Berman

Attorneys for Respondent 2: Adv. Pepi Yakirevich (Traub); Adv. Anat Tal

Attorney in the Request to Join: Adv. Yaakov Cohen

The Supreme Court sitting as the High Court of Justice

(*Before: Justice N. Hendel, Justice U. Vogelman, Justice A. Baron*)

Israeli Supreme Court cases cited:

[1] HCJ 7803/06 *Abu Arafeh v. Minister of Interior*, (Sept. 13, 2017)

[2] HCJ 8093/03 *Artmiev v. Ministry of Interior*, 59(4) IsrSC 577 (2004)

[3] HCJ 758/88 *Kendel v. Minister of Interior*, 46(4) IsrSC 505 (1992)

[4] HCJ 1031/93 *Pessaro (Goldstein) v. Minister of Interior*, 49(4) IsrSC 661, 705 (1995)

[5] HCJ 5239/11 *Avneri v. Knesset*, (April 15, 2015) [https://versa.cardozo.yu.edu/opinions/avneri-v-knesset]

[6] CA 6407/14 *Carmiel Local Planning and Building Committee v. Masri*, (May 24, 2018)

[7] CA 8622/07 *Rothman v. P.W.D. - National Roads Company of Israel Ltd.*, (May 14, 2012)

[8] HCJ 1905/03 *Akal v. Minister of Interior*, (Dec. 5, 2010)

Judgment

(Oct. 18, 2018)

Justice N. Hendel:

1. The request before me is for leave to appeal the judgment of the Tel Aviv-Jaffa District Court, sitting as an Administrative Court, of Oct. 12, 2018 (AA11002-10-18, Judge Erez Yakuel) (hereinafter: the judgment). The District Court denied the Petitioner's appeal of the decision by the Tel Aviv Appeals Tribunal of Oct. 4, 2018 (App (Tel Aviv) 5604-18, Judge D. Bergman), denying the Petitioner's appeal, and upholding the decision by Respondent 1 (hereinafter: the Ministry of Interior) to revoke the visa that was issued her, and to deny her entrance into Israel because of her activity in promoting the imposition of a boycott on the State of Israel.

Background and the Parties' Arguments

2. The Petitioner – a U.S. citizen, born in 1996 – recently completed her undergraduate studies at the University of Florida, and decided to continue to graduate studies at the Hebrew University in Jerusalem. On April 24, 2018, she was accepted to the Human Rights and Transitional Justice Program at the Hebrew University's Faculty of Law, and she was later informed that she was awarded a scholarship for the period of her studies. The Petitioner then set about arranging her

entry into the State of Israel, which she had already visited on a B/2 tourist visa. On Aug. 3, 2018, at the Israeli consulate in Miami, she received an entry visa and A/2 temporary residence permit (student) for a period of one year. Just before the academic year began, the Petitioner landed at Ben Gurion Airport, with the intention of entering the State of Israel. However, after questioning, and after representatives of the Ministry of Strategic Affairs and Public Diplomacy found that the Petitioner had been involved in activity to promote the imposition of a boycott of the State of Israel, the Minister of Interior decided to deny her entry. A document entitled "Decision on Refusing Entry under the Entry into Israel Law, 5712-1952," cited the reason for the refusal as "considerations of preventing unlawful immigration" and also "considerations of public security or public safety or public order".

As noted, the Petitioner appealed the Minister's decision before the Appeals Tribunal, arguing that she has not been a member of the SJP (Students for Justice in Palestine) organization since April 2017, and that even during her tenure as president of the organization, she was not really involved in BDS (Boycott Divestment and Sanctions Movement) activity. Furthermore, the Petitioner declared that she currently does not support the boycott movement, and she committed not to call for a boycott of Israel during her stay in Israel, or to participate in BDS activity. In light of those statements, the Appeals Tribunal ordered the Ministry of Interior to reconsider its decision, and to consider a letter from the Rector of the Hebrew University, Prof. Barak Medina, which noted that the decision risked seriously undermining the efforts of Israeli academia to promote Israel's academic image throughout the world. However, after the Ministry of Interior stood by its decision, the Appeals Tribunal denied the Petitioner's appeal, holding that the decision had not been shown to deviate from the margin of reasonableness to an extent that would justify intervention. That holding was justified in light of the broad discretion granted to the Minister of Interior on the question of entry into Israel, and because no arguments were raised against the validity of sec. 2(d) of the Entry into Israel Law, 5712-1952 (hereinafter: the Entry Law) itself, or against the criteria established under it.

The Petitioner appealed the decision of the Appeals Tribunal, but her appeal was denied. The District Court found that there is a fear that the Petitioner would exploit her stay in Israel in order to promote the imposition of a boycott on it, and therefore: "The Minister of Interior's discretion, as exercised, is compatible with the purpose grounding sec. 2(d) of the Entry into Israel Law."

3. Hence the current request for leave to appeal, in which the Petitioner raises a number of challenges to the lower court's ruling and to the Minister of Interior's decision. On the issue of authority, the Petitioner alleges that the authority that sec. 2(d) of the Entry Law grants the Minister of Interior is limited to preventing the entry of a person who acts *in the present* on behalf of an organization or entity that calls for imposing a boycott on the State of Israel. In any event, it was wrong to prevent her entry because she has not been a member of an organization of that kind since April 2017, at the latest. The Petitioner emphasizes that the Ministry of Interior did not present any evidence of her involvement in activities by boycott organizations during later periods of time, and that its allegations on the issue, which were first raised at the stage of the appeal, lacked detail and documentation. The Petitioner also argues that, given the infringement of fundamental rights, including the right to freedom of political expression, sec. 2(d) of the Entry Law should be interpreted narrowly, and it certainly should not be broadened beyond the criteria that the Minister of Interior and the Minister of Strategic Affairs approved. Because the student organization SJP is not one of the "prominent" boycott organizations, and the Petitioner herself never engaged in "substantial, consistent and uninterrupted" activity "to promote boycotts," she does not come within the purview of the aforementioned criteria, and the Ministry of Interior's decision in her case was *ultra vires*.

Regarding the issue of reasonableness – the Petitioner repeatedly stresses that there is no basis to the fear that she will exploit her stay in Israel to promote a boycott of the state. In addition to the commitment she made before the Appeals Tribunal not to act in that manner, her determination to participate in Israeli academia constitutes the antithesis of boycott activity, and casts serious doubt upon the fear that she will call for such a boycott in the future. The Petitioner argues that, in responding to questions from the authorities, she has never hidden information, and she believes that, considering her practical actions – meaning her aspiration to study in an Israeli academic institution – the attempt to present the deleting of her social media accounts as testimony to her support of a boycott of Israel is utterly unpersuasive. The Petitioner also presents letters from professors and lecturers at the University of Florida that testify to her interest in Israel and the significant and respectful dialogue she has had with Israeli actors. Under these circumstances, she argues that her reliance on the visa lawfully issued to her two months before her landing in Israel should tip the scales, inasmuch as the Petitioner currently has no apartment or workplace in the United States, and the current academic year has already begun.

4. In its response, the Hebrew University agreed with the Petitioner's position, and focused on the principled aspects that the request for leave to appeal raises. In its view, opening the gates of Israeli academia to foreign students and scholars is "the best way to strengthen the global image of the university and of the State of Israel as a democratic, enlightened and egalitarian state", while preventing their entry causes "irreversible damage to the international relations that the university is cultivating." From an academic perspective, as well, there is great value to the diversity and multiplicity of opinions created by having students of different cultural, linguistic and national backgrounds in the classrooms. From a legal perspective, the university believes that, given sec. 2(d) of the Entry Law's infringement of freedom of expression, it should be interpreted narrowly, to allow preventing entry into Israel only "in special and exceptional circumstances […] for example when there is a clear security fear." The university concludes by saying that the Petitioner's willingness to study in Israel is "the best response to those who support boycotting the State of Israel", and it emphasizes that, in any event, the Petitioner's permit could be revoked if it were to emerge that she engaged in boycott activity. For these reasons, the university believes that the Petitioner should be allowed to join her classmates in the lecture halls of Mount Scopus.

5. As opposed to this, the Ministry of Interior believes that there are no grounds for intervening in the ruling of the lower court and the tribunal – certainly not in the framework of a third round of litigation. That position is based on the broad discretion granted to the Minister of Interior to control the entry of foreigners into Israel; because we are dealing with "a clear question of government policy that was also even expressed in primary legislation", and because the request for leave to appeal addresses factual issues, and it has no broad implications.

   On the merits, the State believes that sec. 2(d) of the Entry Law should not be viewed as a comprehensive arrangement, and that the Minister of Interior may also act pursuant to his general authority under sec. 2(a) of the Entry Law in cases that do not come within the purview of the concrete arrangement. In its opinion, "the legislature only limited the possibility of giving a permit to someone connected to the boycott movement", but did not seek to limit the Minister's existing discretion to revoke a permit. The State said that the Minister of Interior himself made the decision in the Petitioner's case, after he consulted with the Minister of Strategic Affairs and considered the entirety of relevant considerations, such that there should be no intervention in his exercise of discretion.

In any event, the State believes that the Petitioner's case also comes within the purview of the specific arrangement in sec. 2(d) of the Entry Law. That is both because of the organizational affiliation of SJP – which the Ministry of Interior believes is "an integral part of the NSJP organization," which is one of the prominent boycott organizations – and also because of actions in which the organization directly engaged during the time period when the Petitioner was "an activist, a vice-president and the president of the branch." Under those circumstances, the short period of time during which the Petitioner claims to have refrained from boycott activity, or her commitment not to engage in similar activity during her stay in Israeli, is insufficient to assuage the fear that she will exploit her entry into the country. Furthermore, the Minister of Interior believes that there is substantial evidence that the Petitioner has continued her boycott activity: deleting her social media accounts – a practice common among boycott activists – as well as her choice to refrain from proactively disclosing her activities prior to being questioned about them. Therefore, even if the Minister's authority were confined to the arrangement in sec. 2(d) of the Entry Law – an assumption that the State, as aforesaid, refutes – there would still be no grounds to intervene in his decision regarding the Petitioner.

Finally, the Ministry of Interior argues that the issue of the Petitioner's reliance does not alter the overall picture. Section 11(a) of the Entry Law explicitly authorizes the Minister of Interior to revoke a visa "upon the arrival" to Israel of its bearer, and considering that the Petitioner is the one who chose to refrain from disclosing the entirety of relevant information at the time she applied for the visa, the Minister's authority was lawfully exercised.

6. It should be noted that the "Im Tirtzu Movement" asked to join the proceeding as a party. In its request – and we decided to suffice with just the request – it argued that allowing the Petitioner to join the Hebrew University would create tensions among the institution's students, and might lead to their physical harm, which is a right that trumps academic freedom and freedom of expression. In contrast, the Movement argues that deporting the Petitioner would have great effect on both "the State of Israel's deterrence, as well as restoring the State of Israel's sovereignty over its borders."

Discussion and Ruling

7. The request for leave to appeal raises principled questions regarding the content and scope of the Minister of Interior's authority to prevent entry into Israel of a person who knowingly published a public call to impose a boycott on the State of Israel, or who acts on behalf of an organization or entity that did so. Thus, for example, it puts at issue the question of the relationship between the Minister of Interior's general authority under sec. 2(a) of the Entry Law and the specific arrangement outlined in sec. 2(d) of the law. Similarly, it raises the question whether the Minister's authority is limited to people acting in the present to impose a boycott on the State of Israel, or whether sins of the past can also lead to the shuttering of the country's gates. As I will clarify below, these principled questions have consequences for the analysis of the existing evidence and its relevance to our case. Therefore – and in light of the groundbreaking character of the issue – we decided to hear the request for leave to appeal as if leave to appeal had been granted, and an appeal had been filed pursuant to the leave granted.

Normative Background

8. Section 2(a) of the Entry Law states:

> The Minister of the Interior may grant –
>
> (1) a visa and transitory resident permit– up to five days;
> (2) a visa and visitor's residence permit – up to three months;
> (3) a visa and temporary residence permit – up to three years;
> (4) a visa and permanent residence permit;
> (5) a temporary residence permit for a person present in Israel without a residence permit who has been issued a deportation order – until his exit from Israel or his deportation therefrom.

As noted in another case, in general, "the Entry Law and the regulations enacted pursuant to it […] do not set criteria for granting the permit, and they leave the Minister with broad discretion" (HCJ 7803/06 *Abu Arafeh v. Minister of Interior* [1], para. 7 (hereinafter: the *Abu Arafeh* case)). Indeed, "The Minister of Interior is the country's 'gatekeeper'. He has the authority to grant visas and Israeli residence permits" and to determine who will enter Israel's borders (HCJ 8093/03 *Artmiev v. Ministry of Interior* [2], 584). However, the rule is that the Minister may only

weigh considerations that are consistent with one of the purposes of the Entry Law (HCJ 758/88 *Kendel v. Minister of the Interior* [3], 527-528); hereinafter: the *Kendel* case) – meaning:

> *On one hand*, the state's sovereignty, which imparts it with a "natural right" to control the identity of those entering its gates and the conditions for their residence within it […] limiting entry into Israel – not to mention restrictions related to granting citizenship or residence status – serve a list of goals, including preserving "the special culture of the state's residents, the identity […] their economic interests and public order and morality" (HCJ 1031/93 *Pessaro (Goldstein) v. Minister of Interior* [4], 705). In addition to the purpose of protecting sovereignty, there is also great importance to protecting the security of the state and the safety of its citizens – a purpose that may justify adjustments and changes in immigration law, commensurate with security needs [..] *on the other hand*, there is a valid additional –and sometimes contradictory – purpose, which is the need to protect the rights of those who hold residence permits (the *Abu Arafeh* case, para. 16 of my opinion).

Furthermore, the exercise of authority is subject to the grounds for judicial review customary in administrative law – including that of reasonableness (the *Kendel* case, *ibid.*).

9. In addition to the broad discretion given to the Minister of Interior regarding the granting of visas and permits pursuant to sec. 2(a) of the Entry Law, the legislature drafted a concrete arrangement for people involved in the movement to boycott the State of Israel. Sections 2(d) and (e) of the Entry Law, which are the focus of the current appeal, state:

> (d) A visa or residence permit of any kind will not be granted to a person who does not hold Israeli citizenship or a permit for permanent residence in Israel if he, or the organization or body on behalf of which he acts, knowingly published a public call for imposing a boycott on the State of Israel, as defined in the Prevention of Harm to the State of Israel by means of Boycott Law, 5711-2011, or has undertaken to participate in a boycott as aforesaid.
>
> (e) Notwithstanding the aforesaid in subsection (d), the Minister of Interior may grant a visa and residence permit as stated in that subsection for special reasons stated in writing.

The parties agree that the arrangement is of a deterrent, not a punitive, character. In other words, it seeks to equip the State of Israel with an effective tool to combat the boycott movement,

but it does not presume to settle accounts with the movement's activists and punish them for their actions. According to the Explanatory Notes of the Entry into Israel (Amendment No. 27) (Not Granting a Visa or Residence Permit to a Person calling for Boycotting Israel) Bill, 5777-2016:

> In recent years, calls to boycott the State of Israel have amplified. *As part of the State's battle against this difficult phenomenon, and in order to prevent representatives of organizations and entities that call for boycotting Israel from acting within the territory of the State of Israel to promote their ideas*, it is proposed to establish that, as a rule, a person who is not a citizen or permanent resident of Israel will not be given a visa or residence permit of any kind if he, the organization or the entity on whose behalf he acts, calls for a boycott of the State of Israel or committed to participate in such boycott (emphasis added).

Similar statements were made in advance of the bill's passage in the second and third reading. Thus, it was clarified that the purpose of the law is to combat the new phenomenon in which different organizations act against the State of Israel by promoting boycotts – cultural, economic and academic. Similarly, it was emphasized that a non-citizen has no vested right to enter the State of Israel, and that the law is intended to prevent people seeking to engage in unlawful actions or to call for a boycott of the State of Israel from entering the country and turning it into a base for their activities (Transcript of Meeting No. 334 of the Interior and Environmental Protection Committee, 20th Knesset, 2 (January 11, 2017)).

The aforementioned rationale – which emphasizes the battle against the boycott movement and the desire to prevent its members from exploiting their stay in the State of Israel – also led to a change in the original version of the bill. Initially, it contemplated denying entry to a person "if he, the organization or the entity which he represents" calls for a boycott of Israel. However, during the legislative process, the version "if he, the organization or the entity on whose behalf he acts" was adopted. That was done in order to "more correctly" define "the connection between the visit of the person whose entrance to Israel we want to allow the Minister of Interior to prevent, and that activity against the State of Israel" (*ibid.*), and to ensure that the authority would be exercised only against someone "who acts on their behalf now, in this context" (*ibid.*, p. 16).

10. In the context of this case, it has been said that there is no need to rule on whether the interpretation of the section, in all its aspects, should be narrow or broad, but rather, according to the rules of our

system, purposive interpretation is required. The section, as arises also from its language, was intended to prevent public calls to impose a boycott on the State of Israel. It applies to a person who published such a call or who acts on behalf of an organization or entity that did so. The definition of boycott is its definition in the Prevention of Harm to the State of Israel by means of Boycott Law, 5711-2011 (hereinafter: *the Boycott Law*), a fact that indicates the connection between the two pieces of legislation.

In other words, the concrete purpose of sec. 2(d) of the Entry Law is promoting the just battle that the State of Israel is waging against the boycott movement – based on the doctrine of defensive democracy and the state's right to protect itself and its citizens against discrimination (See, for example, HCJ 5239/11 *Avneri v. Knesset* [5], paras. 29-34 of the opinion of Deputy President H. Melcer). As stated in the *Avneri* case regarding the Boycott Law, "a call for boycott falls within the category referred to in constitutional literature as 'the democratic paradox', in which it is *permissible* to limit the rights of those who seek to benefit from democracy in order to harm it" (*ibid.*, para. 30). Just as a person has a right to self-defense, so the state has a right to defend itself and its public and citizens.

In addition to this concrete purpose – which is also reflected in the language of sec. 2(d) of the Entry Law – we should also recall the objective, subjective and general purposes of the Entry Law: protecting the sovereignty of the state and public safety and security. These purposes, as well as the section's concrete purpose, do not include an element of punishment or vengeance for past illegitimate acts, and they therefore support preventing entry when doing so has value from the perspective of protecting sovereignty or public safety. In other words, where a boycott activist's entry into the State of Israel risks serving as a platform for promoting boycott activity that has damaging implications.

The legislature believed that it would be appropriate to equip the state with an additional tool in its battle against boycott – in the form of authority to prevent the entry of activists seeking to exploit their stay in the State of Israel in order to act against it. However, in light of the purposes presented, it is understood that such authority is limited to people who threaten Israeli democracy and seek to bring it to its knees by imposing a violent, aggressive boycott. In contrast, it does not justify punishing, for the sake of punishing, actors who no longer engage in such activity or contribute to strengthening it.

11. The criteria that the Minister of Interior and the Minister of Strategic Affairs approved (Population and Immigration Authority, "Criteria for Preventing Entry into Israel of Boycott Activists" (July 24, 2017) reflect a similar perspective. They clarify that the authority established in sec. 2(d) of the Entry Law should be applied only to activists of organizations that "actively, uninterruptedly and continuously" support boycotts of Israel or against "independent" activists who act continuously and prominently to promote boycotts and meet one of the following criteria:

> Holders of senior or significant positions in organizations – serving senior, official positions in prominent organizations (such as, chair or board members). The definition of positions is subject to change in accordance with the character of each organization.
>
> Central activists – persons involved in real, consistent and continuing activity to promote boycotts in the framework of prominent delegitimization organizations or independently.
>
> Institutional actors (such as mayors) who promote boycotts actively and continuingly.
>
> Actors on behalf – activists who arrive in Israel on behalf of one of the prominent delegitimization organizations. For example, an activist who arrives as a participant in a delegation of a prominent delegitimization organization [emphasis original].

These criteria indicate that even the ministers responsible for implementing the arrangement established in secs. 2(d) and (e) of the Entry Law thought that it should be applied only against boycott movement activists who consistently, systematically and continuously promote the imposition of a boycott on the State of Israel. Consequently, the existence of a rift between the activist and his organization, or between the activist and his activity, may remove him from the purview of this arrangement. The tool of evaluating the actor and the act can help here. The act taints the actor and paints him as a target for applying sec. 2(d). Of course, that tool doesn't set rigid rules. There are levels of seniority and activity, and different information about each actor. For example, we would exercise more caution in evaluating a person who has held a senior position in BDS for decades than we would for a person who, even if he comes within the bounds of sec. 2(d), acted only for a relatively short period of time, at a relatively junior level. The burden on the former to prove disengagement from the boycott activity is heavier than that borne by the latter. The evaluation should be individualized, pursuant to the purpose of the law.

12. It should be emphasized that activists coming within the purview of sec. 2(d) of the Entry Law are subject to a relatively rigid arrangement that sec. 2(e) of the law creates. The latter structures the Minister of Interior's discretion and states that, as a default, he should prevent entry into Israel of prominent leaders who are presently active in the boycott movement, and that he may deviate from the rule only "for special reasons stated in writing."

    The concrete arrangement adopted by the legislature regarding boycott activists instructs the Minister of Interior to close the gates of the State of Israel to prominent activists seeking to use the state as a base for their activities in the present – barring the existence of special reasons to open these gates. However, this arrangement does not apply to people who took actions in the past in the framework of boycott organizations, but proved, clearly and convincingly – pursuant to the burden imposed on them, according to the test of the act and the actor, as noted – that they have abandoned such activity, and they no longer pose a risk of exploiting their stay in the State of Israel in order to undermine it.

13. Given this interpretation, we should evaluate whether the Minister of Interior's general authority under sec. 2(a) of the law allows him to take measures against boycott activists who do not come within the purview of the concrete arrangement.

    In this context, I am prepared to assume that the legislature made do with structuring the Minister's authority regarding boycott activists who come within the purview of sec. 2(d) of the Entry Law, without revoking his general authority regarding such activists (see Transcript of Meeting No. 276 of the Interior and Environmental Protection Committee, 20th Knesset, 5-19, and Transcript of Meeting No. 334 of the Interior and Environmental Protection Committee, 20th Knesset, 2-4 (January 11, 2017)). However, as clarified above, this general authority is not unlimited. It is subject to the purposes of the Entry Law – including those reflected in secs. 2(d) and (e) – and to the customary grounds for judicial review in administrative law. Furthermore, especially given the general character of the Minister's authority, which is characterized by an absence of statutory criteria, the standards established in the framework of the concrete arrangement in secs. 2(d) and (e) of the Entry Law also affect the Minister's discretion to act pursuant to his general authority regarding boycott activists. Again, we stress that the objective, specific and general purposes of the law are concerned with protecting the state, its sovereignty and the rights of its citizens, but they do not authorize purely punitive measures. Thus, even when

the Minister of Interior acts in the framework of his general authority, the factual question – whether there is a fear that the applicant will exploit his stay in the State of Israel in order to promote imposing a boycott on it – is of great significance. As noted above, the answer to that question is not limited to evaluating a person's activity at the moment of his entry into Israel. A relatively short "cooling-off period" from intensive and continuous boycott does not always testify to successful "weaning," and factors such as the quality, character and duration of the actor's boycott activity over time should be evaluated.

With this normative picture as background, I will now analyze the case before us.

From the General to the Specific

14. As a preliminary matter, it should be noted that in the current proceeding, no arguments were raised against the constitutionality of the Minister of Interior's authority to prevent boycott activists from receiving visas – an issue that is pending in HCJ 3965/17 [*Prof. Alon Harel v. Knesset*].[1] . The point of departure is, therefore, that both the Entry Law itself, as well as the criteria established pursuant to it, are valid and binding. Thus, the question we must address is whether the evidentiary basis set before the Minister of Interior was sufficient to validate his decision. The answer to that question is in the negative. We will avail ourselves of the test of the act and the actor.

In our case, the salient fact is the Petitioner's aspiration to find a place in Israeli academia and begin advanced studies at the Hebrew University. This was not a hasty decision made lightly, but rather the culmination of a lengthy process that the Petitioner initiated, which took months. As will be explained, it began with seminars in which the Petitioner studied at the Center for Jewish Studies at the University of Florida, including on the subject of the Holocaust of the Jewish People, and with her getting to know professors who studied at the Hebrew University and recommended it to her. The Petitioner indeed applied to study at the Hebrew University, and on April 14, 2018, she was informed of her acceptance to the "M.A. in Human Rights and Transitional Justice" program of the Faculty of Law. At the beginning of July 2018, the Faculty informed the Petitioner that she had been awarded a scholarship, and on August 3, 2018, she went to the Israeli consulate

[1] Ed: The case was left undecided after the Petitioners withdrew their petition (Feb. 28, 2018).

in Miami in order to get her entry visa and residence permit. As the opening of the academic year approached, the Petitioner landed in Israel, and despite the obstacles she has faced since then, she insists on her right to study at the Hebrew University. Such conduct is inconsistent, to say the least, with the theory that the Petitioner is an undercover boycott activist likely to exploit her stay in the State of Israel to promote the BDS movement. The term "boycott" is defined in sec. 1 of the Boycott Law as "deliberate avoidance of economic, cultural or academic ties with a person or other party, solely by reason of his association with the state of Israel" – meaning, conduct that is the opposite of that of the Petitioner, who is working to address and strengthen her connection with Israeli academia.

The Ministry of Interior admits that it has no evidence of any boycott activity whatsoever by the Petitioner since April 2017 – except for mysterious "indications" whose quality has yet to be explained, and no evidence about them was presented. The Ministry thinks that the act of deleting the Petitioner's social media accounts, as well as her decision not to initiate disclosure of her past involvement in boycott activity, have evidentiary value. However, even if we accord some weight to those things, they would appear insufficient to blur the fact that is our starting point: the Petitioner's insistence on joining Israeli academia as an enrolled student, not boycotting it. To that we add a lack of evidence of activity for the past year and half. Those facts make it easy to accept the Petitioner's reasonable explanation that her conduct stemmed from a fear that disclosing her past activities would place obstacles in her path – as was indeed the case – despite the change in her positions, or at the very least in her actions. And we should not expect the Petitioner to initiate sharing the entirety of her life story with the staff of the Israeli consulate in Miami without being asked to do so. Furthermore, it does not seem as if the State had difficulty finding electronic traces of the Petitioner's past activity, despite the deletion of her accounts – such that the absence of such traces at a later period of time casts doubt on whatever suspicion the deletion raises.

15. It is true that, in principle, the absence of BDS activity in the present does not completely negate the Minister of Interior's authority to prevent the entry of boycott activists. However, given the prolonged period of time that passed since the Petitioner participated in such illegitimate activity, and her relatively minor involvement, her decision to study in Israel suffices to tip the scales and to eliminate the fear that she would exploit her stay in Israel.

Indeed, the material presented regarding the period of time in which the Petitioner was active in the SJP organization – prior to April 2017 – indicates that even at that stage, the boycott activity was minor and limited. The "letter of recommendation" in which the Ministry of Strategic Affairs outlined the findings it obtained from open Internet sources lists three actions that the organization undertook – all in the months of March-April 2016. The documentary evidence attached to the letter indicates just one instance in which the organization itself called for boycott measures, while the other two instances were limited to "sharing" information about activities that others undertook. That was true for the case of the cultural center, Pen American Center, and also for the G4S company. It is true that, at a later stage of the proceeding before the Appeals Tribunal, the Ministry of Interior raised a claim, supported by a letter from a "pro-Israel" student at the University of Florida, that SJP was involved in an additional BDS event – putting pressure on other student organizations to try to prevent an Israeli from giving a lecture at the University in April 2017. In any event, even if we assume that the letter is reliable (despite the fact that its contents make clear that it was sent after its author became aware of the Petitioner's wish to study in Israel, rather than in real time), it still does not change the broader picture. There is no doubt that the SJP organization does indeed support boycotting Israel – and such a position is worthy of condemnation. We can also assume that the Petitioner, who held positions in the organization and was, for three years, one of its few members, took part in that illegitimate activity. However, we cannot ignore the relatively sporadic and minor character of the organization's activity. At the least, the organization is not one of the prominent boycott organizations, and it is doubtful that the Petitioner would have met the criteria even during the time she was an office-holder in it. I note that even if we assume there is an affiliation between the student organization at the University of Florida and the NSJP organization, which appears on the list of significant boycott organizations compiled by the Ministry of Strategic Affairs and Public Diplomacy, that does not mean that the concrete activity of the organization – which at its peak had 8 members – or the Petitioner's tenure as its president, has any real meaning, given the relatively meager scope of its activity, as noted above. It is worth noting that the Ministry of Strategic Affair's appendix mentions dozens of universities in which the NSJP worked to promote BDS decisions. The University of Florida, where the Petitioner studied, is not among them.

Furthermore, in addition to chance indications of the Petitioner's involvement in BDS activity during her studies, we cannot ignore the testimony of her professors regarding her complex

position, the curiosity she displayed regarding Israel and Judaism, and her willingness to engage in open, respectful dialogue, which are completely at odds with the idea of boycott. Thus, for example, Prof. Eric Kligerman of the Center for Jewish Studies at the University of Florida notes that the Petitioner participated in two seminars that addressed various aspects of Jewish history and their link to law – including in the context of the Holocaust of the Jewish People. According to him: "Far from being an advocate of BDS or a proponent of suppressing dialogue and the intellectual exchange between peoples, Lara is one of the most engaging and thoughtful students I have had in my seminars on Jewish culture and thought." That testimony, from someone who knows the Petitioner well, would appear to add an additional – more complex – dimension to the Petitioner's activity. In this context, it is also worth mentioning the letter by Dr. Yael Shenkar, who moderated an event held at the University of Florida to commemorate 100 years to the Balfour Declaration, in which she praises the respectful dialogue that developed between the Petitioner and participants in the event.

We will focus a bit on evaluating the actor. The Petitioner is currently 22 years old. Her activity in the SJP organization ended a year and a half ago, at the latest. Her activity in the organization at the university took place when she was younger. Understood in the context of her actions and the individualized information about her, the disconnect that has lasted a year and a half would appear significant. That is especially true because this period of time was not just characterized by the absence of activity against Israel, but also by steps that indicate a genuine desire to get to know Israeli society, culture and history.

16. Given these data, taken as a whole, we cannot accept the argument that preventing the Petitioner's entry serves the purposes of the Entry Law. The negligible activity in which she was involved as a young student at the start of her career cannot negate the change that she says she has undergone, and her desire to exchange the path of boycott for a path of dialogue and direct exposure to Israeli society and academia. The statute seeks to encourage changes of this kind, not to suppress them (See Transcript of Meeting No. 334 of the Interior and Environmental Protection Committee, 20th Knesset, 18 (Jan. 11, 2017)).

17. We should add that we are dealing with a decision by the Minister to revoke a visa given to the Petitioner, as opposed to refusing to grant one at the outset. The Petitioner argues that there is a substantial difference between refusing to grant a visa at the outset and revoking it retroactively.

Counsel for the State correctly responded that the difference is not that significant, given sec. 11(a)(1) of the Entry Law, which states that the Minister is authorized "to revoke a visa given according to this law, whether prior to the arrival of the visa-holder in Israel or at the moment of his arrival." However, the Petitioner's actual reliance on the visa given her is still a significant consideration. By itself, it would be an insufficient reason, were it not for the Petitioner's conduct in the period since April 2017. Given that conduct, however, her reliance is a meaningful consideration, under the circumstances of this case.

Epilogue

18. In any event, it would seem that, regarding the case before us, we can say, paraphrasing the Angel to the King of Khazaria, "Your intention is worthy – but some of your deeds are not." The battle against the BDS movement and its kind furthers a purpose that could not be worthier. The state is entitled, if not obligated, to protect itself from discrimination and from the violent silencing of political discourse. It is entitled to take measures against boycott organizations and their activists (without, at this point, addressing the question of the constitutionality of the concrete arrangements before us, which are to be reviewed, as noted, in separate litigation). Defending democracy is part of democracy. Just as a person is entitled to defend himself, a state is entitled to defend itself and its citizens. That, of course, is subject to the existing legal constraints.

In our case, preventing the Petitioner's entry does not promote the purpose of the statute, and the Hebrew University has even argued, for example, that doing so would harm Israeli academia. The battle against the boycott is appropriate and essential, as are the activities that the State of Israel undertakes to do so. However, the concrete action at issue before us clearly deviates from the margin of reasonableness, and it should not be upheld.

Regarding the Petitioner, recall that the Minister of Interior is authorized to revoke a residence permit given pursuant to the Entry Law, as noted in sec. 11(a)(2) of the law. Invalidating his current decision does not, therefore, give the Petitioner a carte blanche – because if she reverts to her old ways and exploits her stay in Israel to promote boycott activity, the Minister will have the means to revoke her permit and deport her from the country immediately.

19. I therefore recommend to my colleagues that we grant the appeal to overturn the District Court's judgment, and to order the Ministry of Interior's decision in the Petitioner's case void. The entry visa and temporary residence permit issued to the Petitioner at the Israeli consulate in Miami are therefore in force. Given the novel nature of the issues that arose in this proceeding, I recommend that each party bear its own costs.

Justice A. Baron:

1. Since its inception, the State of Israel has had to fight for its very right to exist and for the legitimacy of its existence against those seeking to boycott it, its institutions and its residents, because they are Israeli. The boycott phenomenon is serious. It manufactures global public opinion based on a warped, demonic picture of the State of Israel, and risks harming the Israeli economy and Israeli society. Obviously, we should not accept this phenomenon.

   In recent years, the Knesset has used legislation as part of the battle against the boycott phenomenon. The first statute it enacted in this context was the Prevention of Harm to the State of Israel by means of Boycott Law, 5711-2011 (known as *the Boycott Law*, as it will be referred to hereinafter). That law imposes tort liability and administrative restrictions on those who call for imposing a boycott on the State of Israel. At the time it was enacted, the Boycott Law created a public furor, revolving around the argument that it disproportionally infringes various constitutional rights, primarily freedom of expression. The Boycott Law underwent judicial review by an expanded panel of the High Court of Justice, and most of its provisions were upheld – except for the section that imposed damages without proof of harm on those calling for a boycott. The justices unanimously invalidated that section. In addition, the Court narrowly construed the sections of the law that established a civil wrong (see HCJ 5239/11 *Avneri v. Knesset* [5] (hereinafter: the *Avneri case*).

2. Following this trend, in 2017, the Entry into Israel Law, 5712-1952 was amended, and, inter alia, sec. 2(d) was added:

> (d) No visa or residence permit of any kind will be issued to a person who is not a citizen of Israel or a holder of permanent residence in the State of Israel *if he, the organization or the entity on whose behalf he acts, knowingly published a public call to impose a boycott on the State of Israel*, as defined in the Prevention of Harm to the State

> of Israel by means of Boycott Law, 5711-2011, or committed to participate in such boycott (emphasis added – A.B.) (hereinafter: sec. 2(d)).

That provision is at the heart of the current proceeding, as the Minister of Interior used it to revoke the Petitioner's student visa. Our role is to exercise judicial review over the way in which sec. 2(d) was applied in the Petitioner's case, and not to evaluate the constitutionality of that provision. However, in order to do so, we cannot avoid devoting a few words to the purpose of sec. 2(d) and the way in which it balances the various conflicting interests.

3. The point of departure is that the State of Israel has a right to take proportional measures in order to protect itself from opponents who call for boycotting it. The law's explanatory notes indicate that sec. 2(d) came about "*as part of the state's battle against this difficult phenomenon, and in order to prevent representatives of organizations and entities that call for boycotting Israel from acting within the territory of the State of Israel to promote their ideas*". The text of sec. 2(d) is clear and explicit. It requires barring someone who publicly calls for boycotting Israel or commits to participating in such a boycott from entering Israel. In contrast to other cases in which a person is refused entry into Israel, in this case the refusal also involves an *infringement of freedom of expression*. Like the Boycott Law, sec. 2(d) mandates imposing a sanction for *the act of publicly calling* for a boycott, or *committing* to participate in the boycott.

I do not intend here to address the question of whether or not calling for a boycott of the State of Israel comes within the purview of the "classic" purpose of freedom of expression (in the *Avneri* case, there were diverging opinions on the subject. See, for example, Justice H. Melcer in para. 30 of his opinion, and in contrast, Justice Y. Danziger in para. 7 of his opinion), or whether or not the extent of the infringement of freedom of expression inherent in sec. 2(d) falls within the "hard core" of the right. For us, first principles suffice. Freedom of expression is the life blood of democracy. When a person's right to freedom of expression is infringed pursuant to sec. 2(d), even if that person is not a citizen or resident of Israel, the arrow also pierces the heart of Israeli society as a democratic society. Freedom of expression is critical to the existence of a lively, free marketplace of ideas and opinions, public debate over important issues, and clarifying positions and world views. In the context of the boycott phenomenon, infringing freedom of expression thwarts the possibility of addressing ideas that we, as a society, wish to refute – something that, of

course, we do not want. On this issue, the words quoted by my colleague, Justice Vogelman, in the *Avneri* case are apt:

> The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race: […] those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they [those who oppose the opinion – U.V.] lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error (John Stuart Mill, *On Liberty*, chap. 22 (para. 6 of Justice Vogelman's opinion).

4. Yet it is clear that freedom of expression, like any constitutional right, is not absolute and may be restricted. In sec. 2(d), the legislature established a balancing point between the State of Israel's right to defend itself against boycotts and the principle of freedom of expression. While, as a rule, the Minister of Interior's authority on the issue of entry into Israel is broad, sec. 2(d) outlines standards for exercising the minister's *discretion* in preventing someone's entry because of a call to boycott Israel or commitment to participate in the boycott. These standards, in turn, serve us in judicial review of the Minister's exercise of that authority.

We are thus within the purview of sec. 2(d), whose text is clear and in the *present* tense. The plain meaning of that section is that the prohibition upon entry into Israel applies to someone who (currently) acts to impose a boycott on Israel; belongs (currently) to an entity or organization that calls for imposing a boycott on Israel; or committed to participate in such boycott. This line of interpretation is also indicated from the list of criteria that the Respondent published in July 2017 for preventing boycott activists from entering Israel. That list stated that sec. 2(d) should be implemented against organizations that support boycotts and promote them "*actively, uninterruptedly and continuously*," and against *central* activists who engage in "*substantive, consistent and uninterrupted*" activity to promote boycotts. Criteria were also established to permit the entry of activists in exceptional cases, even if they met the aforementioned criteria. There is, therefore, no basis for banning entry into Israel based merely on "*fear*" of engaging in boycott, or even because of the possibility that a person "*may*" act to promote a boycott during his stay in Israel – and it was inappropriate to expand the application of the section to cases of this kind, as expressed in the District Court's judgment.

5. And now to the case at hand. The Petitioner is a young, 22-year old student, a U.S. citizen, who was granted a visa to enter Israel for academic studies. In the past, the Petitioner was a member of an organization that, according to the Respondent, promotes boycotting Israel, and she even held key offices in it. However, since April 2017, for the past year and a half, the Petitioner has not been a member of that organization, and there is no allegation that during this period of time she acted in any way to boycott Israel or belonged to an organization that opposed Israel in any way. Considering the Petitioner's young age, this seems to me to be a significant period of time. In addition, the Petitioner committed not to engage in calling for a boycott of Israel during the entirety of her stay here, and her attorney repeated that commitment in the hearing. My opinion is that, under these circumstances, and according to the standards established in sec. 2(d), there was no basis for revoking the Petitioner's entry visa, because it is clear that the Petitioner does not currently engage in boycotting Israel and has not done so for some time, not to mention her failure to meet the criteria of "active", "uninterrupted" and "substantial" in this context. Given the aforesaid, the decision to revoke the Petitioner's entry visa was sufficiently unreasonable to justify intervention.

Here I should note that, because the Petitioner's *actions* do not give rise to sufficient cause to ban her entry into Israel, the unavoidable impression is that the visa she was given was revoked because of the *political opinions* she holds. If that is indeed the situation, this is an extreme and dangerous step, which risks causing the pillars of Israeli democracy to crumble. That is not the purpose of sec. 2(d), which is rather, as aforementioned, to take proportional measures to defend Israel from the boycott phenomenon.

Furthermore, the Petitioner's very desire to take part in academic studies in Israel appears to stand in contrast to the idea of imposing a boycott on Israel, especially an academic boycott: "Such a call for the boycotting of the Israeli academic community, or of Israeli lecturers, undermines academic freedom itself and prevents research and instruction whose purpose, *inter alia*, is the search for truth. *It is, in effect, a boycott of intellectualism itself, as boycott silences the discourse*." (emphasis added – A.B.) (*per* Justice H. Melcer in the *Avneri* case, para. 30). However, under the circumstances of our case, it is not the Petitioner's activity that is boycotting "intellectualism itself" – but rather, it seems, the decision to revoke the Petitioner's visa, preventing her from participating in academic studies here in Israel. Such decision also risks

causing harm to the reputation of Israel, thus achieving the opposite result of the legislative intent in enacting sec. 2(d).

6. Without detracting from the aforesaid, the onus is on the Petitioner to be aware of her responsibility to uphold her commitment and not to exploit her stay in Israel to promote a boycott of Israel. If she acts in violation of her declaration on this point – the Minister of Interior would be free to initiate appropriate proceedings against her, and even to order her deported from Israel, should that be justified. We do not know the secrets of another's heart, including the secrets of the Petitioner's heart, or how she will conduct herself in the future, after she returns to her country. However, these considerations are irrelevant to our case, because, pursuant to sec. 2(d) of the law, we must focus on the Petitioner's actions in the present – and not on her opinions, her thoughts, or speculations about her future.

In conclusion, for the reasons outlined above, I concur in the result that my colleague Justice N. Hendel reached, namely that the appeal should be granted, we should overturn the District Court's judgment and declare the Ministry of Interior's decision in the Petitioner's case void.

Justice U. Vogelman:

I concur with the decision of my colleague Justice N. Hendel. I also think the decision that is the subject of this appeal does not fall within the statutory framework established in sec. 2(d) of the Entry into Israel Law, whose interpretation I will address below.

Purposive Interpretation of Section 2(d)

1. Again we are asked to tread the well-worn path of purposive interpretation. The first station of our journey is, of course, the text of the statute, within whose bounds we will locate the meanings that are within "the zone of textual possibilities" that the legislative text can bear. An interpretation that lacks textual grounding cannot be upheld. Should we discover more than one textual possibility, at the next phase we must locate the one that best realizes the purpose of the legislation, which we discern by integrating the subjective purpose – the objective that the legislature sought to achieve by means of the statute – and the objective purpose, which expresses "the intention of

the legal system", meaning the values, principles and objectives that a piece of legislation is intended to achieve in a democratic society. We can learn these purposes from any reliable source, including the text of the statute, the legislative history, the general background, and the legal system's fundamental principles. Where a contradiction emerges among the various purposes, the interpreter should balance them by exercising judicial discretion, such that at the conclusion of the process, we determine the final purpose of the piece of legislation (See, inter alia, CA 6407/14 *Carmiel Local Planning and Building Committee v. Masri* [6], para. 48; CA 8622/07 *Rothman v. P.W.D. - National Roads Company of Israel Ltd.* [7], para. 34 and references there).

The Text of the Section

2. Section 2(d) authorizes the Respondent to refrain from granting a visa to someone who is not an Israeli citizen or a holder of a permanent residence permit "if he, or the organization or body on behalf of which he *acts*, knowingly published a public call for imposing a boycott on the State of Israel, as defined in the Prevention of Harm to the State of Israel by means of Boycott Law, 5711-2011, or has undertaken to participate in a boycott as aforesaid". The Respondent is thus authorized to act pursuant to the section if the visa applicant himself, or the organization or entity on whose behalf he acts, committed one of the following acts: knowingly published a public call for imposing a boycott on the State of Israel or committed to participate in a boycott as aforesaid.

3. In our case, there is no dispute that the relevant alternative is knowingly publishing a call for imposing a boycott on the State of Israel, and that such publication was done by the SJP organization, of which the Appellant was a member, and not by the Appellant herself. The dispute, which was also crystallized in the District Court's judgment, therefore focuses solely on the interpretation of the word "acts". The Appellant argues that the use of the present tense indicates that the authority pursuant to sec. 2(d) can be used only against those who, *at the time of the visa application*, act on behalf of an organization or entity that calls for imposing a boycott on the State of Israel. As opposed to this, the Respondent thinks that the text of the section also bears a broader meaning that includes someone who acted on behalf of such an organization in the past, even if he no longer does so at the time of the visa application. The Respondent supports the District Court's interpretation, namely that a substantial fear that the visa applicant will exploit his stay in Israel in order to promote calls for imposing a boycott on Israel suffices.

4. In this dispute, I accept the Appellant's position. First, I note that the Respondent did not present linguistic support for its interpretation that the section applies to past activity. Second, and this is the main point, the language of the section indicates that it establishes two alternatives for what might constitute the framework for publishing a public call for boycott. First, an independent call made by the applicant himself. Second, a call by an entity or organization *on whose behalf* the visa applicant is acting, even if the visa applicant himself did not publish such a call. If we view these two alternatives together, we see that the legislature thought that in each one of these scenarios, the applicant for a visa or permit would be sufficiently associated with a call for boycott to justify denying his application. While for the first alternative, the association arises from the applicant's direct actions, for the second alternative, it arises from calls published by the entity or organization on whose behalf the applicant acts. That is due to the assumption that if a person *acts on behalf* of a particular organization or entity, he presumably identifies with its ideas and values.

5. Furthermore, the word "acts" has the function of testifying not only to the association between the individual and the organization, but also to the quality of the involvement of the applicant for a visa or permit in an organization that supports boycott. Section 2(d) does not, for example, use the word "member" of the organization, even though membership would also support a claim of intellectual, ideological affiliation between the individual and the organization. The section requires the applicant to "act on behalf of" the organization, meaning to engage in active deeds that serve the organization and its objectives.

6. The other side of the coin is clear. Once a person ceases to act on behalf of an entity or organization that publicly called for boycott, we can no longer continue to assume – certainly not as a non-rebuttable presumption – that there is an intellectual and ideological association between the individual and the organization. In addition, once the activity ceases, the applicant for entry no longer meets the criterion of activeness, which requires the applicant to take substantial actions intended to promote support for the idea of boycott within the framework of the organization.

7. Given the aforesaid, it seems we should read the word "acts" in the present tense, such that the section only applies if, *at the time the application for the permit or visa is submitted*, the applicant is acting on behalf of an organization that supports boycott. Past activity that has been discontinued by the time the application is submitted does not come within the purview of the section. Note that the "present criterion" should be applied logically and reasonably. If, under the entirety of

circumstances, it becomes apparent that the visa applicant ceased his activity in the organization or entity that supports boycott just before submitting his application, or a short time prior to doing so (even if it was a few months prior), and it also becomes apparent that the cessation is artificial or for the sake of appearance, then he should continue to be viewed as coming within the purview of the section. That is especially true if the circumstances indicate that the cessation of activity was designed to "bypass" the provisions of sec. 2(d). However, in general, a person who did not himself publish a public call for boycott, and at the time he applies for a visa or permit is no longer active in an organization or entity that publishes such a call – even if he acted as such in the past – does not come within the purview of the section.

As we shall see, this conclusion is consistent with the purpose of the section.

The Subjective Purpose

8. We can easily discern the legislature's intention in enacting Amendment 28 of the Entry into Israel Law from the brief explanatory notes that accompanied it, which my colleague Justice N. Hendel addressed (emphases added – U.V.):

> In recent years, calls to boycott the State of Israel have amplified. As part of the state's battle against this difficult phenomenon, *and in order to prevent representatives of organizations and entities that call for boycotting Israel from acting within the territory of the State of Israel to promote their ideas,* it is proposed to determine that, as a rule, a person who is not a citizen or permanent resident of Israel will not be given a visa or residence permit of any kind if he, the organization or the entity on whose behalf he acts, calls for a boycott of the State of Israel or committed to participate in such boycott.
>
> That being said, it is proposed to allow the Minister of Interior to grant such a person a visa or residence permit for special reasons stated in writing (Entry into Israel (Amendment No. 27) (Not Granting a Visa or Residence Permit to a Person Calling for Boycotting Israel) Bill, 5777-2016).

Thus, as part of the battle against the boycott phenomenon, the legislature sought to prevent "representatives" of organizations and entities that call for boycotting Israel to operate within the

State of Israel to disseminate the idea of supporting the boycott. It did so while still leaving discretion to allow the entry of such a person where there are special reasons to do so.

9. Furthermore, if we review the debates within the Knesset Interior and Environmental Protection Committee (hereinafter: the Committee) over the bill, we clearly discern the deterrent purpose. The debates indicate that the legislature intended to prevent someone who authentically represents the viewpoints of an organization that supports boycott from entering the State of Israel, and disseminating these ideas here during his stay in Israel. We see this in the exchange between the Committee's legal advisor, Advocate Rosner, and Member of Knesset Bezalel Smotrich, one of the drafters of the bill:

> Advocate Rosner: Your second comment is more substantial. It addresses the question of a representative of an organization […] It is not clear what a representative of an organization is. In other words, a person who is a member of a certain academic institution that made a decision to boycott, but he personally does not identify with that decision, but he is a member of the organization, right? He is a member of a certain university, but he actually opposes this agenda. We would have a problem with that issue. We need to define more precisely, in my opinion, the term representative of a company or organization.
>
> […]
>
> Member of Knesset Smotrich: What we mean is that if there's an organization that is an organization that leads BDS, OK? An organization whose agenda is currently: to lead […] to boycott. The representative of such an organization doesn't come, as part of this story. Now, he himself, there's no evidence now, because he's a new representative […] he started working for the organization yesterday. But his agenda: he came here in order to promote this boycott.
>
> […]
>
> I will not allow anyone who is part of an entity whose agenda is to act against the State of Israel, and that person is part of this entity – I will not allow him to enter the State of Israel in order to hurt me.
>
> […]
>
> I agree that if a lecturer comes here to give a lecture on medicine, and his university […]; By the way, such a person is generally not defined as its representative. But be more precise about that.

> […]
>
> You need to understand that BDS as a system, part of it is built on individuals, and part of it is built on organizations […] of course, we meant that if an authentic representative of an organization, one that has that agenda, comes here as part of promoting this process – we will not allow that to happen (Transcript of Meeting No. 276 of the Interior and Environmental Protection Committee, the 20th Knesset, 45-47 (November 7, 2016)).

And similarly, during the Committee's debate on January 11, 2017, Member of Knesset Smotrich noted that:

> There is no reason in the world for the State of Israel to allow someone who wants to come to the State of Israel and use being here as a base for his activity against the State of Israel, whether for provocations and unlawful activities or calling for a boycott of the State of Israel – there is no reason to let him enter (Transcript of Meeting No. 334 of the Interior and Environmental Protection Committee, 20th Knesset, 2 (January 11, 2017)).

It should be noted that the exchange noted in the first Committee debate is, inter alia, what led to the transition from the language of "representative" that appeared in the bill to the language of a person "who acts on behalf of" an organization that appears in the law (*ibid.*).

To summarize the point, the legislature's intention was to establish a deterrent arrangement that would close the gates of the country to "authentic representatives" of boycott organizations, such as the BDS organization, who represent the ideas of these organizations. That is to deny them the opportunity to disseminate their doctrine within the State of Israel, while they are present here pursuant to a permit or visa that the State of Israel issued them.

10. We can understand the objective purpose of Amendment 28 by examining the general context of its enactment: the battle against the phenomenon of boycott and de-legitimization of Israel, which was recognized as a valid purpose in the *Avneri* case. As Justice Y. Amit noted in that case, the boycott has substantial influence at the international level:

> The strength of a state is the product, *inter alia*, of its standing among the nations of the world, the legitimacy of its existence and its actions, and its economic strength. Over the last years, the State

> of Israel has faced the three D's: Demonization, Dehumanization, and Delegitimization, and the BDS (Boycott, Divestment, Sanctions) movement is the vanguard of these three.

11. The boycott also has serious ramifications at the Israeli domestic level, and the battle against it is intended, inter alia, "to protect the citizens and residents of the state against economic, cultural, and academic harm. It would appear that the Law is primarily directed at combatting the BDS movement […] Indeed, the damage caused by the boycott phenomenon is not inconsiderable […] Mitigating the damage of this phenomenon is a proper and important purpose" (*ibid.*, para. 34 of Justice Y. Danziger's opinion). As the Respondent explained at length in its position, those who call for boycott seek to encourage practical actions intended to significantly disrupt daily life in Israel in a variety of areas. Thus, inter alia, those who call for economic boycott focus on cutting off commercial and service relations with Israel, refraining from buying Israeli products and boycotting Israeli banks. At the academic level, calls for boycott seek to end collaborations and to boycott academic institutions, as well as to divest university funds from Israeli entities. At the cultural level, boycott activists demand that academics, musicians and artists refrain from appearing in Israel or collaborating with Israeli institutions. Obviously, these activities, as well as the boycott movement's activities in additional areas such as security and law, can have a destructive influence on the Israeli economy, on Israeli cultural and intellectual life, and on a variety of additional areas.

12. Against this complex reality, the legislature sought to adopt statutory measures, primarily the enactment of the Boycott Law itself. That law establishes a series of restrictions and obstacles intended to prevent and limit Israeli citizens and residents from calling for a boycott. As a reminder, that law's provisions were reviewed – and mostly upheld as constitutional – in the *Avneri* case.

13. The Boycott Law, as an Israeli law, operates domestically, and as such, primarily targets internal Israeli discourse:

> It should be noted that the Boycott Law is an Israeli municipal law. Its sanctions are therefore intended primarily to influence calls for boycott 'performed' in Israel. This is primarily so in regard to the Law's tort sanctions [...] Inasmuch as we may assume that the "tortious" effect of the Law will be more focused upon its influence on internal Israeli political discourse, and less upon its influence on

> international calls for boycotting Israel or the Area, this would somewhat reduce the Law's potential contribution to the fight against international boycotts and the BDS movement (*ibid*, para. 35 of Justice Y. Danziger's opinion).

14. Amendment 28 should therefore be viewed as a supplementary arrangement intended to be added to the basket of statutory tools made available by the legislature to battle the boycott. While its "older sibling", the Boycott Law, generally focuses on domestic Israeli discourse, Amendment 28 aspires – to the extent possible, within the limitations of the Israeli legislature – to look outward, to the international discourse of boycott and the BDS movement. At the same time, consistent with the Boycott Law's orientation to limit discourse in support of boycott *within the State of Israel*, the legislature sought to use Amendment 28 to prevent foreign "interlocutors" who support boycott from entering the State of Israel, in order to prevent them from disseminating their positions within Israel, thus influencing both the Israeli domestic as well as the external discourse from within Israel.

My view is, therefore, that the objective purpose of Amendment 28 is to protect Israel from harm inflicted by boycotts. For that reason, the legislature chose to guide the Minister of Interior's broad discretion in a specific way, to order him to prohibit boycott-supporting activists from entering Israel, and to permit their entrance only if there are special reasons stated in writing.

The Interpretation of Section 2(d) and its Application in the Appellant's Case

15. To summarize, the textual and purposive interpretation of sec. 2(d) indicates that it was intended to prevent entry into Israel of those who would be expected to disseminate the doctrine of boycott during their stay in Israel. For that reason, the section bans the entry of someone who himself knowingly published a call for boycott or who acts – at the time of his application for the permit or visa – on behalf of an entity or organization that published such a call. That is due to the assumption that a person's action on behalf of such an organization testifies to the applicant's affiliation and identification with the organization's ideas, and the assumption that he will act to disseminate those ideas if allowed to enter Israel. If so, it is clear that the Petitioner's case does not come within the purview of the section, because there is no dispute that she ceased her activity

in the SJP organization in April 2017, while her application for a visa was made in advance of her receiving it in August 2018. My colleague's opinion makes that clear.

The Minister of Interior's General Authority

16. The Respondent believes that the provisions of sec. 2(d) do not detract from its general authority under the Entry into Israel Law, disconnected from the special statutory arrangement regarding applicants seeking to enter Israel who support boycott, and therefore, even if we were to conclude that it was inappropriate to revoke the visa and residence permit pursuant to that section, the Respondent was authorized to do so within the bounds of the broad discretion it enjoys in that special area. Even if, like my colleague Justice N. Hendel, I assume, for purposes of argument, and without ruling on the issue, that there is substance to the claim that sec. 2(d) did not limit the Respondent's general authority to prevent the entrance of boycott activists, it would still be insufficient to alter the conclusion that the decision in question cannot be upheld. As has been held:

> The Minister of Interior is thus granted broad discretion regarding the entry of foreigners into Israel and their living in the country. Such discretion derives from a principle customary in modern democratic countries, namely that the state has broad discretion regarding the entry of foreigners into its territory, and that no foreigner has a right to enter a country in which he has no status, either as a tourist or as a resident. Having said that, we should recall that such discretion is subject to the Court's review, as is the discretion of every other administrative agency, in the framework of the "regular"' grounds for review that apply to every exercise of administrative discretion […]. The Minister of Interior must, therefore, exercise his discretion in good faith, based on relevant considerations, equally, proportionately and reasonably […] As we know, exercising judicial review does not mean substituting the Court's discretion for that of the administrative agency, nor does it mean evaluating whether the administrative agency could have made a wiser decision. Judicial review is limited to the question whether the discretion was exercised according to the rules of administrative law, which we enumerated (HCJ 1905/03 *Akal v. Minister of Interior* [8], para. 11).

17. On this issue, too, I agree with the conclusion of my colleague Justice N. Hendel. My view is also that the Respondent did not accord sufficient weight to the various considerations that he was required to balance. First and foremost, revoking the visa and residence permit does not serve the purpose of combatting the boycott, which is the basis for the exercise of authority in this case. In this context, we should again recall the Hebrew University's position, namely that preventing the entrance of foreign students accepted for international programs, especially when done at the airport, "seriously harms relations between the university and other universities in the world and causes irreversible damage to the international relations that the university is cultivating". It would therefore seem, under the circumstances of this concrete case, that the Appellant's studies at the Hebrew University would serve as an additional layer in the Israeli academy's battle against the boycott phenomenon.

Given that, the decision that is the subject of the petition is not within the margin of reasonableness, and it should be declared void.

Decided in accordance with the opinion of Justice N. Hendel.

Given this day, 9 Heshvan 5779 (Oct. 18, 2018)