Legal Framing and Judicial Policy-Making:
Israel's Policy towards Low-level Palestinian Collaborators

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Abstract

In this paper we ask how legal framing enables courts to act as policy-makers with a tacit acceptance of elected office holders. While previous academic studies mostly demonstrated how courts can serve as policy makers by making statutory interpretation and writing authoritative decisions, little attention has been paid to the way courts may shape policy in complex and sensitive cases where it refrains from making binding decisions. Inspired by Critical Frame Analysis, we examine the way legal framing of an immigration phenomenon over repeated legal cases helps the court to shape directly and indirectly a detailed policy, without making any explicit final ruling that challenges the decisions of executive office holders. The case study presented here is the Israeli immigration policy towards a group of Palestinians who claim to be neglected security related collaborators. That distinct group of petitioners defined in legal proceedings as "threatened persons" has received repeated legal attention from the Israeli High Court of Justice over the past two decades. That policy was officially published by the Israeli Army only in 2015 and it reflects practices previously initiated or approved by the court in its "non-decision" decisions throughout the years.

Introduction

The role of courts as policy-makers has long been debated in studies of national, comparative, and international politics (e.g., Carrubba & Gabel 2015; Dotan 2014; Carruba, Gabel & Hankla 2012, 2008; Martinsen 2011; Silverstein 2009; Rosenberg 2008; Cichowski 2007; Conant 2002; Stone Sweet 2002). While many legal scholars often condemn judicial policy-making and tend to treat it as a legal error or at most as an activist version of interpretation available to a limited range of cases, others tend to look at the court as another political actor who does not only determine facts and interpret authoritative legal texts, but also makes new public policy (Feeley and Rubin 1998, 1–3). Over the years this last approach gained the attention of many scholars, who sought to examine and to demonstrate how trial courts can be very successful as policy-makers. Nevertheless, while most studies of judicial policy-making were mainly focused on courts' statutory interpretation and the writing of authoritative decisions (e.g., Gonzalez 2017, Marks 2016, Koski 2004, Manfredi and Maioni 2002, Lee Jr. and Greenlaw 2000, Reid 1988, Combs 1982), less attention was paid to the way courts may also shape public policy in complex and sensitive political cases where they are often reluctant to make binding decisions.

This study seeks to add another layer to this debate by examining how legal framing enables courts to act as policy-makers in immigration issues, which are often considered a hot political potato. Inspired by Critical Frame Analysis, we examine the way legal framing over repeated legal cases leads the court to shape directly and indirectly a detailed local asylum policy without making any explicit final ruling that openly challenges decisions made by the executive authorities. The case study presented here is the Israeli immigration policy towards low-level Palestinian collaborators, which received repeated legal attention from the Israeli High Court of

Justice (hereinafter HCJ) since the mid-1990s. Despite its initial formation in 1999, that policy was officially published by the Israeli army only in 2015 and we argue that it reflects practices previously created or approved by the HCJ in its "non-decision" decisions throughout the years.

The database of the research consists of 571 unrestricted open court files since the late 1990s throughout 2015 concerning Palestinians who asked the HCJ to be granted legal status in Israel because they are subject to mortal danger as they are suspected by their fellow countrymen to have collaborated with the Israeli security agencies.[1] In the absence of clear legislation, the HCJ has been called to handle dozens of such petitions every year and we argue that the Court, aided by a massive caseload, had been a key player in the formation of a new immigration policy towards low-level Palestinian collaborators.

The article consists of six parts. The first part provides a short overview of the court's intervention on immigration policy issues. The second part presents policy framing as a theoretical framework and discusses our critical research approach. The third part discusses the immigration phenomenon of Palestinian collaborators into Israel and introduces as a case study the Israeli immigration policy towards threatened persons (99% of them Palestinians). The fourth part presents the data collection and the methodology of the research. The fifth part offers a systematic examination of the legal framing towards the population of threatened Palestinians using elements taken from Critical Frame Analysis. The final part summarizes the main conclusions of the research and offers some further directions for future research.

Judicial Intervention on Immigration Policy

[1] The database also includes a single digit number of HCJ's cases of non-Palestinian threatened persons or threatened Palestinians who claim to be under mortal danger for non-collaboration reasons.

Immigration policy raises a variety of fundamental and complex questions concerning the states' social characteristics, national security, economic conditions, and more. Accordingly, immigration policy issues were historically considered as part of state sovereignty, which should be solely determined by the state's legislature and the executive branches, while courts tend to show a judicial restraint towards these issues (Kritzman-Amir 2014, 514-515 and 2013, 177; Waites 2008, 44). For example, in the United States, there are several legal doctrines that allow for a Congress a broad discretion with immigration decisions (Legomsky 1999-2000). One of the main doctrines used in American law is the Plenary Power Doctrine, which states that in the field of immigration, the legislature and the administrative authorities should have complete control, while the court lacks the authority to review their decisions (Martin 2015; Augustine-Adams 2005; VanderMay 1999; Legomsky 1995; 1984). For many decades, this doctrine has effectively insulated federal immigration statutes from constitutional review, leaving them to the exclusive discretion of Congress (Newton 2012, 113).

A similar legal approach was identified also in Israel, wherein many of the judgments relating to asylum seekers - particularly in landmark cases - the Israeli courts rarely tend to interfere with the discretion of the other authorities and interpret the definition and rights of refugees only in a limited manner (Kritzman-Amir 2013). Findings supporting this assertion were also found in cases of migrant workers, where the Israeli Supreme Court refrained from intervening in the Israeli immigration regime towards migrant workers by laconically rejecting or deleting most of their petitions or by pushing the parties to settle outside the court (Sitbon 2007).

Alongside this common legal approach, in recent years we can also identify a gradual development of an opposite approach. For example, in the UK the legislation of the Human Rights Act in 1998 has increased the involvement of the courts in migrants' rights and reduced

their desire to give the legislators a broad discretion in matters of immigration (Waites 2008). Similar examples can be found also in several states in the US, where courts were willing to exercise judicial review in the context of migrant rights (e.g., *State of Washington et al v. Trump* (2017); *State of Hawaii v. Trump* (2017); *International Refugee Assistance Project ("IRAP") v. Trump* (2017); *Arizona et al. v. The United States of America* (2012)). Moreover, in the special context of the refugee regime where many countries are signatories to international treaties which place considerable restrictions on their sovereign ability to adopt independent policies, there are examples where state and regional courts have used their power to review and intervene in administrative decisions and immigration measures taken by the elected or administrative authorities (*Plaintiff M70/2011 v. Minister for Immigration and Citizenship* (US 2011); *Zimbabwe Exiles Forum v. Minister of Home Affairs* (2011); *Attorney-General v. Refugee Council of New Zealand, Inc.* (2003); *Torres v. Finland* (1990)).

Unlike previous studies, this study attempts to show that by adopting "the right" legal framing courts can be greatly involved in the establishment of new types of local immigration policies without making any explicit final ruling that enrages the elected officials and calls into question the public legitimacy of the HCJ's decisions. The case study presented here is the Israel immigration policy towards threatened Palestinians for security reasons.

Theoretical Framework and Research Approach

The use of framing as part of the policy-making process stands at the heart of our study. According to Mieke Verloo's definition, policy framing is an organizing principle that transforms fragmented or incidental information into a structured and meaningful problem, which explicitly or indirectly also includes its solution (Verloo 2005, 20). Following the main assumptions of the sociological approach of framing (Goffman 1974), Verloo defines framing

not as an accurate description of reality, but rather as a choice of a certain social construction that gives meaning and shapes our perception of reality. This social construction is mediated by political, legal and social actors through the use of discourse and other symbolic tools (Verloo 2005, 20).

Verloo's definition of policy framing is based on the writings of some prominent scholars who have adopted a similar approach of framing. One of these scholars is Robert Entman, who offers in his work a broad and pragmatic concept of framing that is designed to help a wide range of research fields (Entman 1993, 56). In Entman's view, framing is an act of selection and silence, which is intended to highlight certain aspects of the text while omitting others in order to define a problem and its causes in a certain way, to interpret and evaluate it normatively, and to offer a solution for it accordingly (ibid, 52). Moreover, according to Entman's view (ibid, 55), framing plays a central role in the use of political power, while the frames in the text are, in fact, an imprinted power that reflects the identity and interests of those who control the text.

Following Entman's critical approach, our basic research assumption is that law should not be seen only as a system of institutionally established and managed rules but also as a form of rhetoric by which community and culture are established, maintained and transformed (White 1985). Like other political texts, laws and court rulings also seek to construct the way we understand the world around us, and the textual choices in them are intended to serve and preserve the interests of the power elites and to justify their chosen policy (van Dijk 1997, 11; van Dijk 1993, 254–55). According to this approach, policy and political discourse may reproduce or change the social world by reproducing or changing people's representation of it and the principles of classification which underlie them (Fairclough, 1995, 182). They represent

authoritative values and beliefs and define the way people should think and act and by what rules they must abide (Woodside-Jiron 2004, 154; Prunty 1985, 136).

As dominant discourses are often tied to social arrangements and practices which support and maintain the position of the powerful elite groups (Burr 1995, 38), the way public policy is developed and implemented through court rulings is an important area for critical policy analysis. Such analysis is intended to examine and expose the power and ideology embedded within the definition of a social problem and its policy solution (Woodside-Jiron 2004, 155).

Drawing on Verloo's and Entman's theoretical approaches regarding the role of framing in the policy-making process and following our critical discourse approach, this study seeks to reveal and critically explore how courts identify the population of threatened Palestinians for security reasons , how they interpret their immigration phenomenon, and how they justify and influence the government policy towards them.

Case Study: Threatened Palestinians on Grounds of Security Collaboration

The use of human intelligence, and more particularly the recruitment of Palestinian collaborators/informers, has been a constant security phenomenon ever since the beginning of Zionist settlement in the Land of Israel as part of the Yishuv's (an acronym for the pre-state Jewish community) struggle to establish a Jewish State (e.g., Cohen 2006, 2004; Sa'di 2003; Dekel 1953, 137-177). Since the Six Day War of 1967 and the occupation of the West Bank and the Gaza Strip, the use of collaborators has become one of the main tools Israel has used, to maintain its control of the occupied territories and to protect the lives of Israeli citizens inside and outside the "Green Line" (Cohen 2012, 469).

Nevertheless, the expansion in the use of human intelligence in the occupied territories has led over the years also to an increase in the need to preserve and protect the lives of those who collaborate with the Israeli security agencies and are eventually exposed. One of the main tools for providing such protection is to enable the exposed agents to resettle in Israel.[2] To a considerable extent, the ongoing relocation and rehabilitation of these exposed collaborators in Israel were based not only on the continual grip of Israel on the occupied territories, but were also strongly connected with Israel's territorial withdrawals from areas taken by Israel following wars with its Arab Neighbors in 1967 and 1982. In all of the conquered territories the recruitment of local collaborators was deemed as an essential security need for the operation of military forces as well as for the protection of Israeli citizens on both sides of the borders. Israel's withdrawal from these territories has demanded not only careful and profound thinking about national and security interests, but also has required practical and moral considerations such maintaining its reputation by taking responsibility for the lives of those who have collaborated with the Israeli security agencies and remained exposed and unprotected in areas beyond the new Israeli sphere of control (Hofnung 2017, 62-63).

In light of the above, one of the most significant turning points in official Israeli policy toward Palestinian collaborators came in May 1994, following the signing of the Oslo Accord, when the Israeli government accepted the decision to establish the Security Aid Administration (hereinafter SAA) (Israeli Government Decision No. B/118, 1/13/1994). In light of the agreement to transfer control over areas in the Gaza Strip and the West Bank to the Palestinian

[2] According to *Haaretz*' report (8 Sep. 2000), until the 1990s a small unit in the ISA (Israel Security Agency) was responsible for the relocation and rehabilitation in Israel of high-level collaborators.

Authority, there was a widespread concern for the lives of many Palestinians who had collaborated with the Israeli authorities (Pery 1999, 259-261).[3]

The SAA was assigned to regulate the relocation and rehabilitation of about 1500 high-level Palestinian collaborators and their families in Israel.[4] As part of its role, the SAA was asked to formulate an individual rehabilitation program for each of the Palestinian collaborators and their family members according to their specific needs. Among its responsibilities, the SAA may take care of the relocation of the collaborators' families to Israel, finding housing arrangements, offering financial assistance and vocational training, and providing assistance in arranging a legal status in Israel for the collaborator and his family (General Security Agency website).

Nevertheless, at the same time, the SAA categorically refused to take care of those who were only suspected or self-claimed to be collaborators, as well as those who were willing to collaborate, but did not meet the SAA's confidential and strict criteria of supplying valuable information. As a result, many Palestinians who claimed that their lives were in serious danger in light of the suspicion that they collaborated with the Israeli security agencies found themselves without any protection or suitable support.

In 1998, the increasing flow of Palestinian applicants to the SAA (and the HCJ) and concern for the lives of the many Palestinian self-claimed collaborators who were rejected by the SAA led the Israeli government to the conclusion that it was necessary to establish a new emergency

[3] According to the IDF Spokesman, between December 1987 and November 1993 942 Palestinians were killed due to suspicion that they collaborated with Israel; according to the Associated Press, during the same period 771 Palestinians were killed for the same reason. See: Be'er and Abd Aljawad, 1994, 9. According to *Haaretz*'s reports (6 Oct. 1995; 2 Jan. 1996), after Israel had transfered its control to the hands of the PA, the Palestinian security agencies increased their harassment of residents who were suspected of collaborating with Israel, and acts of killing of alleged collaborators also continued.

[4] Yaakov Pery (1999, 260), the head of the ISA during the establishment of the SAA in 1994, has revealed that the list of collaborators who were relocated by SAA in its early days included 1400 names, from which 1200 were ISA collaborators. According to *Haaretz*' report (17 July 1995), in its first year the SAA's list included 1,502 families - approximately 6,000 Palestinians. Nevertheless, according to the Security System's assessment in the report, there were thousands of other Palestinians who also needed to be rehabilitated by the SAA.

and temporary relief to low-level Palestinian collaborators. Following this decision, a new provisional arrangement was established in 1999 in which another administrative advisory tribunal known by the name of the "Threatened Committee" was founded by the State's Attorney General (HCJ 3870/12; Treatment Procedure for Threatened Individuals, 2015, &2 (hereafter the Regulation)). Nevertheless, for many years, this initial decision was not accompanied by legislation or any applicable administrative regulations, leaving the HCJ to solve individual cases without a clear guidance (or a formal mandate) from the legislature.

The working manual of the Threatened Committee became public only in February 2015, nearly 16 years after the committee's establishment.[5] During these long years, the HCJ has been faced with an increasing number of individual petitions who ask for judicial review of the above immigration policy. With dozens of petitions piling up on the HCJ docket every year, the court was able to engage in this sensitive policy-making.

Despite more than 20 years of constant increase in the number of individual people seeking the status of a threatened person,[6] Israel's policy toward low-level Palestinian collaborators and the patterns of their settlement have rarely received adequate attention, neither in academic literature nor in the Israeli public realm. Beginning in the mid-1990s, only a few human rights reports sought to draw public attention to the lives of Palestinian collaborators in Israel or to their cruel fate in their own communities (e.g., B'Tselem 1994; Human Rights Watch, 2001). Furthermore, these reports were mostly sporadic and confined to specific periods of time and

[5] The publication made after an administrative petition based on the Freedom of Information Law, 1998, was submitted the District Court in Tel Aviv. ATM 51147-05-14 *Gisha - Legal Center for Freedom of Movement vs. COGAT and Others* (19 Nov. 2014).

[6] Although we do not have clear information on the number of Palestinians who receive "threatened" status since the establishment of the Threatened Committee, monitoring the number of petitions to the HCJ since 1999 shows clearly that the desire to obtain the above status is continuously rising. See: Chapter fifth below.

therefore spark little public debate or encourage a more comprehensive understanding of the Palestinian collaborator population.

In addition, academic research regarding Palestinian collaborators is also still in its infancy. The existing literature on this sensitive subject comes from varying perspectives, among them memoirs of former intelligence officers describing their operational connections with Arab collaborators (e.g., Moreh 2014, 64-77; Pery 1999); other studies were carried out from a sociological perspective (e.g., Haj-Yahia, Kaufman and Abu Nijaila 1999); from a legal point of view (e.g., Livant 2018; Levenkron 2012; Teplow 2009); human rights point of view (e.g., Dudai and Cohen 2007; Cohen and Dudai 2005) or historic political analysis (e.g., Hofnung 2017). However, it is more difficult to find studies that examine Israel's policy towards former Palestinian collaborators in the present age as part of Israel's complex asylum policy or as an intriguing example of judicial policy-making on immigration issues.

It is noteworthy here that although former Palestinian collaborators are not identified by Israel as refugees, it has been argued that this option is certainly feasible under international law. According to this perspective, the Convention Relating to the Status of Refugees (hereinafter the Refugee Convention) also applies, in principle, to Palestinians whose lives are in danger in the West Bank and the Gaza Strip due to security collaboration with Israel, and therefore they are entitled to have (according to a detailed examination of their asylum applications) all the rights which have been set in the Refugee Convention (Livnat 2018).

Indeed, like other groups of asylum seekers, former Palestinian collaborators may often be subjected to persecution by their local authorities. Such treatment meets the initial requirement of the Refugee Convention (&1(A)(2)) and its Protocol (&1(2)) (see also: APA 1440/13, &38(A)),

and therefore threatened persons may claim entitlement for the same protection and legal rights as other groups of refugees. Such an interpretation was also accepted by some prominent judicial tribunals around the Western world, which examined collaborators' requests for asylum, such as Iraqi and Afghan collaborators, in accordance with the refugee laws (e.g., NS (Iraq: perceived collaborator: relocation) Iraq CG [2007] UKAIT 00046).

Nevertheless, unlike other types of asylum seekers, Israel's responsibility towards former Palestinian collaborators does not stem solely from the Refugee Convention, whose application, in this case, raises a few significant legal difficulties worthy still of a clear legal decision (see: Livnat 2018), but also from a series of other legal norms, such as international obligations, bilateral agreements and local supplementary arrangements. For example, Israel has also legal obligations for the security of the Palestinian population in the occupied territories due to the Fourth Geneva Convention (&27), the United Nations Convention against Torture (&2(A)), the International Covenant on Civil and Political Rights (&2(A)) and the international customary principle law of Non-Refoulement (HCJ 4702/94). Moreover, the concerns for the lives of Palestinian collaborators were expressed also in the first and second Oslo Accords between Israel and the Palestinian authority in the first half of the 1990s, where both sides agreed that "Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution." Accordingly, the two sides agreed that "[a]ppropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection." (Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, &16(2) (28/9/1995); Agreement on the Gaza Strip and Jericho Area, &20(4) (4/5/1994)). Finally, over the years Israel has adopted a series of exceptional humanitarian arrangements towards different Palestinian groups and individuals who wish to have status in its territory for reasons of

high-level collaboration (The Citizenship Act, 1952, &6(e), &9(a)(4)), The Citizenship and Entry into Israel (Temporary Provision) Act, 2003, &3C; Israeli Government Decision No. B/118, 1/13/1994) or for other non-security life-threatening reasons, such as persecution based on sexual orientation, desecration of family honor, or blood revenge, tribal conflict (The Citizenship and Entry into Israel (Temporary Provision) Act, 2003, &3B(3)).

Following the complexity of the Israeli-Palestinian case, this study does not limit itself to the narrow legal definitions and requests of the international refugee regime, but rather adopts a more complex perspective (Betts 2010). In our view, although the new immigration arrangement towards threatened Palestinians for security reasons is not part of the Israeli refugee regime, it clearly joins other Israeli immigration arrangements towards Palestinians who are in a life danger that together constitute a composed type of a local refugee regime.

In this context, it is interesting to notice that the influx of threatened Palestinians to Israel has occurred simultaneously with the migration of other asylum seekers, mostly from Sudan and Eritrea. These growing waves of immigration forced Israel, which until then had no official policy towards asylum seekers (Kritzman-Amir 2015, 27-28), to launch two separate local policies in relatively close proximity. The executive policy regarding threatened Palestinians was initially established in 1999 (Treatment Procedure for Threatened Individuals, 2015, &2(F)), while the first executive order towards asylum seekers was set soon afterward in 2001 (The Procedure for Regulating the Treatment towards Asylum Seekers in Israel, 2001). Nevertheless, while the Israeli asylum policy toward Eritrean and Sudanese asylum seekers has gradually become more severe over the years (Livnat 2018, 34-35; Kritzman-Amir 2015, 28-36), the policy towards threatened Palestinians had an ongoing process of expansion and relaxation through the intervention of the HCJ. This intriguing contrast between the two policies requires an in-depth

examination in order to shed more light not only on the judicial policy-making towards low-level Palestinian collaborators, but also on the complexity of the Israeli refugee regime and on the central role of the institutional discourse as part of this regime.

Methodology

A. Data Collection

The research database comprises 571 unrestricted open court files from the late 1990s through 2015 regarding Palestinians who asked the HCJ to grant them legal status in Israel because they face mortal danger due to the suspicion of their fellow countrymen that they have collaborated with the Israeli security agencies. The initial detection of all the relevant HCJ cases was based on a broader database of a research project which examines legal cases of all kinds of groups of collaborators in all Israeli judicial instances (Hofnung 2017). Nevertheless, the selection of the relevant court files for this paper was carried out in accordance with our specific research purposes, and was made by using several public databases, particularly the Judicial Authority's website, which includes the published decisions of the Supreme Court since October 1997.[7]

The involvement of the Israeli Supreme Court in national security, as well as other public policy issues, is based on the Israeli legal system and especially on the role of the HCJ, one of the functions of the Supreme Court of Israel. In this function, the Israeli Supreme Court has original and final jurisdiction in petitions brought against the state and its organs in matters that fall outside the jurisdiction of other courts. It is within this capacity that litigation between public petitioners and policymakers takes place. This is particularly the case with petitions concerning

[7] In a few cases, relevant court files were also found in other commercial legal databases, including Nevo, Takdin and Dinim.

national security, where the respondents are almost always cabinet ministers, state agencies entrusted with security powers, or the Israeli army.

The HCJ's jurisdiction is set out in section 15(c) of the Basic Law: The Judiciary, according to which the High Court "*shall hear matters which it deems necessary to grant relief for the sake of justice*." Unlike the "Case or Controversy" requirement of the U.S. Constitution (&III), the Israeli Supreme Court's power extends to any matter it finds necessary to decide in order to advance the administration of justice. The HCJ has the power to intervene in almost any type of decision-making process and to issue orders to almost any state agency (Dor and Hofnung 2006, 134-135), and its decisions are closely followed and intensively covered by both the media and the public (Hofnung and Weinshall-Margel 2010; Davidov and Reichman 2010; Dotan and Hofnung 2005).

More specifically, for nearly two decades, the HCJ was the main tribunal that was required to examine Israel's policy toward low-level Palestinian collaborators and its application in practice. According to the original Article 12(3) of the First Addendum to the *Administrative Courts Act, 2000,* the residual jurisdiction to hear cases relating to Article 3C of the *Citizenship and Entry into Israel (Temporary Provision) Act, 2003*, which grants authority to the commander of the occupied territories in the IDF to give temporary permits to reside in Israel on humanitarian grounds, rests exclusively with the HCJ.[8]

Additionally, when sitting as the HCJ, special procedural rules apply, resulting in an altogether more relaxed and simplified legal process. This simplified procedure — coupled with the finality of its decisions — has turned the HCJ into a relatively accessible and attractive institution for both

[8] As of April 2018, this Act has been changed and cases relating to Palestinian collaborators, along with a long list of other issues relating to the Occupied Territories, were transferred to the authority of the Administrative Affairs Court (see: Order of Courts for Administrative Affairs (Amendment of the first and second additions to the Law, 2018, &1(3)(c)).

individuals and public petitioners (Dotan 2014, 25). The easy access and fairly low cost have meant that the HCJ has gradually become a very attractive forum for Palestinians claiming to face a mortal threat to their lives because they are suspected of being collaborators.

B. Analysis Method

Our study draws inspiration from the Critical Frame Analysis (CFA), which was first developed within the context of two collaborative and comparative research studies of gender equality policies in the European context, MAGEEQ (2003-2006) and QUING (2006-2011). This methodological approach is still in its early developing stages (van der Haar and Verloo, 2016), and, thus, although it has been used so far mostly in gender studies (e.g., Lombardo and Meier 2014; van der Haar 2013; Dombos et al. 2012; Meier 2008; Verloo and Lombardo 2007; Roggeband and Verloo 2007), it may also be relevant to other policy studies following some necessary adjustments (Verloo 2005, 29).

CFA is largely based on the theoretical approaches of Verloo and Entman, on which this study also relies, and is intended to expose and analyze policy framing in a critical manner, linking framing to issues of legitimation and exclusion (van der Haar and Verloo 2016; Verloo and Lombardo 2007; Verloo 2005). It allows us to see how social phenomena are turned into policy problems in policy language and how certain frames become dominant while others are excluded. Moreover, in CFA policy frames are both 'models of reality' and 'models for reality'. Namely, they not only describe and interpret our world but also structure and determine people's actions and practices (van der Haar 2013, 216).

The analysis of texts using this methodology is a combination of content and discourse analysis according to four main dimensions of a policy frame: Diagnosis of the policy problem (what is the problem represented to be?); Prognosis of the policy problem (what action is proposed?); Roles attributed to various actors in diagnosis and Prognosis and the voice of actors (authors of texts and references in texts) and their varying power in diagnosis and prognosis (Verloo 2005, 25-27).

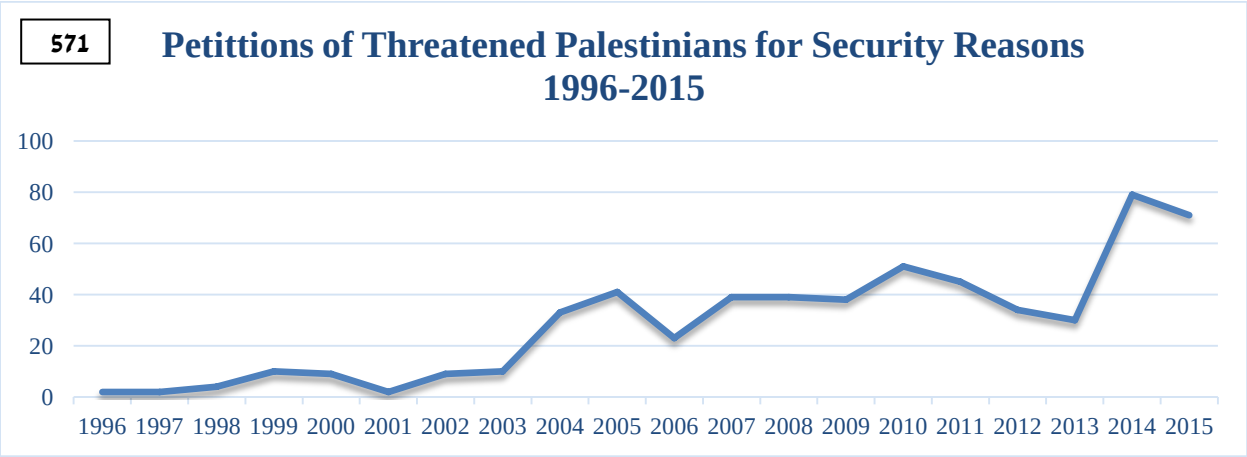
In its original model, this methodology may analyze a variety of parameters in order to identify different frames, as well as to expose the balance of power and the political interests behind these frames (Verloo 2005, 30-31).In light of our research question, this study has developed a new sensitizing questionnaire that aims to reflect each of the above dimensions. The questionnaire, which is built of a series of open and closed questions, served as a coding scheme to systematically extract from each legal text all the relevant information, as well as to reveal its silent and covert aspects.

The analysis of this research was conducted in two main stages. In the first stage, we examined, with the help of the coding scheme, the legal framing of threatened Palestinians in the HCJ's files. Based on the result of this systematic analysis, in the second stage, we used interpretive analysis in order to explain how the legal framing helps the court to justify the chosen immigration policy, despite its serious problems, and to influence and re-shape it over time.

Analysis and Findings

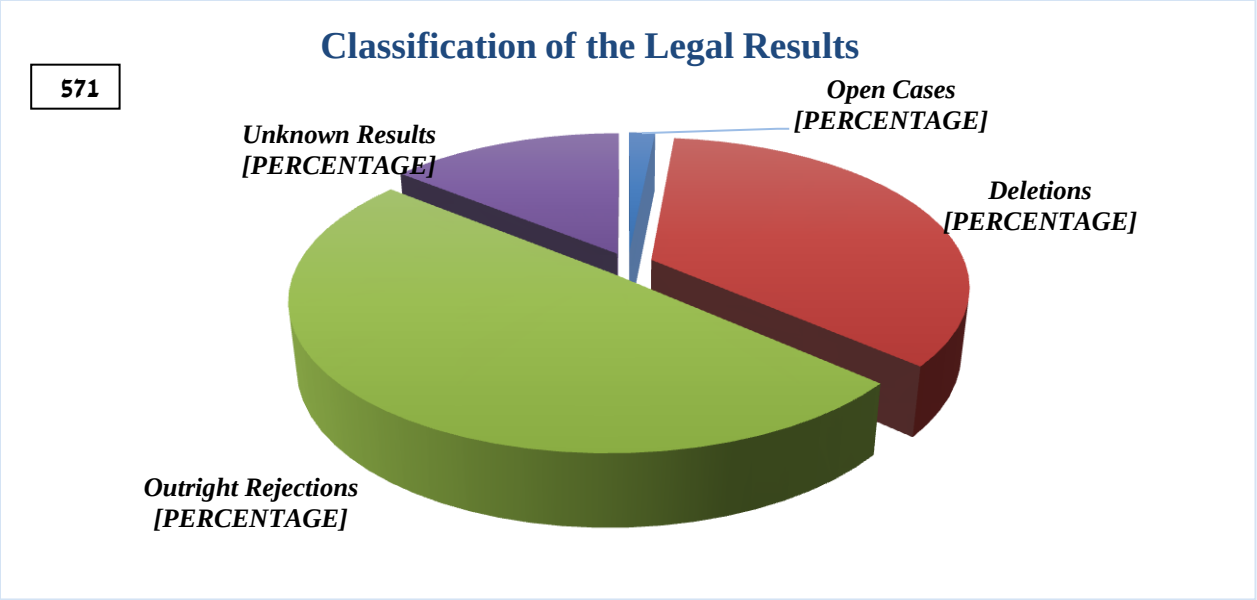
The first petitions claiming a threat to life in the Occupied Territories on the basis of collaboration with Israel were brought before the HCJ in 1996. Soon, these few initial petitions turned into dozens and marked a new continuous trend among allegedly threatened Palestinians,

who asked for the court's help. These new type of petitions raised troubling questions relating to human rights as well as complex political and security issues, which demanded the HCJ's careful and creative legal attention.



*The apparent decline between the years 2011 to 2013 can be explained in light of the increase in the number of petitions to the Israeli Administrative Court, which were not analyzed in this study. For further information, see: Hofnung, 2017, 85.

In a simple reading of the HCJ's legal cases over the years, it might seem that the HCJ was very reluctant to intervene or to change the decisions of the Israeli security authorities in an explicit and declared way. For two decades, all of the petitions brought before the HCJ were either deleted, became moot or rejected outright. We could not trace even a single final judgment granting full court victory for a Palestinian claiming to be a threatened person.



At first sight, these findings are very similar to those found in previous studies, indicating that the HCJ tends to show judicial restraint towards sensitive and complicated political issues such as immigration of Palestinians into Israel. Despite the growing number of Palestinian petitioners asking for the court's help, the HCJ did not make any binding decision in its final rulings and seems to leave the immigration problem of low-level Palestinian collaborators to the exclusive discretion of the state authorities. Surprisingly, though, the Treatment Procedure for Threatened Individuals, which was first published by the Israeli army in 2015 and presents the official treatment process regarding threatened Palestinian for security reasons, declares that

The procedure establishes an orderly process of decision-making which is based on the proper balancing of the obligation of the State of Israel to the safety of people whose lives are in real danger (even if they have not collaborated with Israel's security forces), and the state's commitment to the security and well-being of its citizens. ***The aforesaid balance is based on the principles determined by the High Court of Justice in its rulings*****[…]** (The text is not highlighted in the original version) (the Regulation &1(D)).

The above intriguing statement shows that unlike what one might reasonably assume based on statistical data, the HCJ had, in fact, a major influence on the Israeli policy towards low-level Palestinian collaborators and its official regulation. According to our hypothesis, the explanation for this striking contradiction lies not in the final result of any single case, but rather in the legal framing of each petition, which has enabled the HCJ, directly and indirectly, to shape a detailed new policy without making any explicit final ruling against the state's authorities.

Deportation from Israel of people who seek refuge for fear for their lives in their former place of residence has been discussed by the HCJ over the past decades several times. In the 1970s, the HCJ considered the issue of deportation for security reasons mainly as a security problem, which should be solely determined by the state's security authorities (HCJ 17/71). The HCJ maintained this restrained legal approach for more than two decades, repeating that ruling in its judgments (e.g., HCJ 97/79, 320/80, 698/80, 95/85, 1361/91).

In the first half of the 1990s, the HCJ adopted a more activist legal approach, which highlights the humanitarian considerations that must be examined in every deportation decision and may also be subjected to judicial review. It ruled that in such matters the authorities' decision should be made according to Israeli constitutional law and international law. According to the HCJ, the customary law's principle of Non-Refoulment, according to which a person cannot be deported to a place where his life or liberty is endangered, obligates the Israeli authorities in every deportation decision and applies also to persons who are not defined by the state as refugees (HCJ 4702/94).

Beginning in the second half of the 1990s, the HCJ has been required to examine a growing number of petitions of allegedly low-level Palestinian collaborators seeking to obtain status in Israel in order to save their lives. In the absence of a clear official policy, the HCJ was

called upon to handle dozens of such cases each year and to justify its legal decisions. Realizing of the growing number of allegedly threatened Palestinian collaborators who ask for the court's help, giving too much attention to humanitarian considerations, which obligates the state to act in accordance with Israeli constitutional and international law, could have made it very difficult for the Israeli authorities to cope and could have provoked a strong objection among the Israeli security agencies and in the political system.

In the following analysis, we are set to examine how the HCJ has handled the Palestinian collaborators' problem by framing their petitions in a new way. According to our hypothesis, this new legal framing has allowed the court to show a legal flexibility and to redefine the balance between Israel's obligations to the safety of threatened Palestinians, and the needs and interests of the state's security authorities. Moreover, following its legal framing, the HCJ could, on the one hand, satisfy in its rulings the decision-makers and get their tacit agreement, and, on the other hand, was able to influence directly and indirectly the formation of a new immigration policy.

In order to examine our research hypothesis, we analyzed all the legal cases that were submitted (and were not classified as secret information) from 1996 until the end of 2015.[9] By systematically testing each of the files using our coding scheme we found that the petitioners were repeatedly identified in the legal texts as residents of the West Bank or the Gaza Strip who claim to have collaborated with Israeli security forces and therefore their lives in their place of residence were in danger. This new framing enabled the HCJ to emphasize that the Palestinian petitioners belong to a special group of forced immigrants with specific needs and conditions,

[9] In order to not to exclude cases that had important interim decisions prior to the publication date of the regulation as well as to ensure that the findings and conclusions of the research also reflect the legal framing in the post-policy making age, our research database includes all the legal cases that were submitted until the end of 2015. After that year, there is a larger number of open files that have not yet been decided.

which cannot be compared to other groups of asylum seekers. As a result, the HCJ could not only avoid dealing with the complex legal question of whether the Palestinian petitioners are indeed asylum seekers, who should be treated in accordance with international law,[10] but also with the problematic political label of 'Palestinian Refugees', which reminds one of the most acute disputes of the Israeli-Palestinian conflict (Schwartz and Wilf , 2018).

On the other hand, following the tangible concern for the lives of many former low-level Palestinian collaborators, who were exposed and allegedly doomed to death in the occupied territories, framing the Palestinian petitioners as a different and special group of forced immigrants, enabled the HCJ and the Israeli authorities to act for their safety without arousing any public opposition. Moreover, it allowed them to avoid comparing the Palestinian petitioners to other groups of immigrants, who are often presented in the Israeli legal and political discourse as infiltrators, citizens of an enemy state or migrant workers in order to limit the extent of their immigration to the state (e.g., HCJ 7052/03, 466/07, 7146/12, 7385/13, 8665/14).

More specifically, by using a new and specific framing, the HCJ could, on the one hand, clearly define the limits of Israeli policy towards this group of Palestinian immigrants. Since the petitioners were mostly identified as Palestinian individuals who claim to be former collaborators, their requests were examined solely in accordance with the Israeli policy towards high-level Palestinian collaborators, and were considered as a default group due to strict criteria that apply to the latter category (high-level collaborators). In addition, by referring specifically to their Palestinian nationality and to the security background of their status requests as former collaborators, the HCJ could justify the exclusion of other people from this same special policy.

[10] In HCJ 9394/10, the HCJ casually raises this problematic question, but chooses to leave it open. See also HCJ 5553/14 and HCJ 1364/13 where the HCJ refrains from dealing with the legal question of whether a threatened Palestinian could be considered an asylum seeker, who can also apply to the R.S.D unit (Refugee Status Determination).

We refer here to groups such as non-Palestinian threatened persons (e.g., HCJ 7370/11) or threatened Palestinian for non-collaboration reasons (e.g., HCJ 8036/08, 203/11, 9404/11). This narrow definition was later also expressed in the 2015 regulation, which relates only to Security related threatened Palestinians from the West Bank or the Gaza Strip (the Regulation &2(C, E), &4).

Reviewing the HCJ's caseload reveals that over the years, with the absence of clear legislation, the Israeli security authorities have used their wide discretion to apply the above mentioned to additional groups of threatened Palestinians, such as family members or other close relatives of Palestinian collaborators (e.g., HCJ 3758/05, 6059/09 1791/09, 442/11, 2774/14, 179/14), Palestinians suspected of collaborating with Israel even though they did not (e.g., HCJ 7779/00, 9304/05, 7567/08, 1759/08, 3661/09) as well as Palestinians who were involved in the sale of lands to Jews (e.g., HCJ 7437/12). This expansion of population was also reflected in the regulation of 2015, which relates to threatened Palestinians due to suspicions of collaboration in a vague and general manner (the Regulation &2(C, E), &4).

Altogether the HCJ refrained from examining the Petitioners' problem from a broad perspective. The Palestinian petitions were mostly framed as exceptional cases of unrelated individuals, who ask for the state's assistance following their specific life conditions and therefore should be treated separately (e.g., HCJ 7907/02, 6939/09). Accordingly, the 2015 regulation was also formulated as such that allows only individual inspection, in which each case is examined on its particular circumstances.

Furthermore, only in a very small number of cases, we could find a reference to some of the non-security problems of the threatened Palestinians, such as employment, health, education, and welfare (e.g., HCJ 3758/05, 1559/05, 8961/06, 1796/08, 5762/12, 4505/13). Nevertheless,

even in these exceptional cases, the non-security problems were presented very briefly without clarifying the inherent difficulties of foreign immigrants, specifically former low-level Palestinian collaborators. This narrow view was reflected also in the 2015 regulation, where we could not find any reference to the non-security problems of the threatened Palestinians and their families.

After analyzing the represented problem of the Palestinian petitioners in the legal texts (the Diagnosis), we can now analyze the HCJ's solution for them (the Prognosis). Firstly, although the main reason for granting low-level Palestinian collaborators a legal status in Israel derives from their life-threatening fate and is not given to similar petitioners who are not found to be at risk (e.g., HCJ 4842/06, 8610/06, 3250/08, 5245/09, 2608/13, 454/14, 2978/14, 6179/14), in the HCJ's texts the petitioners' demands were not presented as asylum requests, but rather as requests to have a permanent or temporary status, such as citizenship, residency or renewable monthly stay permits. Namely, they were framed as formal status requests to which the state is not obligated by international law, and are mostly dependent on the broad discretion of the state. Moreover, since the requests of the Palestinians for legal status were framed as a result of collaborating with Israel, the court considered their claims not only in view of the danger to their lives and the danger they might pose to the Israeli public, but also on the basis of their intelligence contribution. This special criterion, which is not recognized by international law, was mostly intended to serve Israel's security interests and allowed the court to justify the hierarchical distinction within the Israeli policy between high-level and low-level Palestinian collaborators and their different legal rights (e.g.; HCJ 1008/98, 1562/98, 6427/04, 10898/04, 6696/05, 1907/05, 11531/05, 4842/06, 5883/07, 7008/07, 6899/07, 6230/08, 9394/10, 3322/11, 442/11; the Regulation &2(A-C)).

Framing the Palestinian petitioners' phenomenon as a security issue enabled the HCJ to promote a specific and limited solution that was later also institutionalized by the Israeli authorities. In 1996, when the first petitions began to be filed the court was asked to act at that time in an unclear legal situation and with insufficient information regarding the Palestinian petitioners' claims for threats to their lives. It decided to allow the Palestinian petitioners to stay in Israel until their claims will be properly examined (e.g., HCJ 4535/96, 1199/97, 1562/98), thereby demonstrating the need for a new institutional mechanism, which will prevent the immediate expulsion of alleged low-level Palestinian collaborators, until their claims will be checked. Following the court's rulings, the state started to adopt a similar practice, which allowed low-level Palestinian collaborators who petitioned the HCJ to have temporary stay permits in Israel as a humanitarian gesture and to re-examine their situation within specified periods (e.g., HCJ 5427/97 1008/98, HCJ 1562/98, 8202/99, 4476/99, 5215/99).

In 1999 the Israeli government decided to institutionalize its practice towards low-level Palestinian collaborators and established a new temporary organ called the "Threatened Committee", that is entrusted to hear and examine claims and to allow credible individuals to receive temporary stay permits on a humanitarian basis (HCJ 9482/11, 3870/12; Regulation &2(D-G)). Despite the fact that the new committee was not a statutory organ (HCJ 9482/11), the HCJ was willing to recognize its authority and broad discretion from its early years (e.g., HCJ 7779/00, 8770/00, 5439/00, 9588/00), as well as to contribute significantly to its permanent status by repeatedly emphasizing the committee's role in its final decisions (e.g., HCJ 10898/04, 6695/05, 1907/05, 4857/07, 7008/07, 11090/07, 6899/07, 3232/08, 6230/08, 6355/09, 1026/10, 9343/11, 203/11, 9404/11, 9482/11, 6463/12, 2608/13, 3728/13, 1364/13, 454/14, 5553/14).

Moreover, by recognizing the administrative authority of the Threatened Committee, the HCJ has limited itself mainly to examine the administrative activity of the committee in each case and refrained from criticizing the state's overall policy towards low-level Palestinian collaborators, despite its awareness of its partial solutions and deficiencies (e.g., HCJ 9482/11, 3870/12, 2608/13; State Comptroller's Report, No. 57B, 2007, 1082; Knesset State Control Committee Sitting, Protocol No. 252, 15 May 2012). As part of its close involvement, the HCJ required the committee to follow a number of guiding principles and to establish certain work procedures, which eventually also became part of the state's official policy (For a detailed examination of the regulation's procedural clauses and the court's rulings in their matter, see Appendix A).

One notable example for the HCJ's method could be found in a detailed judgment of the HCJ that examined the committee's work procedure and the source of its authority (HCJ 9482/11). Even though the HCJ has rejected the petition, it did not hesitate to criticize the committee's two main deficiencies and to demand their regulation. First, the court instructed the commander of the occupied territories in the IDF, to whom the authority to grant Palestinians stay permits was delegated by law (the Citizenship and Entry into Israel (Temporary Provision) Act, 2003, &3C) to formally empower the Chairman of the Threatened Committee to grant stay permits to threatened Palestinians in abbreviated procedure. Secondly, the court has asked that the committee's deliberations and the chairman's decision will be presented separately (see: HCJ 2608/13; Certificate of Accreditation to the Chairman of the Committee, 16/6/2013).

Following its legal framing, the HCJ not only had a direct influence on the official policy towards low-level Palestinian collaborators, but also an indirect one. Considering the initial stage of the state's policy in its first years, the state authorities were not only very open to adopt the

court's recommendations in order to obtain its support and legal approval, but they were also creative in appointing new functionaries and developing additional procedures. Thereby, the state authorities could gradually develop a new policy in accordance with the criteria outlined by the HCJ, knowing that it be eventually endorsed by the Court.

Finally, analyzing the HCJ's judgments also in the years following the publication of the regulation in February 2015 indicates that the HCJ has continued to use the same legal framing described above and to take the same legal practices in its rulings. The court's rulings after this date systematically match the regulation's provisions, and it rejected requests that tried to change or expand the formal procedure that was set.

Conclusion

Despite the recent growing attention accorded to judicial policy-making in academic research, the role of courts as policy-makers still remains controversial. Over the recent years, most of the studies that tried to address this issue were mainly focused on courts' statutory interpretation and the writing of authoritative decisions. Taking a new path, this study seeks to examine the hidden facet of judicial policy-making. We focus on the way legal framing over repeated legal cases leads the court to shape directly and indirectly a detailed policy without making any explicit final ruling that openly challenges decisions made by the executive authorities. The case in point was the Israeli immigration policy towards low-level Palestinian collaborators, which received repeated legal attention from the Israeli HCJ over the past two decades.

Our research findings show clearly that legal framing plays an important role in the policy-making process of the court. It allows the court not only to overcome various political and legal obstacles but also to justify and be deeply involved in the development of a new official policy.

The HCJ's continued intervention in the case of low-level Palestinian collaborators was made possible, to a great extent, due to their legal framing, which served the interests of the Israeli security and political authorities and thus received their tacit agreement. The fact that the HCJ did not view the low-level Palestinian collaborators as asylum seekers, but rather as a different group of immigrants who seek to have a legal status in Israel, has allowed the Court to avoid dealing with many of the legal and political difficulties of this delicate policy issue. Moreover, by using a new legal framing the court could justify and develop a new policy that does not oblige the state authorities to treat low-level Palestinian collaborators in accordance with the international refugee regime, but rather according to the broad discretion of the state's security authorities.

From a broader political view, the case of low-level Palestinian collaborators also demonstrates the potential influence and the role of courts as policy-makers in sensitive political cases, where state authorities choose to establish only an initial vague policy without regulating its details. The fact that the Israeli authorities refrained from establishing a comprehensive policy towards low-level collaborators allowed the HCJ to gradually intervene in its details. At the same time it also enabled elected decision-makers to assess the implications of an evolving policy which addresses a complex and sensitive political and security issue while knowing that it has already undergone a judicial review and they are not expected to be face a setback in court.

Our study shows us that for courts to act as policy makers, they do not have to rule directly against the executive authorities. Courts can have a profound impact and be deeply involved in setting a new policy, even when it comes to sensitive and complex security and political issues. In addition, we hope that these findings will be an initial step for other studies addressing the

subject of judicial policy-makers by legal framing from more global and comparative perspectives.

Appendix A

Court Influence on Formal Procedure	Examples of HCJ's Cases	Regulations (2015)
Confirming the composition of the Threatened Committee, which includes almost exclusively only representatives of security agencies.	7008/07 3322/11 9482/11	&2(F)
Justifying the confidential activity of the Threatened Committee.	3138/03 1907/05 6230/08 3085/11 6544/11 9404/11 3322/11	&6(E)(2)
Recognizing the security authorities' operational capabilities to monitor classified information on Palestinian applicants and the Threatened Committee power to base its decision on confidential information, which was gathered by security officials.	4417/04 10898/04 2205/05 6899/07 4815/08 10117/08 5763/09 7252/10 1662/10 2974/10 50/10 3085/11 9343/11 1393/11 2608/13 454/14	&5(A, B)
Acknowledging the Threatened Committee's authority to approve or to refuse to grant temporary stay permits, depending on life-risk indications, as well as depending on security considerations or other justified circumstances.	6155/03 8610/06 11090/07 4900/07 9357/10 3322/11 5762/12 8511/12 2608/13 698/13 454/14	&5(C) &6(B)(12)(A) &6(D)(1) &6(D)(3)
Justifying the Threatened Committee authority to condition the grant of temporary stay permits based on the petitioner's commitment not to engage in criminal activity.	1562/98 4476/99 7149/04 9366/05 3232/08	&6(B)(12)(B) &6(B)(13)(E))
Suggesting that the Threatened Committee will interview the Palestinian applicant or other people in order to obtain all the relevant information.	8926/02 10821/07 4796/10 4414/11 698/13	&5(D, E)
Clarifying that application to the Threatened Committee should be made in writing and in an orderly and well-established manner.	2205/05 7139/04 6767/05	

	6547/07 3459/07 5763/09 4228/10 6637/14 6697/14 7803/14	&6(B)(1)
Recognizing that the applications to the Threatened Committee are usually made directly by the Palestinian petitioner and treated in time.	114/14 2084/14 7539/14	&6(B)(1) &6(B)(7)) &6(B)(8)
The application to the committee can also be treated following a direct request of the HCJ or other outside parties.	7907/02 1907/05 2745/05 2518/05 8915/05 1691/06 6899/07 10821/07 2924/07 5588/09 5763/09 7675/09 7711/09 1379/09 1662/10	&6(B)(1)
Clarifying that the principle of "Res Judicata" does not apply to the committee's decisions or to the petitions to the court in this matter. In case the Palestinian petitioner has new relevant facts or arguments, he can re-apply to the committee (and to the HCJ).	10089/06 3250/08 7670/08 4708/08 778/08 5245/09 9357/10 7548/10 8955/11	&6(B)(4)
Criticizing the delay in the committee's method of gathering information, asking it to set a clear procedure for urgent appeals or asking it to examine the petitioner's application within a specific time frame.	8926/02 932/06 9835/09 7252/10 8231/10 3684/12 7437/12 5476/14	&6(B)(7) &6(D)(2)
Criticizing the committee for its laconic refusals and encouraging it to bring to the attention of the Palestinian applicant a reasoned answer with all the non-confidential information in order to enable that person to petition the court if necessary.	7907/02 6230/08 7252/10 203/11 8127/11 9343/11 1448/12 2608/13	&6(B)(10) &6(B)(12)(C) &6(E)(3-5)

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