

12.85x19.59	6	5	עמוד	HAARETZ - FRONT	15/01/2012	30414349-8
המכללה למינהל בראשון לציון (לא בוגרים) - 20222						

Yoram Rabin

Talking security, thinking demographics

In an unprecedented step, one of the most controversial in the history of Israeli constitutional law, the Supreme Court has upheld the constitutionality of a law that prevents family unification in Israel between citizens of the state and residents of the Palestinian Authority (as well as citizens of Iran, Iraq, Lebanon and Syria).

The Citizenship and Entry into Israel Law is a special case; it is a law with a different dominant purpose in the legislative process and in the examination of its constitutionality. When the law was first passed in 2003, its main purpose was state security. It was passed during the second intifada, on the initiative of the Shin Bet security service, after a number of cases – the exact figure is disputed – in which entry permits to Israel were used for terrorist activities.

Over time, however, a new purpose arose, a demographic goal. At the end of the day the justices unanimously accepted the state's argument that the law's purpose was security-based. At the same time it is quite clear that at least some of the judges in the majority opinion "talked security" while "thinking demographics." Some even admitted as much. Justice Miriam Naor noted that the purpose of the law was security but that it had demographic implications – although these issues were "indivisible."

Justice Eliezer Rivlin explained that "European states are toughening the conditions for immigration, for demographic reasons." Justice Edmond Levy, who was in the minority opinion that sought to overturn the law, explained that Jews must be in the majority in a Jewish state and denounced what he claimed was the implication that the minority justices "put their seal of approval on the so-called right of return of the 1948 refugees." Levy said "the result might have been different" if

the state had not insisted on using the security argument instead of putting forth arguments regarding "the composition of Israel's population, or appropriate immigration arrangements."

The indivisible link between the security and demographic arguments was also raised in 2006, the last time the Supreme Court deliberated on the citizenship law. On that occasion, justices Ayala Procaccia and Salim Joubran questioned the credibility of the security argument, proposing that the true purpose of the law may be to use immigration law to prevent an increase in Israel's Arab population.

The citizenship law episode is over. The cabinet will soon be asked to discuss a bill that puts forth a comprehensive immigration arrangement. That is the place to ask whether such an arrangement is "also expected to address the demographic question – that is, the question of the meaning of a Jewish state and whether that meaning includes the need to foster the existence of a Jewish majority in Israel," as Rivlin proposed.

Shlomo Avineri, Amnon Rubinstein and Liav Orgad authored the outline of a comprehensive immigration policy for the state, and it was cited in the Supreme Court ruling. They proposed basing Israel's immigration policy in part on the state's definition as a democracy with a specific purpose: that is, a state in which the Jewish people exercises its right to self-determination. In referencing this, Levy noted that precisely in light of the moral rightness of this argument, "In my opinion it is not clear whether the security tack taken by the state reinforces or undermines this position." This begs the question of whether the time has come to take demography out of the closet.

The writer is the dean of the law school at the College of Management in Tel Aviv.