

The Impact of Immigrants on Political-legal and Legislative Processes in Israel

Edmond Day

*South-West University “Neofit Rilski”, Blagoevgrad, BULGARIA
Faculty of Philosophy*

Abstract

This article deals with illegal immigrants from Africa, specifically from Eritrea and Sudan to Israel between 2007 and 2018 (this is the focus group) and its influence on the immigration policy processes in Israel. The infiltration from Africa to Israel began in the mid-90s of the 20th century. It expanded considerably from 2007 until the end of 2012 when the project to build the border fence between Israel and Egypt was largely completed. Most of the infiltrators from Africa entered through the Israel-Egypt border, which was previously fenced or in parts that still needed to be fenced. However, the research may also involve refugees and migrant workers from those countries during this period as part of analyzing processes relevant to the research and the focus group. The data presented in this work and their analysis led to the general conclusion that the asylum seekers who infiltrate Israel from African countries are not refugees. The vast majority of the infiltrators arrive in Israel on their own, leaving their family members in their countries of origin. This fact is consistent with migration for work purposes, which is typical of the globalization process and does not indicate an attempt to save lives. Indeed, the factual data presented in the work show that Israel has become a destination for immigration from African countries. This immigration began in 1993 out of economic considerations and pressure from interested parties in the construction and agricultural sectors to obtain cheap labor to replace the Palestinian workers, whose entry into the country was prohibited for security reasons.

Keywords: immigration, migrant workers, refugees, asylum seekers.

1. Introduction

This article deals with illegal immigrants from Africa, specifically from Eritrea and Sudan, to Israel between 2007 and 2018 – this is the focus group – and its influence on the immigration policy processes in Israel. The infiltration from Africa to Israel began in the mid-90s of the 20th century. It expanded considerably from 2007 until the end of 2012 when the project to build the border fence between Israel and Egypt was largely completed. Most of the infiltrators from Africa entered through the Israel-Egypt border, which was previously fenced or in parts that still needed to be fenced. However, the research may also involve refugees and migrant workers from those countries during this period as part of analyzing processes relevant to the research and the focus group.

In the first decade of the 21st century, the State of Israel witnessed an increasing flow of infiltrators from African countries, mainly from Eritrea and Sudan, who entered its territory through the Egyptian border, most of them migrant workers. The impact of this immigration on Israel’s immigration policy, as well as on other areas of social life, is evident to this day. Sudan is defined as an “enemy country” and the human rights situation in Eritrea is difficult, so forced

removal of the infiltrators to the countries of origin was not possible. Bloody wars and extreme climate changes in Africa are causing many Africans to come en masse to Israel, usually through the border with Egypt. Dealing with the phenomenon was based on a policy of closing the border, deterring and encouraging voluntary departure. In addition, as part of this policy, agreements were signed with third African countries, allowing them to remove infiltrators, albeit on a limited scale. It should be emphasized that in the first years, Israel did not curb the phenomenon, which led to a considerable increase in scope. Several years later, it was decided to build the fence on the Israeli-Egyptian border. More important than that, within the framework of preventive and deterrence measures, was the legal framework formulated - prolonged detention for infiltrators. Later, an integrated policy was also adopted, designed to reduce the number of infiltrators in the city centers and Israel as a whole, as well as to encourage voluntary departure.

A central question in this context is: Are we dealing with emissions, or are we facing a completely different phenomenon that requires a different approach? Already at this stage, it should be noted that only when a few of those who knock on the state's gates are recognized as refugees at the end of the process. The bulk of them consist of immigrants who chose Israel as a preferred destination due to its economic and regime characteristics. Support for this claim can be found in the fact that Israel is not the closest destination to the countries from which the immigrants come. The focus of the country's attraction is that it is a relatively developed country, and no clear policy has been established. Therefore, no steps are being taken to stop the phenomenon.

2. The impact on civil society in Israel

In the Israeli discourse, it is customary to call the infiltrators “refugees from African countries.” This nickname affects Israeli society and creates confusion regarding the proper approach to the phenomenon. Some mention in this context the fact that various countries in the world refused to admit Jewish refugees who fled the terror of the Nazis. According to multiple elements in Israeli society, this historical event imposes on Israel a profound moral obligation towards the refugees, and therefore, Israel is faced with the necessity of dealing with complex questions concerning the national history of the Jewish people and Israeli society's perceptions of the fundamental state values and the state's identity – all this apart from Dealing with the practical problems caused by the phenomenon.

2.1 *Data on the entry of asylum seekers and infiltrators*

According to data from the Population and Immigration Authority from May 2016, 41,685 infiltrators who arrived in Israel illegally through the border with Egypt are staying in Israel. The total number of infiltrators who entered Israel from approximately 2006 until March 2016 is 64,371. The vast majority (83.15%) entered Israel by the end of 2012.

According to the Population and Immigration Authority's answer, at the end of May 2016, 2,939 infiltrators stayed in the “Holot” accommodation facility in the Negev-7% of all infiltrators. Countries of origin – according to the Population and Immigration Authority data from March 31, 2016, about 72% of the infiltrators staying in Israel came from Eritrea – 30,549 and about 20% – came from Sudan – 8,232. 7% of the infiltrators came from other African countries – 2,828 and an additional 1% – from the rest of the world – 535; this distribution has changed slightly over the years due to the voluntary departure process, among other things at the end of 2013 there were approximately 52,900 infiltrators in Israel, 68% of whom came from Eritrea, 24 % from Sudan and 8% from other countries.

Table 1. Entry of infiltrators and asylum seekers into Israel from 2006 to 2022 – the data was checked in May 2023

until 2006	2007	2008	2009	2010	2011	2012	2013	2014
2022	2265	8937	5368	14645	17199	10439	43	78
2015	2016	2017	2018	2019	2020	2021	2022	Total
255	21	9	8	8	4	3	1	64,273

According to these data, the policy that eventually led to the decision to build a system fence and, as a result, the creation of a physical obstacle along the Israel-Egypt border is undoubtedly the most effective policy that was followed.

Table 2. Infiltrators staying in Israel by selected countries of origin December 2022

	Eritrea	Sudan	other African countries	the rest of the countries of the world	Total
Absolute number	19142	3375	2103	375	24,995
Percent	77%	13%	8%	2%	100%

As of the end of 2022, the number of infiltrators staying in Israel is 24,995. This is a decrease of approximately 11.5% from the number of infiltrators in Israel at the end of 2021. This decrease is partly because starting at the end of 2021 and during 2022, approximately 3,000 asylum seekers who are citizens of Sudan were accepted a temporary residence permit (residence was granted following the Supreme Court's ruling in Tagal High Court 4630/17 and 7552/17, which stated that foreigners from Sudan who submitted their application for political asylum before the deadline – 11 June 2017 and who were found to be illegal aliens Darfur, the Nuba Mountains and the Blue Nile, a temporary residence permit of type A5) will be granted, subject to the absence of security and criminal impediments, until their request for political asylum or another decision in their case is decided.

Table 3. Voluntary departure of infiltrators from African countries, by years

Country of Origin	2019	2020	2021	2022
Eritrea	2239	606	1340	2195
Sudan	216	100	174	118
other African countries	268	112	174	171
Total	2723	840	1688	2484

The number of people leaving with the help of the Voluntary Departure Unit in 2022 increased by 47% compared to 2021, and it stood at 2,484 people. This is about a volume of people leaving that is approaching what it was in 2019, in the period before the outbreak of the coronavirus pandemic. In the first two months of 2022, still under the influence of the epidemic, the rate of voluntary departure was slow and stood at an average of 50 over a month, the rate of voluntary departures remained relatively low. On the other hand, in the following ten months of the year, voluntary departures increased to an average of about 240 departures per month. The table also shows the number of infiltrators in 2022, Eritreans who left voluntarily accounted for 88.4% of all infiltrators from African countries who left voluntarily (compared to 79.4% in 2021)

2.2 Immigration and emigration: Immigrant considerations, influencing factors, aspects of integration and their impact on the receiving country

The term immigration does not have one agreed-upon definition. The research approach to the phenomenon began in the field of geography, from the aspect of people moving from one place to another. Only in the 19th century did the phenomenon begin to be linked to economic and political phenomena, i.e., a social phenomenon with psychological effects, including tensions between groups competing for the same labor market.

Migration is a permanent move to a new place outside the nation-state. It has two main elements: migration outside the country of origin and within the destination country for its motives. Thus, the distinction was made between push factors and pull factors. Each type of factor involves a set of considerations that the immigrant makes before the decision, mainly political, economic, and environmental. Each of them requires the immigrant to make a different decision, which leads to different results from the immigrant's and the receiving country's point of view.

Political driving factors

Political instability, wars and internal struggles lead to emigration from the country of origin. Factors of this type include, among others, the refugees and asylum seekers. These are immigrants who are forced to leave their country of origin for political reasons. The U.N. Convention defines refugees as those who have been in danger in their country of origin and fled from it. They cannot return due to fear of persecution based on race, religion, nationality, membership in a social or political organization, or because of their political opinions. They are "homeless" until another country takes them in. Immigrants of this type usually move to the country closest to or most accessible to their country of origin without considering the possibilities of work and acceptance there.

Economic driving factors

The polarization caused by unequal economic development between countries leads people whose standard of living in their country is low to be displaced in a country that offers opportunities to improve it. Thus, for example, in the 20th century, about a quarter of the workforce and more than a tenth of the entire population emigrated from Ireland due to a natural disaster that destroyed their fields and food sources. Most immigrants were young and educated, and their education served as their exit ticket from their homeland.

Environmental driving factors

Environmental causes such as an unwanted lack of or excess water are common ecological threats. Many people live in flood-sensitive areas, to the extent that many countries suffer from drought. In places where the economy is based on agriculture, this leads to mass migration in search of food or to escape the floods. Some argue that climate change is the greatest threat to human society and may very shortly lead to a more significant population migration than ever before. A rise in the water level by only half a meter will flood deltas with millions of people in them (so in Bangladesh, Egypt, and the Netherlands).

Political pull factors

This is, first and foremost, a personal choice. People are attracted to democratic countries, which encourage individual choice in education, employment, and place of residence. An example of this can be found in Germany after the Second World War, whose eastern part was handed over to the control of the Soviet Union. Many Germans moved west until immigration was forcibly stopped. Another example is the migration from Eastern European countries to the West starting in 1989, the year of the collapse of the Soviet Union.

Economic attractive factors

People immigrate to places where they believe they will improve their quality of life and where jobs are available. Thus, Europe, the United States, and Canada are classic centers of attraction for immigrants.

Environmental pull factors

Favorable weather conditions are one of the attractive environmental factors. An example is the great migration from the eastern United States to western California and from the north of the cold continent to the south (the Sun Belt). A distinction must be made among immigrants between temporary labor migrants and permanent migrants (Ben-Dor, 2008; Galily, 2023).

Family immigration

Temporarily, migrant workers usually leave their families in their country of origin and intend to return there within a specific time. It is often a seasonal migration, such as working in agriculture during the burning seasons. In this case, the destination countries will be those where the wages paid are higher than those in the country of origin. Still, the immigrants understand that they will be placed in a job that requires cheap labor with no promotion possibilities. It is worth noting that, in many cases, contrary to their original intention, temporary migrant workers establish communities and seek to become permanent migrants or at least stay in the destination country for more extended periods than planned. Permanent immigrants – a phenomenon also known as family immigration (immigration families are immigrants who wish to improve their standard of living or the quality of their lives) – usually come with their families or bring them with them after they have established themselves in the new country. These immigrants seek to settle and assimilate into the receiving society and look for permanent work in the destination country and possibilities for promotion.

Integration aspects

The integration of immigrants is a complex process, but there is agreement regarding several vital aspects that measure integration processes of this type:

1. *The linguistic aspect:* knowing and using the local language is one of the most essential skills the immigrant acquires in absorption. It is expected to refer to personal characteristics (age at immigration, human capital, etc.) and group characteristics (group size and linguistic distance) as predictors of linguistic skill (knowledge and use of the language), that is, the higher the education and seniority in the country, the lower the age at immigration and the circle of friends. Including a small percentage of immigrants from the same country of origin, the higher the chances of mastering and widely using the language of the receiving country.
2. *The economic aspect:* studies that examined this aspect indicate that the socio-economic achievements of immigrants are measured according to three factors: participation in the labor market, salary, and establishment (employment status). These aspects depend on seniority in the host country, the characteristics of human capital (education, work experience, language skills), personal characteristics (age and gender), and the economic similarity between the country of origin and the country of destination. That is, the higher the human capital (education, work experience), the seniority in the country, and the mastery of the language of the destination country, the higher the active participation in the labor market, the employment establishment, and the salary.
3. *The social aspect and identity:* these are determined by group characteristics, such as cultural similarity between the immigrants and the natives and the sense of connection with the new social environment. Among the additional factors that influence the adoption of values should be the “pulling” or “pushing” motive, age at

the time of immigration, and the immigrants' education level. The influence of these factors creates conditions for accepting or rejecting the local identity or combining it with the ethnic identity. That is, those with linguistic skills and high seniority in the receiving country, those who came at a younger age and for important reasons, who feel a positive attitude from the natives of the country and are not surrounded by immigrants from their country of origin, will tend to assimilate into the general society.

2.3 *Legality of being an immigrant in the receiving country*

The issue of immigrants can also be examined according to the legality of your stay in the receiving country; the distinction is between immigrants who enter the destination country legally and immigrants who are illegal in the first place. Some immigrants enter the destination country lawfully and then violate the conditions of entry, for example, by exceeding the period of stay set for them, entering as tourists and starting to work, or being caught in criminal acts and the like. Some are those whose entry involves illegally sneaking into the country.

This distinction is of great importance both in defining the dimensions of the phenomenon and in ways of dealing with it, and not only from today. Studies done worldwide have led to an attempt to talk about a “model” of immigrant behavior since 1870-1880, and some of them are still relevant.

According to this model:

1. Most immigrants travel only a short distance to the destination country.
2. Those who travel long will usually prefer to move to a big city.
3. The migration movement from the country of origin to the final destination is done gradually geographically.
4. Most migration is from the village to the city.
5. Each wave of immigration creates another wave of immigration.
6. Most immigrants are relatively mature; only a few families immigrate from country to country.
7. Most of the international migration movement is of young people.

Later, appendices were added to the immigration model; *firstly*, the immigrants do not teach about the population composition in the country of origin. *Second*, most of the immigrant companies are young males, although there have been changes in recent years, the main one being a significant increase in female immigration.

It is worth noting that immigration, refugees, and the absorption of immigration are extremely complicated issues, and it is difficult to collect reliable data about them, especially when it comes to illegal immigration. The data are usually based on estimates and models with a relatively large possibility of statistical deviation. Therefore, one should focus on the general lines emerging from the data and treat the data themselves with due care. As mentioned, immigration is not a phenomenon that started in recent years; Huntington defined *demography* as fate and immigration and population movements as the engine of history. He explains that different growth rates, challenging economic conditions, and government policies have also caused waves of mass immigration in previous centuries.

Decolonization and modernization

However, the immigration wave of the 20th century is different and more significant than before, *it was partly* caused by decolonization and the establishment of new countries and

their government policies that encouraged and even forced people to leave, a process of negating colonialism. This process gradually led to the end of the superpowers' control of overseas colonies and the establishment of independent countries in these countries. This process started between World Wars and culminated after World War II, mainly in India, the Middle East, and later in North Africa.

In part, it is a result of modernization and technological development. The improvements in transportation made immigration easier, faster, and cheaper. Improvements in communication intensified the drive to take advantage of opportunities and helped immigrants maintain contact with their families in their countries of origin. The difficulties of economic development in non-western countries compared to the abundance in Western countries cause immigration from non-western countries, and this becomes a self-reinforcing process because once the immigration flow begins, it increases its flow.

According to one of the sources, at the end of 2004, there were 185 million immigrants, about 3% - of the total world population (Zabar, 2008). For example, the formation of social networks that operate in the receiving country and the country of origin and preserve the phenomenon of migration. Immigrants enable their friends and relatives in their country of origin to immigrate by providing information about immigration options, resources to ease the transition, and assistance finding work and housing in the destination country. The immigrant will prefer a place where he can find social networks that will not lead to his disconnection from the country of origin over a place where the salary is the highest. The power of social networks exists even when wage differences are reduced. Other parties are stakeholders of various kinds in the process, such as border smugglers, personnel companies, visa and passport forgers, and other parties with a financial interest in working to preserve the phenomenon of immigration.

As far as Israel is concerned, the claim from the above is that it is not a phenomenon of refugees but of immigrants only and that the Israeli phenomenon is not unique to Israel but integrates with the trends in the entire Western world and with Israel's integration into the global economy. The movement of workers from country to country has become a central aspect of globalization in recent years.

2.4 Israel - The impact of immigration on policy – The difficulty in designing Policy and the difficulty in implementing it

Considerations of Jewish tradition and human rights – Knesset Committee In the summary of the meeting of the Interior and Environmental Protection Committee of the Knesset (Israeli Legislature) Protocol No. 106 of 2007, a committee that deals with, among other things, political, policy, and security questions, in its summary the committee appealed to the Israeli government to treat the Sudanese refugees by Jewish tradition: “As a people persecuted for two thousand years of exile, we must be sensitive to the plight of refugees, whatever they may be. The committee appeals to the Minister of Defense, the Minister of Internal Security, and the Minister of the Interior to find appropriate solutions that will ensure Israel’s security on the one hand and fair conditions for the refugees who arrive on the other.”

The committee stated to the Knesset that public bodies in Israel, such as the Moshavim movement, the Kibbutz movement, and ordinary citizens, are ready to help find suitable solutions until the state reaches long-term agreements. The committee even appealed to the ministers responsible for solving the families' plight or for allowing them to stay together under reasonable conditions, to allow the granting of work visas with the assistance of government ministries to those released by the courts or the I.D.F., and to give an appropriate visa classification to the families' owners. The committee also appealed to the Service Commission. The prisons treat the

refugee detainees more humanely and give them the rights granted to detainees in the State of Israel.

Like many countries in the European Union, Israel also currently has a significant community of illegal immigrants from Africa. Their number is 34,000, not including about 8,000 – children born in Israel to immigrant parents. From the Population and Immigration Authority data published on the Authority's website, it appears that among the “infiltrators,” 63% are citizens of Eritrea, 26% are citizens of Sudan – and 11% are citizens of other countries, most of them arrived through the southern border with Egypt, and several thousand more are tourists who stayed after their visa expired.

Similar to Europe, the Israeli media often refers to these infiltrators as “refugees” or “asylum seekers” but these concepts are misleading, of course. There are clear signs that the vast majority of them came to Israel in search of economic well-being and that their lives were not in danger: about 80 percent of the immigrants are men of working age, who usually passed through other safe countries on their way to Israel, and of the small number of asylum applications that the Israeli authorities examined, less than one percent One was found to meet the requirements for receiving refugee status (deserters from conscription are not, according to the international convention, considered refugees unless additional circumstances justify it).

Hardening and “hot return” policy

The “*warm return*” policy – is mainly the deportation of refugees and asylum seekers from Israel to Egypt according to the “warm return” procedure – which means the immediate return of asylum seekers who cross the border from Egypt to Israel back to Egypt. The beginning of illegal immigration from Africa to the State of Israel was modest; in 2005, it increased from a trickle of individuals to dozens and then to hundreds who came from Sudan and crossed the border. Politicians from the political left argued that nothing should be done about a few hundred. Israel has no problem absorbing some of them and finding an adequate arrangement for the rest – a claim that will be repeated later regarding thousands. As for tens of thousands, the Israeli government headed by Prime Minister Ehud Olmert was less complacent even then. Prime Minister Olmert wanted to cut off the infiltration with hostility. He reached an understanding with Egypt on a “hot return” policy, meaning the immediate return to the Egyptian side of anyone caught crossing the border. In addition, Olmert established a prison facility for those caught inside Israel. The purpose of this policy was to send a clear message that Israel will not become the solution to Africa’s problems. About 600 people received temporary residency permits after the U.N. granted them refugee status.

The Commissioner of Prisons in Israel in the years 2015-2018 Adv. Ofra Klinger claims that until 2014, when Israel’s southern border was still breached, and the number of infiltrators was estimated at around 20,000, according to mapping of the phenomenon of infiltration, it was proven that the waves of immigration occurred mainly during periods convenient for a prolonged march in the Sinai desert, a fact that strengthens the claim that it is not a flight out of danger to life. In addition, Klinger used data from the Saharonim facility and proved that less than 20% of those imprisoned there infiltrated with their families - the great majority were adult men over 18. “In these numerical data,” she wrote, “There is something to support the claim that essentially this is work immigration and that the immigrants leave their family members behind in order to ensure income for the family or create an economic basis for bringing them to Israel.”

2.5 The influence of human rights organizations, media, politics, legislation, and law on government policy

Already at an early stage, many organizations defining themselves as human rights organizations came into action. They petitioned the courts against the hot repatriation policy, as

they have done against almost any policy – aimed at curbing illegal immigration. The court issued a conditional order until the matter was fully clarified, and even though the order did not have an immediate operative meaning, it had a chilling effect. The mainstream media, which mostly lean towards the Israeli left, also quickly mobilized for the campaign. The newspapers and news releases were filled with articles comparing today's African immigrants to the Jews who escaped from Hitler's Germany in the 1930s, and there were accusations of cruelty and racism on the part of the Israeli government. The government finally gave in and abandoned the "repatriation policy" after five organizations, including the Civil Rights Association, submitted a petition to the High Court against the deportation of refugees and asylum seekers to Egypt according to the "warm return" procedure – the petition was submitted through an assistance center for foreign workers and the refugee rights program at the University of Tel Aviv.

The central claims of the human rights organizations, supported by the media and the political left, was that the legislation on the issue of infiltrators was withdrawn before the court due to a severe violation of the hard core of human rights, denial of freedom, and restriction of freedom of movement. However, not only due to a purely economic matter, the Supreme Court preceded the legislature by proposing a mechanism of financial guarantees as an economic incentive for illegal residents to leave the country. Later, the court proposed to apply this to infiltrators, according to the words of Judge Edna Arbel at the Adam High Court: "The arrangement creates an economic incentive for the employee The infiltrators to leave the country, the continued settling in the cities and staying in Israel, strengthen the motivation of the infiltrators not to leave the country, even when this would be possible, in the face of this negative incentive, the deposit arrangement seeks to create a counter-incentive, proportionate, to encourage the departure from Israel, when it becomes possible to do so, and thus to fulfill the immigration policy of the Israeli government. Illegal infiltration – its damage Internal security is undermined, the sense of personal security is damaged, crime is increasing, residents of South Tel Aviv, downtown Netanya, Petah Tikva, districts in Eilat, District B in Ashdod, and other neighborhoods where there are concentrations of infiltrators – they suffer, the burden on the public coffers for welfare, medical, policing and education services, enforcement of civic obligations such as tax payments – is difficult."

Judicial activism

The Supreme Court's activist intervention is also reflected, for example, in its decision on a petition submitted by associations for the promotion of human rights, which deal, among other things, with the protection of the status of foreign workers given in 2011 and known as the High Court of Foreign Worker Procedure – a procedure based on a policy. The Ministry of the Interior states that an employee may stay in Israel with her child unless 63 months have passed since she arrived in Israel. In the latter case, the mother will be forced to leave the country with the child. If the employer wants to continue employing her, she must return to Israel. e. If the worker's spouse / the child's father is in Israel, one of the spouses will be forced to leave the country as a condition for regulating the status of the other spouse. The detention facilities where illegal immigrants were held according to Israeli law also became a target of the aid organizations for infiltrators. The petitions did their part – the Supreme Court once again overturned legislation designed to allow the detention of infiltrators in detention centers and finally reduced the time allowed for entire detention to three months. The facilities have become a roadblock, and not much else.

The policy of the perimeter fence and the tightening of the conditions of stay

However, the State of Israel began formulating its policy in the face of the phenomenon of immigration from Africa only years later, after the decision to build a perimeter fence. The construction of the perimeter fence on the Israel-Egypt border was only completed in December 2013. Following the construction of the obstacles and the establishment of the perimeter fence,

the burden was placed on those seeking to infiltrate Israel. On the other hand, we are witnessing the opposite phenomenon, which is a more significant number of infiltrators who will try to enter until the completion of the barrier's construction. The problem of illegal immigrants constituted a weighty national problem for the State of Israel; the number of 15,000 people entering the country per year may continue, and about 100,000 within three years and within five or ten years, close to 200,000 to 250,000 infiltrators who will constitute a demographic change, a social change, a change Economically, immigrants without an identity, without a name, and legal permission, this is about changing the reality in the State of Israel without Israel being prepared for it.

However, this is only one factor in the equation; to prevent the entry of asylum seekers, it is recommended to stop issuing permits to foreign workers as much as possible. Reducing the attractiveness of immigration should also be implemented through a policy of "hardening the conditions of stay, increasing access to welfare systems, and increasing the conditions for obtaining permanent status." The state began implementing this part in January 2012, with amendment No. 3 to the Infiltrators Law.

The Law for the Prevention of Infiltration (Crimes and Judging), 1954-57 is a law enacted by the Second Knesset on August 16, 1954, to deal with the infiltration (mainly of Palestinians) into Israel. As will be detailed, two amendments to this law, enacted in the second decade of the 20th century 21 and came to deal with the infiltration from Africa to Israel, were disqualified by the High Court of Justice because the clause of holding in custody for more than 12 months contradicts a fundamental law: human dignity and freedom. Additional amendments were enacted within the framework of the law to prevent infiltration and to ensure the departure of infiltrators from Israel.

The hardening policy, administrative arrests, and detention facilities

This policy, which led to the tightening of the employment conditions of the infiltrators, proved itself. The results could be seen about two years after the state began the legislative procedures. As of the end of 2013, the number of African infiltrators who voluntarily left Israel stood at 2,612. According to the Population and Immigration Authority data presented by Prime Minister Netanyahu, no less than 6,180 infiltrators have gone from the beginning of 2014 until today. An incredible achievement, an object of envy in Europe, is against the background of the massive waves of infiltration that plague the continent. The purpose of Amendment No. 3 is to deter asylum seekers from entering Israel, and this is using indefinite administrative detention of those who have no possibility of deportation due to the danger they face in their country of origin. The provisions of the law state that, except in the most exceptional cases specified in it, a person will not be released until at least three years have passed from the date of his arrest. In the absence of exceptional circumstances, the Custody Review Tribunal, which is supposed to conduct a quasi-judicial review of detention under the law, is not authorized to release a person. Therefore, the petitioners here and the other detainees under the law do not have any alternative remedy other than attacking the constitutionality of Amendment No. 3.

In October 2012, human rights organizations petitioned the High Court of Justice, demanding the law's repeal. The petition was submitted on behalf of the Immigrant Rights Clinic at the Academic Center for Law and Business, the Refugee Rights Program at the Faculty of Law at Tel Aviv University, the Civil Rights Association, the Foreign Workers Assistance Center, A.S.F. – An organization for aid to refugees and asylum seekers in Israel, the worker line and the center for the promotion of African refugees. The petition was also submitted on behalf of two Eritrean men, two Eritrean women, and a one-year-old baby, all of whom are being held for an indefinite period in detention camps, which were established to hold asylum seekers.

The petition claims that there is a prohibition in Israeli and international law on the detention of immigrants that is not for deportation, that the administrative detention of asylum

seekers who have experienced trauma, including children, increases the trauma and will harm the safety and health of the detainees, and that the purpose of administrative detention for deterrence is not proper. Therefore, because the law to prevent infiltration is contrary to a fundamental law: human dignity and freedom, the High Court of Justice was asked to cancel the law.

This is what is claimed in the petition: As early as June 2012, the state began to enforce the Amendment to the law to prevent infiltration, which allows administrative detention without trial for at least three years. By the law, mainly citizens of Sudan and Eritrea are primarily held in administrative detention, which the government itself recognizes that they should not be deported due to the fate expected of them there. The law to prevent infiltration is emptied of the right to freedom of many thousands of people, and they are deprived of any legal protection. This is an administrative detention whose purpose is not deportation but deterrence and “tiring the lives” of the asylum seekers, as the Minister of the Interior, Eli Yishai, said.

In the response, submitted by the State Attorney’s Office in May 2013, it is claimed that the law creates a “dynamic” mechanism that allows the release of detainees for a variety of reasons, that incarceration is required in order to maintain the sovereignty of the state and undermine the incentive to infiltrate, that most of the detainees are not refugees but “migrant workers” and more. The “dynamic” release mechanism that the state presented in its answer resulted in the release of less than 7% of the 2,000 detainees under the law, while all the rest are expected to be held in detention for at least three years. In 2014, despite the passage of time since the start of the implementation of the law, the examination of not even one asylum application was completed, with or without the law; the number of people entering Israel is minimal due to the construction of the fence on the Israel-Egypt border.

The answer also claims that the “custody facility” is, in fact, a prison for all intents and purposes, where harsh conditions and a system of administrative punishment, and above all - the law allows unlimited administrative detention of those for whom deportation proceedings are not held due to the danger they face if they are deported, the response opens by citing her answer of the Minister of Justice to the question submitted by the then MK Dov Hanin, in which she submits the position of the Attorney General, according to which the deportation of Sudanese and Eritrean citizens, who make up 90% of the imprisoned, is not on the agenda.

On September 16, 2013, the Supreme Court ruled in an expanded composition of 9 judges that the Amendment to the infiltration law was unconstitutional and void. The court ruled that administrative detention, as allowed by the Amendment to the law, is contrary to the provisions of the Basic Law: Human Dignity and Freedom, and that the state must examine the case of each of the detainees within 90 days and release them as long as there is a reason for release according to the Entry into Israel Law.

3. Conclusion

Summary of Judge E. Arbel’s opinion at the Adam High Court: The judge reviewed the infiltration phenomenon into Israel in recent years, noting that there are currently 55,000 infiltrators in Israel. The judge maintained that most of the infiltrators are from the countries of Eritrea and Sudan and emphasized the difficulties experienced by the residents of these countries. It also clarified that the state of Eritrea applies the international principle of “non-refoulement,” meaning that the state will not remove a person from a place where his life or freedom is in danger. As for the Republic of Sudan, a return there is impossible due to the lack of diplomatic relations with Israel. This is because the country is facing a significant phenomenon of tens of thousands of infiltrators entering its territory, and it is unable at this stage to expel from its territory in a practical or normative way.

Following the repeal of the Infiltration Prevention Law (Amendment No. 3) in September 2013 and the High Court's determination that those staying at the Saharonim facility must be released within ninety days, the Center for Israeli Immigration Policy submitted an urgent petition to the High Court in October 2013 demanding that the released infiltrators be prohibited from reaching South Tel Aviv. This is the first and only time that a petition has been submitted to the High Court on behalf of the residents of South Tel Aviv, demanding to impose restrictions on the phenomenon of infiltration into Israel.

The petition described the suffering of the residents of South Tel Aviv and cited quotes from Supreme Court judges who recognized this plight. For example, Judge Fogelman's statement at the Adam High Court: "The cry of the residents of South Tel Aviv about what is happening in their neighborhoods was heard loud and clear. This is a cry that comes from the heart, and you should not take it easy at all." The petition also presented crime data and affidavits of affected residents and described the violation of the right to life, dignity, property, freedom of occupation, and equality. The court will also be asked to compel the state to implement the government's decisions regarding the establishment of open residence facilities. On 10.12.2013, International Human Rights Day, the Israeli Knesset/Parliament passed a law in the second and third reading designed to bypass the High Court ruling and allow the state to continue imprisoning asylum seekers indefinitely.

After Amendment No. 3 to the law to prevent infiltration was invalidated by the Supreme Court in September 2013, about three months later, the Israeli legislator faced the court's review and established a new arrangement, Amendment No. 4 to the Infiltrators Law; this law allowed holding illegal infiltrators in custody without a sentence, meaning in a closed residence facility (facility: Saharonim) for up to a year, and then in an open residence facility (facility: 'Holot') where up to 3,300 infiltrators will stay. As stated above, within the framework of the law, the state undertook to provide the infiltrators with accommodation, food, drink, and basic health needs.

After the 4th Amendment to the Prevention of Infiltration Law was passed by the Knesset in its third reading on December 10, 2013, and the government established its policy of principle for the immigration of infiltrators from Africa, the state began sending summonses to the Holot facility also to infiltrators already residing in Israel. Following this, a massive departure of infiltrators from Israel began almost immediately. In January 2014, 765 infiltrators left, and in the following two months until the High Court's verdict, over 3,000 additional infiltrators left, most of whom decided to leave after receiving the summons to the open detention facility without spending even a single day there.

However, both about this legislative arrangement and in the additional hearing, the Supreme Court found that the arrangement was unconstitutional. As part of those influencing the government's immigration policy, the Center for Israeli Immigration Policy appeared in court alongside the residents of South Tel Aviv. The center also submitted a written response on its behalf to the petition of the aid organizations for infiltrators. As mentioned, despite the many efforts, on September 22, 2014, the judges of the High Court decided by a majority of 7 to 2 to cancel the sections of the law and amendment No. 4 to the law requiring infiltrators to stay in a sand facility and also to cancel the section of the law requiring infiltrators who entered Israel after the application of the law to stay in a closed detention facility for one year. The President of the Supreme Court, Judge Grunis, who was in the minority, rejected the petition of the Center (High Court of Justice) because he ruled that the law enacted by the Knesset met the test of legality and, therefore, the petition was unnecessary. On the other hand, most judges rejected the petition on behalf of the residents of South Tel Aviv, even though they ruled that the law should be repealed and those staying in the detention facilities should be released without bothering to justify it or provide an alternative remedy.

Paying attention to the court's position, the legislator created a new third mechanism, which includes a stay in custody for up to three months and the operation of a detention center where the infiltrator will be found for a maximum of 20 months. Even this arrangement – regarding the limit of stay at the residence center – was found to be unconstitutional, and the court ordered its cancellation. As mentioned, on August 11, 2015, the Supreme Court's judgment was given at the High Court of Dstta. The petition was discussed before nine judges who determined that the legality of the law to prevent infiltration is contrary to a fundamental law: human dignity and freedom.

The ruling stated that the arrangement according to which an "infiltrator" for whom a deportation order was issued will, as a general rule, be held in custody for three months from the date of his unauthorized entry into Israel is constitutional, despite his violation of the constitutional right to freedom (Section 5 of the Fundamental Law: Human Dignity and Freedom) since it meets the tests The limitation clause – Section 8 of the Basic Law). By this arrangement, which only applies to those who entered Israel after it entered into force, 41 infiltrators (according to Ministry of Interior data) located at the Egyptian border in the first half of 2015 were imprisoned in the Saharonim facility. In the centers of the cities," is a proper purpose, and the maximum delay period stipulated in the law is unconstitutional. Moreover, in the end, the court decided on the invalidity of the sections of the law that are the subject of the discussion because they are unconstitutional.

"Deposit Law" policy. It is worth noting that other policy initiatives were designed to emphasize the same message, one of which was the "Deposit Law," implemented by the only organization supporting the state's position – the Center for Israeli Immigration Policy. The idea is to keep part of the immigrants' salaries in a particular deposit, which will be returned to them when they leave Israel. However, this policy was also partially eliminated by the courts and then further diluted by the state, which hoped that a softened version would still pass with the judges.

Removal policy to a third country. The plan for removal to a safe third country, which for a while seemed to be successful, according to which the deportees were to receive an amount of \$3,500 each, four or five times the annual G.D.P. per capita in the destination countries, in addition to the compensation that Israel would transfer to the governments of these countries - Rwanda and Uganda. However, then a strong opposition erupted from the media, which claimed that the infiltrators were "deported to their deaths" and faced rape and torture, or at least arrest and confiscation of their documents in the countries above. Intellectuals and celebrities joined the protest, and stickers calling "stop the deportation" appeared in Tel Aviv cafes.

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