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Palestinian Family Unification in Israel: The Limits of Litigation as Means of Resistance

by [Elia Weizman](#) • 16 September 2013

In Israel and elsewhere, resistance to hegemonic power can never limit itself to the law and legal channels.



At the end of March 2002, Eli Yishai, then the Israeli Minister of Internal Affairs, decided that all requests for family unifications submitted by Palestinian citizens of Israel married to Palestinians from the Occupied Palestinian Territories (OPT) would be frozen until further notice. The media reported that the decision was made following the [suicide attack at the 'Matza' restaurant in Haifa](#), which was executed by a Palestinian man whose father had been granted citizenship through the procedure of unification of families. However, previous publications reveal that even months before, Yishai had examined ways in which the law could be changed to [decrease the number of Palestinians gaining Israeli citizenship, thereby posing a threat to the Jewish character of the State of Israel](#).

On July 2003, a government bill, [Nationality and Entry into Israel Law \(Temporary Order\)](#) was submitted and its rationale was that Palestinians (from the OPT) take advantage of their status in Israel (due to unification of families) to commit attacks

against Israeli citizens. This bill was approved and the law was enacted as a temporary order and extended since then and until this day. This law explicitly excludes Jewish settlers residing in the OPT, and only affects Palestinians. It therefore distinguishes between people on nationality grounds.

Ever since its enactment, and throughout its extensions and amendments, Adalah, [‘The Center for Arab Minority Rights in Israel’](#) has fought against the law. In few words, Adalah (meaning ‘justice’), founded in 1996, is one of the leading legal organisations representing the Palestinian citizenry in Israel that devotes its work solely to legal activism and advocacy, with an emphasis on Palestinian collective rights inside Israel.

In relation to the above mentioned law, Adalah has petitioned the Supreme Court, both challenging the law and trying to halt its application, sent letters and petitions to the Minister of Internal Affairs, addressed members of parliament, and issued countless press releases and appeals to various international platforms such as the United Nation’s committees for human rights and the European Commission. I focus is on Adalah’s struggle on the local legal stage, namely the Israeli Supreme Court.

In August 2003 Adalah [filed a petition at the Supreme Court requesting that the law be quashed](#). Petitions to the Supreme Court are divided into two parts: the factual part in which the petitioners are free to unfold ‘the story,’ and the legal part in which the petitioners must keep the argumentations strictly legal and grounded in precedents, laws and legal conventions. The tension between the factual description and the legal argumentation highlights the dichotomy between the language of rights and the language of justice, which Adalah is striving to bridge. Following this line, it seems that the subversive practice can be found only in the factual part of the petition. However, further investigation can prove otherwise, when the use of petitioning and litigation is placed within a context that has different aims.

In Adalah’s petition, the factual introduction to the petition narrated personal stories of Palestinian couples whose lives together would become impossible as a result of the new legislation. Additionally, Adalah claimed that the law was enacted in the absence of sound factual grounds elaborating the need for this law and its repercussions. The petitioners proved that the records showed only twenty cases of suspected involvement of Palestinians with Israeli citizenship in terror attempts, out of a population of many thousands of inhabitants of the Occupied Territories who had received residence status in Israel due to the unification of families.

Adalah’s main legal argumentation was based on the assertion that the law explicitly contradicted the instructions of Israeli [Basic Law: *Human Dignity and Liberty*](#), namely the constitutional right to equality between citizens. Hence, “the discrimination against Arab citizens in the Law is apparent from the clear, unambiguous wording of the Law” ([H.C. 7052/03](#)). The petition continued, claiming that,

The constitutional status of the principle of equality is required for a constitutional regime built on a free and democratic society. [...] A society that wishes to establish itself on the fundamental principle of freedom and equality has no choice but to recognize the constitutional status of the principle of equality. ([Ibid](#))

Indeed, it is not surprising to discover that the petition had to follow strictly legal argumentation using the state’s concepts and narratives of ‘liberal democracy,’ ‘constitutional rights,’ and ‘equality between citizens’.

While insisting on constitutional rights and democracy was a good legal tactic, a more sincere line of argumentation is revealed in [Adalah’s lawyer’s publications](#), where they expressed their conviction that security considerations have been used many times as a cover for ideological-demographic ones and that what guided the legislators in this

case was the desire to preserve the Jewish character of the state, where ‘security legislation’ often serves as a disguise for ideological motives.

The Supreme Court gave its decision after almost three years, rejecting Adalah’s petition (together with other petitions against the law) by a six to five majority. The majority opinion states that the law does not violate constitutional rights and even if it does, the violation is proportional ([HCJ 7052/03](#)). Adalah did not give up and [petitioned again](#), but the [court rejected all petitions in January 2012](#). In July 2012 Adalah petitioned again, and the court’s decision is still pending. Adalah petitions to the Israeli Supreme Court serves as an interesting context to discuss some of the inherent limitations of litigation.

First and foremost — the unavoidable use of some of the state’s narratives and concepts, such as the above mentioned ‘liberal democracy’ and ‘unconstitutional law’ instead of pointing the finger at the demographic considerations — dressed up as security threats — that stand at the base of the law. Therefore, the language is confined within the boundaries of the acceptable legal (and hegemonic) discourse, in which the law can be challenged only from the point of view of the existing legal framework of the state. But this is hardly the only limitation and paradox embodied within litigation as resistance.

An inherent paradox is embodied in litigation as a practice of resistance: the question of legitimacy. Indeed, the dilemma is how to gain justice through the state’s legal ideology without granting legitimacy to the state, which constitutes that ideology. This issue is found at the core of debates amongst both legal professionals and legal scholars. In brief, on the one hand scholars claim that litigation and resistance from the legal system serve to legitimise political authority, and therefore provide [legitimacy to the courts and thereby, in Israel, sustains the Zionist hegemony that is found at their base](#). On the other hand, other lawyers and legal scholars claim that the law, as a tool of legitimation, [may be effective only among those proximate to the centres of social and political power](#), in a way that makes it irrelevant to those oppressed by the law. Thus, in order to deal with the questions of legitimacy and its potential dangers, one must always put it in the context of the audience to which the legitimacy question is referring. Certainly, it should be examined from the point of view of the victims, and not the oppressors. Bearing this in mind, we must remember that in matters related to resistance to Zionism there is an importance to the international stage, and the question of the effect on international public opinion is important and still needs to be taken into consideration.

At the same time, while Palestinians are unlikely to ever support an ideology or system of government that is built upon their oppression, the legal struggle might weaken the intensity of other forms of resistance. Some lawyers refer to this as the ‘anaesthetic effect of the court.’ This means that the appearance of recourse to justice transfers responsibility to the justice system and its representatives and can lead to the paralysis of other forms of struggle, and in general to the legalisation of the political struggle.

Since the hope of creating change through litigation is limited due to the fact that this will necessitate a change in the political and legal culture as a whole, litigation assumes a different role. One of the most important roles of litigation is to expose contradictions in the ‘Jewish and democratic state’ formula that the State of Israel relies on, and to force the court to face these contradictions and the need to defend them time and again. In this sense, there is an accumulative effect that can influence the court, together with the fact that it also creates pressure on the system. Exposure of contradictions in the hegemonic system forces the state to be more explicit in its coercive nature and in its need to defend itself and repress attempts at resistance against it.

Another related role of litigation is the exposure of information that otherwise would be kept hidden from the public. Appeals to court often attract media interest and can serve to expose to the public hidden aspects of the Israeli regime and its practices. This exposure of information in turn contributes to the creation of social movements, since it enables both lawyers and their clients to show how the law provides legitimacy to practices that perpetuate alienation and injustice, and stir public debate. It also exposes the brute force of the state that may be rendered illegitimate or at least questionable.

Additionally, litigation constitutes the documentation of the struggle, and functions as both history writing and narration of the resistance. Litigation in these types of cases, which can be defined as 'losing causes,' constitutes a refusal to accept the present and lawyers carry a vision of the future. In this way, the lawyer also serves as a witness, testifying against these injustices. Litigation also empowers the individual or community that is using it. What the Palestinian citizenry lacks in political terms, it can compensate for in the legal sphere.

Finally, litigation can also be used as a first step before an appeal to international platforms. The information exposed and revealed in the courts can also be brought up on international platforms, such as the United Nations and European Union bodies.

In sum, while litigation can be an important tool of resistance, in the light of its limits it should be used carefully and should never remain as the sole strategy. A possible way out is limited use of litigation in a wider context of socio-political legal calculation, where the variety of possibilities for collective action is found under constant examination. Litigation, and even the larger frame of legal resistance are just part of the larger picture of resistance. Resistance to hegemonic power can never limit itself to the law and legal channels. Despite the potential embodied in legal resistance, I argue that only an ensemble of resistance that acts simultaneously both inside and outside the legal system, constructing and disrupting, building and dismantling, seems to be most strategically effective in countering the hegemonic structures of the state, exposing their weaknesses and contradictions, showing its willingness to suspend the one (democracy) to defend the other (Jewish), and revealing its coercive side, thereby losing its legitimacy both internally and internationally.

Overall, this is a process that we can already see: the deterioration of the Israeli political culture from liberal structures and pretences into a more blatant oppressive system of rule, one that is expressed on both the discursive and [legal \(judicial and juridical\)](#) levels, can count as successes of resistance.

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