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The Deportation of Migrant Workers from Israel: Theory, Policy and the Law

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The Deportation of Migrant Workers from Israel: Theory, Policy and the Law

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This essay proposes a theoretical framework for understanding the deportation of tens of thousands of migrant workers from Israel between the years 1995 and 2005. To this end, it examines Israeli deportation policy based, inter alia, on an empirical study of hundreds of deportation cases litigated in the courts between 2001 and 2005. This examination demonstrates that the deportation campaign was designed to achieve two parallel goals: to lower labor costs by creating a large class of indentured workers through what has been referred to as the “binding arrangement” (a neo-liberal goal) and to deny the grant of civic status to non-Jewish migrant workers (an ethno-national goal). To a large extent, the Israeli courts have played an active role in the implementation of the deportation campaign by dismissing the lion’s share of petitions that have been submitted in this matter, while employing language that justifies the two aforesaid goals. Nevertheless, on migration issues, a certain degree of tension has emerged between public policy and rulings by the High Court of Justice. Therefore, we argue that no single theory is able, on its own, to explain the Israeli deportation campaign, but rather, a combination of several approaches is

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required. These include: the role of the state in serving the interests of local capital; the dilemmas faced by the nation-state on issues of citizenship in the global age; the new penology as applied to disadvantaged populations; and the influence of pressure groups and fluctuations in public opinion on decision-making processes in liberal democracies. The need to take all of these approaches into consideration becomes clearer as migration issues become a more central part of public, legal, and academic discourse in Israel.

I. Introduction. II. The Theory. A. General; B. Controlling and monitoring labor migration. III. “Eventually, They Will Establish A Chinatown Here”: Israeli Deportation Policy. A. Historical background; B. The main aspects of Israeli labor migration policy; C. The “first wave” of deportation: 1995-2002; D. The “big wave” of deportation: 2002-2005. IV. “We Have Not Seen Fit To Intervene”: The Courts and Deportation. A. The district courts sitting as administrative affairs courts; B. The Supreme Court sitting as a court of appeals and as a high court of justice. V. Conclusion.
I. Introduction

In the decade between 1995 and 2005, tens of thousands of migrant workers were deported from Israel, while a similar number chose to leave the country of their own accord, out of a fear that they would be deported. Israeli deportation policy since 1995 has been implemented as part of a neo-liberal project mainly designed to turn labor into as cheap a commodity as possible for employers. At the same time, the deportation campaign was combined with tougher measures against non-Jewish residents, as part of the state’s ethno-national outlook. Therefore, the deportation campaign should not be viewed as an aberration, but rather as a climax in shaping the formal, social status of migrant workers as indigent laborers and as residents deprived of civic status. The empirical study that we conducted, examining hundreds of cases litigated in the district courts and in the Supreme Court, indicates that, for the most part, the courts have played an active role in advancing this policy, and have rarely exercised judicial review, even when it was possible within the context of the law.

The measures chosen to achieve these goals have been complex. In the first phase, the state “privatized” the authority to recruit migrant workers and monitor their employment, from the moment of their entry into and throughout their entire stay in Israel, placing it in the hands of employers. It did this by creating a large class of indentured workers through what has been referred to as the “binding arrangement,” by depriving these workers of socioeconomic rights, and by shirking its responsibility to enforce labor laws with respect to said workers. In the second phase, the state took back its powers of oversight – during the stage of “departure” from Israel – in order to enable a process of detention and deportation.

Our theoretical analysis indicates that Israeli deportation procedures reflect a combination of several existing approaches discussed in research literature. These include, inter alia, a view of deportation as the product of a capitalist economic structure designed to serve the interests of local capital (within the context of a neo-liberal outlook) and as a reaction by the nation-state against the permeation of international human rights norms and models of supra-national citizenship (within the context of an ethno-national outlook). Additional approaches enable the Israeli deportation campaign to be viewed as part of a new penology that prefers to exclude disadvantaged groups and label them as “dangerous” instead of solving their problems.
through rehabilitation and treatment, and as part of the characteristic pattern of liberal democracies, which act according to fluctuations in public opinion and the influence of pressure groups on decision-makers.

In order to identify the relevant theoretical framework for understanding Israeli deportation policy during the period under discussion, this article will proceed as follows: Part II will survey theoretical approaches to labor migration, in general, and state control and oversight of labor migration – including detention and deportation procedures – in particular. Part III will examine the historical background of labor migration in Israel since the end of the 1960s and the central layers of policy that the state has adopted towards migrant workers since the 1990s. This section focuses, in particular, on the chronological progression of the deportation campaign implemented between the years 1995 and 2005, while discussing its underlying public policy as adopted by the Knesset (the Israeli parliament) and the Israeli government. This campaign entailed two distinct phases of deportation: the “first wave,” between 1995 and 2002, followed by an accelerated “big wave,” between 2002 and 2005. Part IV will discuss the role of the courts in reviewing the deportation process. This section examines judicial trends and the rhetoric of both the district courts, sitting as administrative affairs court, and the Supreme Court, sitting as a court of appeals and as a high court of justice. It also offers a critical analysis of the case law and the manner in which it has failed to protect the human rights of migrant workers.

II. Theory

A. General

A vast body of research literature attempts to explain the phenomenon of migration and to understand its various facets.\(^1\) This essay deals with theories focusing on labor

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\(^1\) For theories of migration, see: Michael S. Teitelbaum, *International Migration: Predicting the Unknowable*, in *DEMOGRAPHY AND NATIONAL SECURITY* 21 (Myron Weiner & Stanton Russell eds., 2001); Aristide R. Zolberg, *International Migration in Political Perspective*, in *GLOBAL TRENDS IN MIGRATION: THEORY AND RESEARCH ON INTERNATIONAL POPULATION MOVEMENTS* 3 (Mary M. Kritz, Charles B. Keely & Silvano M. Tomasi eds., 1981). In this essay, we shall not
migration, particularly those theories that could be relevant to the case of Israel.\(^2\) We shall start therefore with a brief survey of general theories in this field.

**Dual labor market theory** assumes, for example, that local workers are unwilling to take certain jobs with a low social status because such positions demand hard work with low pay, and because they entail a limited basket of rights. Therefore, since employers have a hard time filling these jobs with local citizens, they are forced to search for workers abroad – i.e., migrant workers – who do not view themselves as part of the local economic and status structure.\(^3\)

**State policy theory** ascribes to the state the central role in controlling labor migration through various institutions and mechanisms, including the judicial system. Explanations for the state’s involvement are, in part, instrumental (e.g., the influence of pressure groups), structural (e.g., a Marxist approach that views the state as a tool serving the interests of local capital), and also autonomous (e.g., the interest of the state itself in economic growth based on a cheap workforce).\(^4\)

**Institutional theory** focuses on the role of organizations and institutions acting as “intermediaries” in the recruitment, employment, and monitoring of migrant workers. These intermediaries include individual employers, employers’ associations, manpower companies, smugglers of migrant workers and trafficked women, and – at the other end of the spectrum – non-profit, non-governmental organizations (NGOs) acting to protect the rights of migrant workers.\(^5\)

Discuss two types of general theory strongly identified with ideological streams: the first are neoclassical microeconomic theories, which emphasize the individualistic aspect of migration and argue that migrants base their decision to migrate on a utilitarian calculation; the second are Marxist macroeconomic theories regarding world systems, which attribute migration to the spread of capitalism and the resulting imbalance that develops between the capitalist core and the periphery over which it has taken control. According to these theories, the core creates jobs for members of the periphery that members of the core are unwilling to take.


\(^3\) For a more extensive discussion, see Michael J. Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (1979).

\(^4\) For a more extensive discussion, see Bartram, *supra* note 2, at 321-22.

\(^5\) For a more extensive discussion, see Teitelbaum, *supra* note 1.
In the Israeli case, several researchers have already argued that no single general theory is capable of fully explaining the labor migration phenomenon. Thus, for example, the dual labor market approach explains the recruitment of migrant workers as a substitute for Palestinian laborers following the outbreak of the First Intifada, when it became clear that Israeli workers refused to accept low-status work. However, it does not account for the heavy involvement of the state, including the legal system, and the relation between Israeli policy and global economic trends. State policy theory explains the central role that the state has played, and still plays, in setting public policy in this field – for example, with regard to the “binding arrangement” or the collection of brokerage fees by manpower companies. However, it does not account for the important role played by pressure-group interests in decision-making processes and the basic economic structure that has facilitated the policy. Institutional theory explains the central role of employers and their associations (e.g., the Association of Contractors and Builders and the Moshav Movement) and manpower companies in shaping policy, as well as the involvement of human rights organizations in determining legal arrangements in this field. However, on its own, this theory fails to explain the decisive influence of political and economic processes, as well as ideological outlooks, on labor migration.

Therefore, in order to generally understand labor migration in Israel, it must be viewed through the lenses of several combined theoretical approaches. We shall

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6 Bartram, supra note 2; ADRIANA KEMP & REBECA RAJMAN, MIGRANTS AND WORKERS: THE POLITICAL ECONOMY OF LABOR MIGRATION IN ISRAEL (2007) [in Hebrew].
8 Sharon Asiskovitch, The Political Economy of Labor Migration to Israel and the Immigration Policy towards Foreign Workers in the 1990s, 10 AVODA, CHEVRA, U’MISHPAT 79 (2004) [in Hebrew].
9 Lea Pilovski, “Present Absentees”: A Study of How Manpower Agencies Deal with Foreign Workers and Their Relationship with the Authorities, in THE NEW WORKERS: WAGE EARNERS FROM FOREIGN COUNTRIES IN ISRAEL 41 (Roby Nathanson & Lea Achdut, eds., 1999) [in Hebrew].
examine below whether this combined approach is also valid for theories in the field of deportation.

B. Controlling and monitoring labor migration

The need to establish powerful mechanisms for controlling and monitoring labor migration is based primarily on a series of moral justifications. Isbister discusses these arguments within the context of immigration to the United States, but they are also valid, to a large degree, in the context of labor migration to Israel:

1. Migrants are perceived as people wishing to attain a share of the economic wealth in the country without obtaining “permission” for this and without having been invited in by the country’s citizens.
2. The state’s institutions and values are presented as also serving migrants already in the country, who ostensibly have an interest in a restrictive and controlled migration policy so that the rights that they enjoy will not be eroded by further waves of migration.
3. Direct financial assistance to poor countries is a much more effective and just method for contributing to global justice than receiving migrants as individuals in developed nations.
4. Migration clearly operates to the detriment of citizens in need of employment and economic welfare relief. Therefore, the state has a moral duty to satisfy the needs of its own citizens before providing assistance to the disadvantaged of the Third World, even if this detracts from the rights of foreigners. Moreover, the duty to provide assistance is not absolute and, even under Good Samaritan laws, a person is not expected to act altruistically if this is liable to place him in danger. A broad and “open” migration policy, according to this view, is deemed altruistic – and even heroic – and may cause economic and social harm to the nation’s own citizens.
5. Migration widens social gaps by providing a cheap workforce that competes for jobs and wages with the weaker populations in a society.

These moral justifications are expressed in most societies coping with the problem of migration. They are frequently used to justify tighter control and monitoring of labor migration, including detention and deportation. In the Israeli case as well, policymakers and those who shape public opinion have voiced most of these justifications. Migrant workers have been described in official ad campaigns of the Immigration Administration as a source of increasing unemployment and socioeconomic injustice. Thus, for example, an official ad campaign, entitled “It is Not Legal, and it Does Not Work,” prepared the groundwork for mass deportation and imbued the public discourse with hostile attitudes towards migrant workers, given the ostensible damage that they cause to the economy and to society. As we will show below, even the courts have acted as a tool for legitimizing the deportation policy. They have done this by relying on moral justifications couched in terms of the rule of law versus the offense of “illegal residence,” and the need to cope with unemployment for the benefit of Israeli citizens. The moral legitimacy granted to deportation has therefore facilitated the multi-faceted deportation campaign implemented between 1995 and 2005. The campaign itself can be explained by several theories, described below.

(1) Deportation as a capitalist mechanism

The deportation of migrant workers constitutes an important layer in the establishment of a capital-biased public policy designed to lower the cost of labor as much as possible. This is accomplished by the constant threat of deportation and its actual implementation by the brutal mechanisms of the state, which significantly reduce the bargaining power of migrant workers in the labor market and allow employers to treat them as a replaceable commodity. The very fact that migrants are foreigners, and their lack of civic status in many western nations, contribute to this reduction in their economic bargaining power. In fact, Chang and Bonacich show how preservation of the status of migrant workers as non-citizens allows capital, and the capitalist state that supports it, to deport them for any minor “provocation.”\(^{12}\) The denial of civic status also allows migrant workers to be deprived of welfare services.

and social security, and to be deported when the economic benefit of their employment has ended. Thus, the special legal status of migrant workers as non-citizens leads to a special status that is applied to those who are defined as “illegal.” These migrants are in danger of deportation if they attempt to protest or improve their situation in any way. The threat of deportation inevitably lowers the cost of employing migrant workers and serves the clear interest of employers and other parties in the strict monitoring of illegal workers.

This exploitative pattern is reinforced by the global economy and its associated neo-liberal attitudes. The privatization policy of recent decades, adopted in most industrialized economies, has struck a mortal blow to the power of organized labor and especially to workers at the lower end of the wage scale, such as migrant laborers. Public discourse, which favors “growth” and “efficiency” according to their neo-liberal definitions, is more ready than ever to entertain attitudes regarding the deportation of someone considered to be a “parasite” on the labor market, as a measure designed to promote economic benefit and to deal with unemployment or a recession.

As we shall see below, the binding policy and its associated arrangements have made the Israeli deportation campaign a part of the neo-liberal project adopted in the country since the mid-1980s. Employers and local capital have had a clear interest in deporting those same workers who have broken free of their bonds and, as a result, threatened to raise the cost of labor. Rulings by the courts, especially those of the administrative affairs courts, have bolstered the economic interest of employers by broadly approving deportation orders against workers who have freed themselves from indenture, condemning them as persons who have “left their employers in a lurch.” In effect, the weaker the status of migrants in Israel, the easier it has been to deport them when their economic benefit to employers has lapsed, i.e., when they are no longer “bound.”

(2) Deportation as a national practice

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13 For further discussion of these attitudes, see David Bacon, *For an Immigration Policy Based on Human Rights*, 23(3) SOCIAL JUSTICE 137 (1996).
Labor migration represents a significant challenge to the nation-state. It poses threatening questions concerning the most sensitive issues facing the nation, among them the traditional overlap between political and cultural boundaries and the existence of an ethnic collective that shares a common language, history, leaders, and sense of belonging within a sovereign political framework. It is no wonder therefore that, throughout history, preventing the entry of immigrants has served as one of the central means for preserving the national identity of the state. Some scholars believe that, even in the global age, the nation-state continues to enjoy much control in determining the composition if its population and over the addition of new members. According to adherents of this view, globalization has not significantly altered the state’s ability to ignore human rights norms and to take a hard-line against immigrants. In contrast, others argue that economic and political globalization has created a new model of supra-national citizenship. This model is anchored in human rights discourse and practices, which weaken the power of the nation-state to preserve its ethnic character, as well as its ability to exclusively determine the make-up of its population. This has become increasingly dependent on other, external forces, which encourage human rights norms and a multiculturalism that are beneficial to immigrants.

Joppke, for example, argues that the immigration phenomenon is still controlled and directed, to a large extent, by modern nation-states. In his view, the nation-state does not experience external “pressures,” but rather an internal tension between notions of sovereignty and concepts of human rights. Soysal, on the other hand, argues that universal concepts of human rights are constantly drawn into classic national discourse, which assumes an inseverable link between civic membership, identity, and rights. Thus, for example, even illegal immigrants are increasingly considered to be partners in the civic framework, and are entitled to civil and social rights, such as the right to petition the courts against their deportation. Therefore, those who are “illegal” have gradually become “undocumented” – which is a less

15 Id. at 1-4.
Sassen argues that external pressures do have an influence on the state, but mostly succeed in shaping the manner of its control over immigration. For example, international conventions on human rights, in general, and the rights of immigrants, in particular, establish a set of rights that influence the state “from without,” while international economic developments lead to changes in the structure of the state “from within.” New actors—among them, business interests, rights organizations, and trade unions—succeed to play a role in shaping migration policy.

The tension between these approaches has frequently led to the adoption of aggressive measures against those who the state identifies not only as economic actors in the labor market, but also as moral actors in the political realm. Many nations choose, in the short-term and interim, to “restrict” migrant workers to their economic role while creating obstacles that prevent them from attaining civic status. However, such restrictions become problematic as the years go by, and the state finds it difficult to continue to impose a temporary status on migrants and their families, especially in light of processes of family unification and the creation of a second generation. In this way, detention and deportation have become the central tools for excluding populations that are deemed a “risk.”

In Israel, which defines itself as a “Jewish and democratic state,” the scale is clearly tipped in favor of an ethno-national model, whereby the nation-state preserves its sovereignty and resists external pressures in the form of a global phenomenon of migration and human rights norms. External processes do have an effect, to some extent, and lead both to the involvement of new actors in the field of migration (e.g., employers and rights organizations) and to certain changes (e.g., granting a limited status to the children of migrants). However, the mass deportation of tens of

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17 Id. at 130-35. Jacobson argues that, in the American case, the assimilation of illegal immigrants has led to new social contracts, so that the possibility of mass deportation was never even taken into consideration. Thus, in his opinion, transnational relations have become a basis for membership, the institution of sovereignty has been eroded, and the state has lost its ability to block immigration. See DAVID JACOBSON, RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP (1994).


19 Zolberg, supra note 1.
thousands of migrant workers, precisely at the height of the adoption of global economics in Israel, and the failure of efforts to prevent it through litigation (as will be described below), reflect just how far the model of supra-national citizenship is from finding expression in Israeli public discourse and policy.

(3) Deportation as social control

The desire for social control over migration is anchored in penological approaches. These approaches concern the general social order, and they treat migration as an issue that is related to this order. Whereas, in the past, penology has drawn mainly on the fields of criminology and criminal law, currently, it is also influenced by actuarial approaches that are based on the measurement and evaluation of the degree of risk supposedly faced by society from specific sub-populations. This leads to the formulation of a strategy to “prevent” said risk, which prefers arrest and incarceration to rehabilitation and treatment. These approaches tend to ignore the background, underlying reasons, and environmental factors that explain the growth of said “dangerous” sub-populations. They call for a greater use of force and less of an investment in personal treatment and attempted rehabilitation. For instance, actuarial approaches are not at all concerned with the prevention of crime, but rather with controlling and monitoring it through bureaucratic measures, and by making it more “sufferable” through systemic coordination.20

Indeed, the new penology seeks to effectively control populations considered dangerous while emphasizing concepts of efficiency, management, and control as a substitute for procedures of justice on a personal basis. Its goal is to grant a sense of security and order without significantly reducing the level of crime. The basic assumption of this approach is that inequality, poverty, and social alienation are unavoidable and, therefore, the limited and “realistic” goal of ensuring public order and security through control over problematic social groups is all that can be hoped for. This mostly concerns ethnic minorities or illegal migrant workers.

In Israel, the view of illegal migrant workers as criminals deserving of sanction combines with the reinforcement of actuarial approaches. This has been

20 For a discussion within the context of labor migration, see Michael Welch, The Immigration Crisis: Detention as an Emerging Mechanism of Social Control, 23(3) SOCIAL JUSTICE 169 (1996).
reflected, in recent years, by the decision to privatize the prison system and a preference for incarceration over rehabilitation, by legislative proposals to limit judicial discretion in sentencing, and by a heightened concern for the rights of crime victims at the expense of the rights of suspects and defendants. In this penal discourse, judges frequently characterize migrant workers without permits (including those who have freed themselves from indenture) as “lawbreakers” who deserve to be sanctioned. According to such views, their incarceration and deportation are a reflection of the need to punish criminals.

(4) Deportation as a part of the decision making process in liberal democracies

Freeman’s study indicates that liberal democracies share common policies regarding labor migration.\(^{21}\) For example, such policies tend to be more tolerant and more liberal towards migrant workers than local public opinion. Nevertheless, the preferences of the median voter have a considerable influence on how this policy is shaped. Liberal democracies also suffer from a dearth of information on migration issues, which mostly leads to public apathy on this subject. The major political parties lack a clear platform in this matter, and are interested to remove it from the political agenda. In general, the policy fluctuates between “good” and “bad” periods: during good periods (from an economic, social, and political perspective), a relatively lenient and positive approach towards labor migration prevails, while during bad periods (characterized by economic instability, recession, and unemployment), migrants are treated as scapegoats. Thus, for example, as we will see below, the Israeli deportation campaign accelerated between 2002 and 2005, at a time when unemployment had risen and economic growth was threatened as a result of the Second Intifada. However, as the situation improved during the course of 2005, deportation subsided. Furthermore, the “economic recovery” of 2006 enabled the government to initiate steps granting limited civic status to migrant workers. Moreover, the High Court of Justice’s acceptance of a petition challenging the binding arrangement was only possible once the lion’s share of migrant workers had already been deported from

Israel. Only then did the High Court allow itself to invalidate such a central layer of
the underlying economic policy and interests. 22

Another central characteristic of liberal democracies noted by Freeman is that
of client politics. 23 According to this approach, lobbying and the pressure exerted by
influential groups, such as business interests, employers, and political insiders, plays a
major role in shaping policy. The effect of such pressure on decision-making in the
field of migration is considerable, and it is mostly applied far from the public eye.
Labor migration policy, including on matters of detention and deportation, is therefore
formulated, to a large extent, in accordance with the power and needs of these
pressure groups. In Israel, it is impossible to exaggerate the influence of pressure
groups – such as associations of contractors and industrialists, the Moshav Movement,
and the agriculture lobby – in shaping policy in this field. Statements in support of the
deporation policy made by the representatives of such groups, in public forums such
as Knesset committees (see Part III below), demonstrate their clear interest in the
deporation of illegal workers and the measures taken to advance this policy.

III. “Eventually, They Will Establish A Chinatown Here”: 24 Israeli
Deportation Policy

A. Historical background

Shortly following the occupation of the West Bank and Gaza Strip, in 1967, Israel
began to recruit Palestinian laborers to work in low-wage jobs. During the 1980s,

22 See infra note 135 and the accompanying text. Nevertheless, it is clear that these explanations fail to
demonstrate the full scope of the underlying factors at the heart of the policy. For example, in
response to Freeman’s arguments, Brubaker says that even if it is possible to identify common
patterns in liberal democracies, many of these patterns depend on political and cultural
circumstances, and reflect, first and foremost, the time and place in which they have been shaped.
See Rogers Brubaker, Comments on “Modes of Immigration Politics in Liberal Democratic States,”

23 Freeman, supra note 21, at 888.

24 Hagi Herzl, former advisor on foreign workers to the Minister of Public Security, as quoted by
approximately 100,000 Palestinian workers were employed in the construction, agriculture, and service sectors, constituting about 6%-7% of the Israeli labor force, reaching a peak of about 116,000 (including those without permits) by 1992. However, with the outbreak of the First Intifada at the end of the 1980s, the entry of legal Palestinian workers was curtailed and, in 1991, for the first time, then Minister of Construction and Housing Ariel Sharon ordered the issuance of 3,000 permits for migrant workers in the construction sector.25

The massive recruitment of migrant workers started in 1993. As part of the Oslo Process, the Rabin government began to implement an official policy of “separation” between Israel and the Palestinians. Within its framework, a permanent closure was imposed on the occupied territories, and Palestinians were prevented from entering Israel for work. As expected, the shortage of cheap labor led to a demand by employers for an alternative; however, at first, the government was opposed to the recruitment of migrant workers. The reason for this was, inter alia, the fear that such migrants would become permanently settled in Israel and, in time, would demand civic status, thus endangering the preservation of a Jewish majority. However, a combination of several factors – among them, considerable pressure brought by employers, the need for massive construction to house waves of immigrants from the former Soviet Union, and the failure of plans to absorb Israelis into jobs previously held by Palestinians (jobs referred to pejoratively as “Arab labor”) – eventually led to a government decision to allow the recruitment of migrant workers at levels three times higher than in the 1980s and the beginning of the 1990s.26 Nevertheless, in order to offset the fear that migrant workers would become permanently settled in Israel, the government decided on several restrictive arrangements. For example, it was decided that residence visas for migrant workers would expire after a relatively short period of time. Moreover, migrant workers were not permitted to come with their families, and Israel even avoided signing treaties or agreements with the

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25 For a detailed description of the background to the recruitment of migrant workers in Israel, see Bartram, supra note 2, at 305-08.

migrants’ countries of origin regarding arrangements for their recruitment or the terms of their employment in Israel.27

In light of these government decisions, thousands of work permits were issued, primarily to building contractors and farmers, but a new sector also developed for round-the-clock employment of caregivers in private homes.28 These permits helped to maintain the low cost of labor in key sectors of the economy. For example, the economic benefit to building contractors alone from the employment of migrant workers was estimated to be NIS 4.5 billion per year, from “savings” in the costs of wages and the fact that it was unnecessary to introduce advanced technologies.29

By 1996, the number of work permits for migrant workers had jumped to more than 100,00030 and, at the same time, there was a significant decrease in the number of Palestinians employed in Israel.31 At the beginning of the new millennium, there were between 250,000 and 300,000 migrant workers in Israel, about 10% of the Israeli labor force. This figure placed Israel among the top five countries “importing” migrant workers, alongside Switzerland, Austria, Luxembourg, and Germany.32 However, the unofficial number of migrant workers in Israel was estimated to be even greater, ranging between 300,000 and 400,000, which constituted about 15% of the labor force.33 Approximately 60% of the migrant workers in Israel at that time did not possess valid residence visas.34 During these same years, the main sectors in which migrants were employed were construction (51%); agriculture (27%); industry, hotels, and catering (10%); and caregiving (7%).35 Most migrant workers were located in the center of the country, and they represented about 16% of the population of Tel Aviv.36

28 Kemp & Raijman, supra note 26, at 2.
29 Id. at 12-13.
30 Bartram, supra note 2, at 313.
31 Kemp & Raijman, supra note 26, at 4.
32 Id. at 5.
34 Kemp & Raijman, supra note 26, at 4.
35 Id. at 8.
Since the start of the “big wave” of deportation in 2002, which will be discussed below, there has been a significant decrease in the number of migrant workers in Israel. According to official estimates, at the end of 2004 there were approximately 188,000 migrant workers in Israel, and their actual number according to unofficial estimates ranged between 200,000 and 250,000.

B. The main aspects of Israeli labor migration policy

In general, the deportation of migrant workers from Israel reflects the conversion of labor into a commodity by lowering the cost of employing vulnerable foreign workers (a neo-liberal goal) and the preservation of the Jewish majority by limiting the civic status of foreigners as much as possible (an ethno-national goal).

The first goal derives from a neo-liberal ideology that has become dominant in Israel since 1985, when the Labor-Likud unity government initiated an emergency plan to stabilize the economy. This ideology espouses an almost total privatization of public services within a strict budgetary framework entailing minimal government intervention in the economy, the complete liberalization of trade and currency laws, and, primarily, a reduction in the costs of labor and its objectification. This was to be accomplished, first and foremost, by eroding collective labor relations and by a transition to employment through manpower companies. This last component was viewed by the neo-liberal school of thought as an essential stage for improving social efficiency and for achieving economic growth.

The second goal served by this deportation policy derives from Israel’s self-definition as a “Jewish and democratic state” and the fact that it grants preferential rights on an ethno-national (i.e., to Jews) and not a civic (i.e., to Israelis) basis.

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36 Id. at 2-3.
37 Moti Bassok, More Than Half of the Foreign Workers in Israel are Illegal, HAARETZ ONLINE, July 28, 2005 [in Hebrew].
Thus, Jews all over the world are automatically eligible for Israeli citizenship, and Jewish citizens of Israel enjoy political, economic, and social rights, some of which are not granted to non-Jewish residents, first and foremost, Palestinian citizens, who constitute the largest indigenous group in the country. Consequently, the Israeli citizenship regime ab initio deprives non-Jewish residents of equality.

Several methods have been chosen to achieve these two goals:

(1) The “binding arrangement”

The employment of migrant workers in Israel was based for many years on an exceptional mechanism – the so-called “binding arrangement.” Arrangements of a similar scope have only been known in the Persian Gulf states, in Thailand, in Cyprus, and in South Africa. This arrangement stood at the core of Israeli labor migration policy and, in our opinion, the political desire to reinforce it was also the primary motive behind Israeli deportation policy. In March 2006, the High Court of Justice invalidated the binding arrangement, and we will discuss this ruling extensively in Part IV. At this stage, we should note that the binding arrangement remained in effect throughout the entire period of deportation under discussion and is therefore the focus of our analysis, and also that the High Court’s aforesaid ruling held that this arrangement would only expire as of the end of 2006 – and, at present, in the year 2008, this arrangement still prevails.

According to the binding arrangement, the work permit does not belong to the worker but rather to the employer, and the worker is not allowed to leave his employer. Any change in these circumstances – as a result of the worker’s dismissal or resignation, or the withdrawal of the employer – automatically leads to a loss of the worker’s legal status. The official reason for this arrangement is the need to strictly monitor migrant workers. The state’s argument, as will be discussed in Part IV, is that the binding arrangement is designed to give it control over the flow of migration and the location of foreign workers in the country, and to enable it to adapt its policy as it sees fit.

40 Dahan, supra note 26.
The binding arrangement is anchored in three main legal sources: the Foreign Workers Law,\textsuperscript{41} which stipulates that “a person shall not accept a foreign worker for employment unless the officer in charge has authorized, in writing, the foreign worker’s employment with said employer, in accordance with the conditions of the permit”\textsuperscript{42} and that “the Minister, in consultation with the Minister of Interior, may prescribe in regulations, provisions, rules, conditions, and exceptions regarding the transfer of a foreign worker between employers”;\textsuperscript{43} the Entry into Israel Law,\textsuperscript{44} which states that “[t]he Minister of the Interior may - (1) prescribe conditions for the grant of a visa and for the grant, extension or substitution of a permit of residence; (2) prescribe, in a visa or permit of residence, conditions upon the fulfillment of which the validity of such visa or permit shall depend”;\textsuperscript{45} and Ministry of Interior procedures, which, for years, required that migrant workers be “bound” to a specific employer as a condition for their legal residence and employment in Israel.

The main significance of the binding arrangement is the bondage of migrant workers to their employers, whereas harsh sanctions are imposed on those workers who wish to put an end to this bondage. In fact, a considerable number of migrant workers who were deported because they were “illegal” had arrived in Israel with a valid permit but lost it as a result of the binding arrangement.\textsuperscript{46} Thus, for example, workers who quit their jobs because they had not received their wages were immediately rendered illegal. In other cases, workers lost their legal status because their employers had failed to pay fees required by law\textsuperscript{47} or had “mobilized” them, like

\begin{itemize}
  \item[42] Id. § 1M(a) (this section, which was added in an amendment after 2000, does not appear in the aforesaid translation).
  \item[43] Id. § 6A.
  \item[44] Entry into Israel Law, 5712-1952, 6 L.S.I. 159. An unofficial English translation, including amendments up to July 31, 1985 is available at \url{http://www.geocities.com/savepalestinenow/israellaws/fulltext/entryintoisraelaw.htm}.
  \item[45] Id. § 6.
  \item[46] Kemp & Raijman, \textit{supra} note 26, at 7.
\end{itemize}
goods, to other employers without valid permits – and the workers themselves were not even aware of this.  

To a large extent, the binding arrangement shifts labor relations from the contractual to the proprietary sphere. Consequently, this arrangement exposes migrant workers to common practices such as the confiscation of passports, the failure to pay minimum wages, violence and mistreatment, and the violation of basic rights in housing and health care. Indeed, the terms of employment and wages of workers who have violated their bondage (and have, thus, been rendered illegal) are estimated to be better and higher than those of workers who remain bound (and, thus, legal). Therefore, employers have a clear economic interest in maintaining and reinforcing bondage as a means to ensure an indentured, and thus, cheaper workforce.

(2) “Inter-State Mediation” through manpower companies

From the outset, Israeli governments have chosen not to deal directly with the recruitment of migrant workers, but rather to entrust this task to manpower companies. In this way, the field of labor migration was privatized from the start, whereas the power to recruit workers abroad was concentrated in the hands of commercial interests. These companies collect brokerage fees, mostly through third parties operating in the country of origin, and without any official documentation or regulation of the profit from these fees. According to estimates, manpower companies rake in an annual profit of about NIS 11,000 for each migrant worker arriving in Israel.

48 Id. at 379-80.
49 Dahan, supra note 26, at 38.
51 Asiskovitch, supra note 8, at 96-97. The author’s position is that “deportation served employers more than it served the state.”
52 Kemp & Raijman, supra note 26, at 13.
53 Id.
The activity of manpower companies in recruiting, bringing, and placing migrant workers is anchored in two legislative sources: the Employment Service Law,\textsuperscript{54} which prescribes, in section 65, that “[a] private agency shall not carry on job placement in respect of work located abroad, workers located abroad, or foreign workers, except with the special permission of the Minister of Industry, Trade and Labor and pursuant to the conditions prescribed in the permit; and the Employment of Employees by Manpower Contractors Law,\textsuperscript{55} which prescribes, in section 10, that the Minister of Industry, Trade and Labor has the power to grant a permit to a person to act as a manpower contractor for workers who are not residents of Israel, and may refuse to grant such a permit, or make its grant subject to additional conditions, “having regard, inter alia, to the need for fulfillment of the contractor’s obligations toward his employees, and in respect of the provision of manpower services by employees who are not Israel residents – and also to the employment situation in Israel”.

In the past, section 66 of the Employment Service Law forbade a private agency from demanding, collecting, or receiving “any payment whatsoever, directly or indirectly, in Israel or abroad, from a job applicant or from another person acting as an employment broker representing the interests of the job applicant in Israel or abroad.” However, this provision was repealed in 2004 within the framework of an amendment promoted by then chairman of the Knesset’s Labor and Social Affairs Committee Shaul Yahalom. The official purpose of the amendment was to prevent the collection of huge brokerage fees by legitimizing the collection of a fixed and relatively low fee for “reimbursement of expenses.” This method, so it was argued, would enable manpower companies to collect fees from migrant workers that covered the costs of arranging for their arrival in Israel, but would prevent the collection of much higher sums “under the table.” The amended law therefore allows manpower companies to collect certain payments from migrant workers, and leaves the


discretion regarding their nature and scope to the Minister of Industry, Trade and Labor, who was to enact regulations for this purpose. However, during the legislative process, human rights organizations claimed that, for the first time, the law would leave an official opening for the collection of payments from job applicants abroad that are not a “reimbursement of expenses,” and would be, in effect, a supplement to the unreported amounts collected. Thus, argued the organizations, this amendment legitimized and would even increase the collection of brokerage fees.56

(3) Non-enforcement of protective labor laws

Protective labor laws include all legislation regulating the labor market, particularly those laws seeking to reduce the inherent gap in power between the worker and the employer.57 These laws grant a very basic security net of rights to workers, which may be added to by employment contracts, collective agreements, and extension orders. The laws apply universally to all workers employed in Israel, including foreign workers. In recent years, there has been a public debate concerning the non-enforcement of the protective laws in Israel. For example, the fact that a third of all salaried workers in Israel earn less than the minimum wage prescribed by law, and that half of them are below the poverty line, has been attributed to this non-enforcement. The Ministry of Industry, Trade and Labor claims that the failure to enforce these protective labor laws stems from a lack of resources reflected in the fact that only twenty-two inspectors have been assigned to carry out this task. In 2006, the government established a joint committee, comprised of representatives from

56 Letter from the Association for Civil Rights in Israel and Kav LaOved to Ehud Olmert, then Minister of Industry, Trade and Labor (July 29, 2004) [in Hebrew]. See also Eynav Ben-Yehuda, Workers from Philippines pay $4,257 to work in Israel, HAARETZ.COM, September 10, 2006, at http://www.haaretz.com/hasen/spages/760805.html.

government ministries, the Histadrut – General Federation of Labor in Israel, and employers associations, the goal of which was to improve the system for enforcing the protective laws. Migrant workers suffer in particular from the non-enforcement of protective labor laws, given their vulnerability as foreigners. Thus, for example, since the start of the new millennium, the number of migrant workers earning less than the minimum wage has stood at close to 70%,\(^5\) and the wages of migrant workers is estimated to be 40% lower than those of Israel workers.\(^6\) The failure to enforce protective labor laws is therefore particularly significant in the field of labor migration, since it reflects the state’s consent by silence to the treatment of migrant workers as a cheap labor force.

(4) Denial of social services

The arrangements that we have discussed up to this point demonstrate that migrants are allowed to reside in Israel as a cheap workforce deprived, for the most part, of civil and social rights.\(^7\) For this reason, and due to their vulnerable, temporary status in the country, migrant workers find it difficult to take independent, organized action in order to attain rights and improve their situation.\(^8\) According to Rosenhek, the characteristics and agents of the Israeli labor migration regime increasingly operate to deny migrant workers and their families social services and civil and economic rights.\(^9\) Virtually no policy has been set regarding the provision of basic social services, out of a fear that this would legitimize the long-term stay of migrant workers in Israel as residents entitled to rights. Migrant workers mostly find themselves deprived of social protection, without any government entity to regulate or monitor the fulfillment of their social needs (e.g., housing, education, and health care).\(^10\)

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58 Dahan, supra note 26, at 40; Kemp & Rairjman, supra note 26, at 12.
59 Kemp & Rairjman, supra note 26.
60 Id. at 22.
62 Rosenhek, supra note 27, at 110.
To illustrate this point, it should be noted that foreign workers are uninsured for most social security (national insurance) benefits that Israeli workers are entitled to. Their social security net is very limited, and does not include, for example, coverage for cases of illness, unemployment, old age, or death. The only areas of social security that migrant workers are covered for are work injury, maternity leave, and the bankruptcy of employers. An employer of migrant workers at the lower end of the wage scale is only required to pay national insurance contributions at a rate of 2% of their wages, as compared to 7.6% for Israeli workers.64

The 2003 Economic Arrangements Law included an amendment to the National Insurance Law stipulating that holder’s of temporary residence visas would not be deemed “residents” for the purpose of eligibility for social security or health care benefits. A petition against this amendment submitted to the High Court of Justice by several human rights organizations was dismissed.65 In his opinion, Supreme Court President Aharon Barak accepted the state’s claim that, regarding entitlement to these social rights, a distinction could be made between permanent residents who meet their obligations, including the payment of national insurance premiums, and migrant workers who are only residing in Israel temporarily. Barak held that this distinction, on its own, “is not discriminatory and is not illegal.”66 An additional amendment to the National Insurance Law within the framework of the Economic Arrangements Law of the same year stipulated that migrant workers without permits would no longer be entitled to social security benefits.67 Human rights organizations petitioned the High Court of Justice in opposition to this amendment as well, arguing that it is unconstitutional because it infringes the rights of migrant workers to bodily integrity, life, and health.68 In response to the petition, the National Insurance Institute argued that according to its interpretation of the amendment, illegal migrant workers could receive benefits only upon their departure from Israel.

64 Id.
66 Id. at 331-32.
68 H.C.J. 1911/03, Association for Civil Rights v. Minister of Finance, 2003(3) TAKDIN-ELYON 445 [in Hebrew].
but that they would continue to receive hospitalization grants for work injuries and childbirth, benefits for relatives of persons injured in work accidents, and maternity grants. In light of this response, the petition was withdrawn.

(5) Denial of civic status

The Israeli citizenship regime – with the Law of Return and the Entry into Israel Law at its core – is based on an ethno-national outlook. Accordingly, Israel does not grant citizenship or residency to non-Jews, apart from exceptional cases, such as a familial relationship to an Israeli citizen or a special contribution to the state. Israel, in defining itself as a “Jewish and democratic state,” has adopted an ethnic-priority immigration policy. This is mostly reflected in the grant of a preferential and privileged status to one ethnic group – Jews. Therefore, the central measure taken by the state in order to ensure its Jewish character is to control and monitor the entry and residence of non-Jews. Thus, for example, the state’s reluctance to take an active and official part in the recruitment of migrant workers, since the beginning of the 1990s, stemmed to a large degree from the fear that its Jewish character would be harmed as a result of the entry of non-Jewish migrants.

This policy places migrant workers in an extraordinary position. On the one hand, many of them actually remain in Israel for an extended period of time, raising families and establishing a community of their own. On the other hand, the state does not acknowledge any possibility to grant them civic rights, thus creating within its borders a large population of de facto residents lacking official recognition.

(6) Deportation


Between 1995 and 2005, tens of thousands of migrant workers were deported from Israel. A similar number chose to leave Israel of their own accord, out of a fear that they would be deported. The lion’s share of migrant workers were forced to leave Israel as of the year 2002, when the government decided on a mass deportation and established the Immigration Administration for this purpose. This government campaign was one of the harshest manifestations ever of an Israeli policy directed against such a large population group – both regarding the scope of resources allocated to it and, especially, regarding its far-reaching effect on labor migration and the Israeli labor market. As Kemp and Raijman have shown, the public battles conducted by human rights organizations succeeded mainly to influence the execution of the deportation process, but not to undermine its fundamental assumptions. The deportation policy is the focus of this essay and, therefore, we will review in detail its chronological development since 1995.

C. The “first wave” of deportation: 1995-2002

The Rabin government initiated the deportation of migrant workers in 1995. In that same year, 950 migrant workers without valid residence and work permits were deported. However, the effect of this policy was especially felt as of June 1996, with the ascension to power of the Netanyahu government. The Minister of Labor and Social Affairs at the time, Eli Yishai, led the declared policy of deporting migrant workers, relying on rhetoric with a clear ethno-national tone. Thus, on the instructions of Minister Yishai, the Ministry of Labor and Social Affairs set a deportation goal of 1,000 migrant workers per month. This goal was not actually achieved, but thousands of illegal migrant workers were indeed deported during these same years. During the tenure of the Barak government, a freeze on deportation was announced, but this only lasted several months. At the time, Minister Yishai claimed

71 Kemp & Raijman,, supra note 7, at 102-04; Raijman & Kemp, supra note 10.
72 Kemp & Raijman,, supra note 7, at 97 n20.
73 Id. at 97.
74 Id.
75 Id.
76 Id. at 103.
that the deportation policy remained the proper solution for the problem of foreign workers, stating that “they must be deported before they become pregnant.”77 Indeed, upon instructions from the offices of the Prime Minister and the Minister of Finance, deportation was renewed and a new goal of 1,000 deportations per month was set. This pattern attests to the fact that, for years, decision-making in this matter was conducted, in the words of Kemp and Raijman, in a “patchwork” manner.”78

The deportation policy became even harsher with the establishment of the Sharon government in 2001. The Ministry of Public Security announced at that time that it would deport every illegal migrant “intending to settle down,” and, in total, 1,915 migrant workers were deported that same year.79 In January 2002, then Minister of Labor and Social Affairs Shlomo Benizri declared a goal to deport between 1,000 and 3,000 illegal migrant workers from Israel each month.80 From this point in time, government spokespersons began to emphasize the supposed correlation between the number of unemployed persons and the number of migrant workers in Israel, and the need to reduce unemployment by deporting the foreigners. At the same time, government statements were issued that were designed to “prepare the groundwork” for mass deportation. For example, the Minister of Public Security’s then advisor on foreign workers, Hagai Herzl was quoted as having said that “the Chinese arrive, later on they will bring their families, and eventually they will establish a Chinatown here. The state can’t cope with this community, which is mostly comprised of violent persons … eventually we will arrive at a reality in which the state will be unable to defend its sovereignty against them.”81

As part of this tougher deportation policy, leaders who had emerged in the migrant communities were now also included on the lists of deportees. At first, the state was unwilling to admit that their role as leaders in the community was the motive for their deportation, claiming that this was “purely coincidental” and that they

77 Id. at 97 n19.
78 Id. at 97.
79 Id. at 97 n20.
80 Kemp & Raijman, supra note 26, at 18.
81 Regev, supra note 24.
were being deported because they were “illegal aliens.”82 This claim was accepted in a petition filed by rights organizations against the deportation of one migrant leader, in which the High Court of Justice held that there was no legal reason to intervene in deportation orders.83 During the hearing in this case, the panel of justices explained their decision by saying that the leaders of the migrant community must themselves be legal residents.84 Nevertheless, as part of the accelerated deportation, the state changed its official reasoning. Thus, for example, Minister of Interior Avraham Poraz made clear statements about the need to prevent a leadership from developing among migrant workers, since this was liable to influence the growth of minority communities and lead migrants to remain in Israel.85

The inflamed rhetoric and tough official policy against migrant workers was also manifested in legal and institutional arrangements in this field. In 2001, the Entry into Israel Law, which regulates the issuance of entry and residence visas, was amended with the addition of a detailed chapter concerning “removal and custody.”86 This amendment significantly altered key arrangements applying to migrant workers. Within its framework, new and broad powers were granted to the Minister of Interior and ministry officials in matters relating to the detention and deportation of illegal aliens. The amended law stipulated that an illegal alien “shall be removed from Israel as soon as possible unless he has willingly left beforehand.”87 According to the law, a person suspected of being an illegal alien may be held in “temporary custody” for a period of 24 hours, after which he must be brought before a border control officer, who is an Interior Ministry official.88 The border control officer may order that such a person remain in custody or that he be released on bail, but the grounds for such

83 H.C.J. 5903/01, Diaz v. Israel Police (not yet reported, decision of Aug. 9, 2001) [in Hebrew].
84 For You Were Strangers, supra note 82, at 40.
85 Nurit Wurgaft, The tenure of migrant leaders is indeed very brief – it is followed by deportation, HAARETZ – INDEPENDENCE DAY SUPPLEMENT, May 6, 2003, at B4 [in Hebrew].
86 Entry into Israel Law (Amendment No. 9), 5761-2001, S.H. 509 [in Hebrew].
87 Entry into Israel Law, § 13(a).
88 Id. §§ 13A, 13B.
release are extremely limited. The law only permits release on bail in one of the following cases: (1) it has become clear that the illegal residence is based on a mistake; (2) the border control officer is convinced that the foreign citizen will leave the country of his own accord and that there will be no difficulty to locate him if he does not leave at the designated time; (3) on account of the age or health of the foreign citizen or for other humanitarian reasons; (4) the foreign citizen has already been held in custody for more than 60 days. Moreover, the law qualifies the power to release a person on bail for the aforesaid grounds by stipulating that a person shall not be released in the absence of full cooperation on his part for the purpose of carrying out the deportation, or because his release poses a danger to national security, public safety, or public health. It was further stipulated that the deportation shall be carried out pursuant to a removal order issued by the Minister of Interior, but “someone against who a removal order has been issued … will not be removed prior to three days from the day on which the order has been delivered to him, unless he has left beforehand of his own accord.”

This amendment placed migrant workers arrested on suspicion of illegal residence in a legal position completely different from that applying to Israeli citizens. Although the Detention Law stipulates that a detainee be brought before a judge within 24 hours of arrest, a person held in “custody” was to be brought before an administrative tribunal – the Custody Review Tribunal for Illegal Aliens (hereinafter: “Custody Review Tribunal”) – and not necessarily within 24 hours, but rather “as soon as possible and no later than the end of 14 days from the start [of custody].” In one case, this provision was interpreted by a district court as a “drastic measure” and it was held that this is an “especially long period” intended only for extreme situations. Later on, even the Attorney General instructed that a person being held in

89 Id. § 13(d) (granting the power to extend this period to the border control officer, who, as stated, is a Ministry of Interior official).
91 Entry into Israel Law, § 13N(a). It should be noted that a person who was released on bail but has been returned to custody is to be brought before the Custody Review Tribunal within 72 hours of having been returned to custody, id. § 13N(b).
92 Administrative Petition (Jerusalem) 398/03, Kerr v. Minister of Interior, 2003(1) TAKDIN-MEOHIZI 2183 [in Hebrew].
custody be brought before an administrative tribunal within four days at the latest. The Custody Review Tribunal itself was created from the start as a tribunal subordinate to the Ministry of Interior and the Ministry of Justice. The Entry into Israel Law states, for example, that normal evidence law does not apply in hearings before the Tribunal, and that its only power given to it would be to approve or introduce changes to the custody order, without any authority to cancel or alter the actual decision to deport.

In fact, during the year 2002, prior to the establishment of the Immigration Administration, between 2,000 and 3,000 migrant workers were deported from Israel. To a large degree, the heated debate had prepared the groundwork for the decision in the summer of 2002 to accelerate the deportation.

**B. The “big wave” of deportation: 2002-2005**

In the summer of 2002, Prime Minister Ariel Sharon announced his decision to order the mass deportation of migrant workers who were in Israel without permission and the establishment of a special unit for this purpose. The Prime Minister, so it was claimed, had decided to take this matter into his own hands because of the “disorder and the failure to deport foreign workers,” and the fact that “only hundreds of illegal foreign workers had been deported.”

In August 2002, the government unanimously decided to establish a temporary authority that would operate with inter-ministerial coordination and would be in charge of carrying out the deportation of 50,000 illegal migrant workers by the end of

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94 § 13K of the Entry into Israel Law, and the government announcement of Mar. 14, 2004 within the framework of the litigation in H.C.J. Entry into Israel Law, id.

95 Entry into Israel Law, § 13S(b).

96 Id. § 13L.

97 Mazal Mualem, In the past nine months 3,000 foreign workers were deported from Israel, HAARETZ ONLINE, Aug. 5, 2002 [in Hebrew].

98 David Regev, The prime minister is “appropriating” the handling of foreign workers, YEDIOTH AHRONOTH, July 22, 2002, at 18 [in Hebrew].
This authority was established within the framework of the Ministry of Public Security, as a police unit headed by an officer holding the rank of major general who would be subordinate to the police commissioner. At the start of its official operation, in September 2002, the temporary authority was named the Immigration Administration. At first, it was allocated NIS 200 million for its operations, an amount subsequently increased to NIS 600 million, and later growing by several hundred million Shekels.

The “big wave” of deportation also included the expulsion of families in what was referred to as “voluntary departure.” As part of this campaign, families residing in Israel without permission were given two months to leave the country. At the end of this period, so it was announced, the head of the family would be arrested, and eventually, entire families, including infants, would be arrested, incarcerated, and deported. For this purpose, the Michal detention facility in Hadera was prepared so that it could hold migrant families, including children. However, in light of public criticism, the state adopted a method of “hidden” deportation, whereby many families were forced to leave Israel by signing a commitment – together with the deposit of a guarantee – to “voluntary departure,” which was often obtained after one of the parents of the family had been arrested and the signature was a condition for release. In this way, the state avoided issuing deportation orders against parents and children, but ensured the departure of entire families. The state consistently denied that it arrests parents, however, there were in fact many such arrests. In some cases, even adolescents were arrested, and made to sign a commitment to leave the country.

The deportation process itself was often accompanied by reports of human rights violations. These included cases of police brutality on the part of Immigration Administration officers who had broken into apartments in the middle of the night,

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99 Government Decision No. 2469, Expulsion of Foreigners Working Illegally In Israel with the Intention of Encouraging the Integration of Israelis into the Labor Market (Aug. 18, 2002) [in Hebrew].

100 Ruth Sinai, The deportation has not really succeeded and unemployment has risen, but the lives of foreign workers have become hell, HAARETZ, Aug. 31, 2003, at B3 [in Hebrew].

101 Interview with Hagai Herzl, former advisor on foreign workers to the Minister of Public Security (Aug. 4, 2003).

102 Nurit Wurgaft, Entire families, including infants, will be arrested and held in a detention facility in Hadera, HAARETZ, Aug. 6, 2003, at B3 [in Hebrew].
removed migrant workers from public buses in order to arrest them, and conducted street pursuits after fleeing migrant workers.\textsuperscript{103} It was also been reported that detainees brought before the Custody Review Tribunal were not provided with legal counsel or, alternatively, were represented by the employer’s attorneys. In the absence of court interpreters, hearing were conducted by means of gestures and hand signals,\textsuperscript{104} and in some of the minutes from hearings held before the tribunal it is possible to find sentences such as “there is no communication with the person.”\textsuperscript{105}

According to Ministry of Industry, Trade and Labor statistics, since the start of the deportation campaign in 2002 and up until the end of 2004, approximately 40,000 migrant workers were expelled from Israel by means of deportation orders.\textsuperscript{106} According to Immigration Administration figures, during that same period, a total of more than 129,000 undocumented migrant workers left Israel – either through deportation orders or of their own accord.\textsuperscript{107} Deportation reached its climax in 2003, during which approximately 20,000 migrant workers were expelled from Israel.\textsuperscript{108} Since then, following the expulsion of tens of thousands of migrant workers, the deportation campaign abated, and some detention facilities were even closed.\textsuperscript{109}

\begin{thebibliography}{9}
\bibitem{103} Hotline for Migrant Workers & Kav LaOved, \textit{Immigration Administration or Expulsion Unit?}, (2003) at \url{http://www.hotline.org.il/english/pdf/Hotline_and_Kav_Laoved_paper_on_Immigration_Police_May_2003_Eng.pdf}.

\bibitem{104} \textsc{State Comptroller}, \textsc{Annual Report No. 56b For the Year 2005 and the 2004 Fiscal Year} 381-82 (2005) [in Hebrew].


\bibitem{107} Ruth Sinai, \textit{After two and a half years it is much harder for the Immigration Administration to find someone to deport}, \textsc{Haaretz}, Feb. 3, 2005, at A1 [in Hebrew].

\bibitem{108} Bar-Tzuri, \textit{supra} note 106.

\bibitem{109} According to an analysis conducted by the Hotline for Migrant Workers, based on the serial numbers assigned to detainees eligible for deportation, in January 2004, 2,725 persons were
\end{thebibliography}
IV. “We Have Not Seen Fit To Intervene”: The Courts and Deportation

A. The district courts sitting as administrative affairs courts

The heartbeat of litigation in Israel related to the arrest and deportation of migrant workers is located in the district courts sitting as administrative affairs courts. The jurisdiction of these courts to review decisions by the Ministry of Interior was established in 2000 in the Administrative Affairs Courts Law.\(^{110}\) The stated purpose of this law was to ease the heavy caseload facing the High Court of Justice, inter alia, by transferring to the district courts the subject-matter jurisdiction for most cases regarding entry into Israel. Indeed, this new instance was established as a sort of “mini high-court-of-justice,” with powers and procedures similar to those of the High Court itself.\(^ {111}\) The law authorized the new instance to adjudicate two main types of cases: the first, administrative petitions against the Minister of Interior and the border control officer opposing removal and custody orders; the second, administrative appeals of decisions by the Custody Review Tribunal.\(^ {112}\)

Cases in these matters have reached the courts through private attorneys or human rights organizations representing migrant workers who, for the most part, were confined to detention facilities and eligible for deportation. In these cases, officials have been represented by the State Attorney’s Office, whose central line of argument was that the custody and removal procedure meets the requirements of the Entry into Israel Law. Nevertheless, the state has also argued that there is a clear social interest in removing illegal aliens from Israel, given the fact that their presence in the country

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\(^{110}\) Administrative Affairs Courts Law, 5760-2000, S.H. 1739 [in Hebrew].

\(^{111}\) Id. §§ 8,13.

\(^{112}\) Id. § 5, § 12 of the First Schedule, § 10 of the Second Schedule.
has become a widespread phenomenon in recent years. The removal of illegal migrant workers, the state has argued, is also one of the measures adopted by the government in order to reduce unemployment and as a solution for the associated social problems stemming from the high number of migrants in the country. The decisions rendered by the courts and the precedents set in these cases have interpreted, for the first time, the aforesaid amendment to the Entry into Israel Law and, to a large extent, shaped new legal arrangements in the field of migration. For the most part, these have not been detailed opinions, but rather decisions of several paragraphs that relate to the specific case before the court; however, some of these judgments also contain remarks concerning the deportation process in general.

Through our own empirical analysis, we have found that the vast majority of petitions and appeals submitted by migrant workers in opposition to the decision to deport them have been dismissed. More than two hundred administrative petitions and appeals requesting to postpone or rescind deportation orders were submitted between the years 2001 and 2005, and approximately three quarters of these have been rejected. Moreover, out of close to seventy petitions and appeals submitted on the matter of release from custody, over forty have been dismissed. However, these statistics only reflect the litigated cases that have been entered into databases accessible to the public. The lion’s share of cases remain unreported because they have concluded at an earlier stage of proceedings: some have been withdrawn at the advice of the court, and some have concluded with an agreement between the parties regarding the date of deportation or conditions for release from custody. Therefore, we believe that the extent of petitions and appeals that have actually been dismissed is much greater.

An examination of the reasoning of the administrative affairs courts leads us to the conclusion that they have, first and foremost, reinforced the binding arrangement. Essentially, the courts have viewed workers who leave their employers as “sinners” deserving of punishment. Migrant workers are frequently described in judgments as persons who have “fled” their employers, “taken the law into their own hands” and left their employers “in a lurch.”\footnote{Oded Feller, & Jonathan Berman, \textit{Shame on us}, GLOBES THIS EVENING, May 16, 2006, at 2 [in Hebrew].} In one case, for example, where a worker had already left two employers, thus violating the terms of his residence visa, the judge
ordered his deportation, stating that “[t]his behavior by the petitioner raises a justified
fear that, if he is put to work for a third employer, he will also leave this employer
within a short period of time.”\textsuperscript{114} In another case, the court dismissed the petition of a
migrant worker who requested that her deportation be prevented, ruling that “a
caregiver who abandons an employer is liable to harm the employer’s welfare … the
applicant is a caregiver, who arrived in Israel on a work visa in the field of caregiving,
and after ‘running away’ from her employer, worked at random jobs … this fact too is
a reason to dismiss the application.”\textsuperscript{115} And, in the case of another caregiver
requesting that her deportation be prevented and that she be allowed, in the words of a
Ministry of Interior procedure, to “mobilize” to another employer, her petition was
dismissed, with the court stating that: “… the wage of caregivers is very low and is
(apparently, much) lower than the wage potential of other jobs … naturally, most
caregivers would abandon their place of employment in order to find a better
livelihood and, immediately upon their arrest, the advantages of the procedure
allowing unconditional ‘mobilization’ would be voiced, by them or by their lawyers.
Anyone can understand that such a situation cannot continue.”\textsuperscript{116}

In general, our conclusion is that the administrative affairs courts have granted
legitimacy to the deportation policy and its underlying rationale. Migrants without
residence permits who have petitioned the courts have mostly been turned away with
the argument that their arrest and deportation is justified because their stay in Israel is
illegal. In the words of one judge: “Illegal residence in Israel is a phenomenon that
must be combated, and it is good that the time has finally arrived when there is
intensive activity to fight this phenomenon.”\textsuperscript{117} In another case, it was held that “just
as the foreign resident expects the state to respect his rights, liberty, and dignity as a
person, it may be expected that the foreign resident will respect the laws and

\textsuperscript{114} Administrative Petition (Tel Aviv) 2241/03, \textit{Erol Reis v. Minister of Interior}, 2004(1)
TAKDIN-MEHOZI 1321 [in Hebrew].

\textsuperscript{115} Administrative Petition (Tel Aviv) 1156/04, \textit{Valorica v. Minister of Interior} (not yet reported,
decision of Feb. 1, 2004) [in Hebrew].

\textsuperscript{116} Administrative Petition (Tel Aviv) 1981/04, \textit{Eang Xiangying v. Minister of Interior}, 2004(2)
TAKDIN-MEHOZI 6708 [in Hebrew].

\textsuperscript{117} Administrative Petition (Haifa) 2273/04, \textit{Labuzek v. State of Israel} (not yet reported, decision
of Nov. 2, 2004) [in Hebrew].
procedures of the state. If the foreign resident has violated the laws of the state, then the state is entitled to insist that the law be obeyed and maintained.”¹¹⁸ The courts have frequently preferred not to intervene in the flaws of the deportation process. For example, a migrant worker from China appealed a decision by the Custody Review Tribunal to extend his detention despite the fact that the law had been violated and he was held in custody for more than 14 days before being brought before the Tribunal.¹¹⁹ However, the judge chose to ignore the issues of principle that arose from this appeal, ruling that “under the circumstances, I find no need to address the issue … one way or another, the removal order will be executed in another 80 hours.”

Due to limitations of space, only some of the case law has been surveyed above, but this is its basic direction. To complete the picture, it should be noted that in several other cases the administrative affairs courts have criticized the violation of human rights in the deportation process. In one case, for example, the judge stated: “it is not clear to me that there is a mechanism of coordination between the investigation of the employer’s affairs and the removal of the foreign worker. The impression is just the opposite; i.e., that a worker found to have violated the terms of his residence permit in Israel is removed regardless of the question of the employer’s responsibility for creating this situation … in the relationship between the Israeli government and the foreign worker, the government holds most of the power if not most of the strength. Therefore, the government can and must allow itself to also be just.”¹²⁰ In the case of 35 construction workers from China who left their employer because they did not receive their wages, the judge observed that migrant workers are “easy prey to exploit,” and that their deportation from Israel is liable to place the petitioners in a “desperate economic situation” and “in some cases even put their lives in danger.”¹²¹

¹¹⁸ Administrative Petition (Tel Aviv) 2817/04, Nauwi v. Minister of Interior, 2005(1) TAKDIN-MEHZOI 1680 [in Hebrew].
¹¹⁹ Administrative Petition (Tel Aviv) 206/02, Hong v. Minister of Interior (not yet reported, decision of Oct. 31, 2002) [in Hebrew].
¹²⁰ Administrative Petition (Jerusalem) 1860/04, Ho v. Minister of Interior (not yet reported, decision of July 4, 2004) [in Hebrew].
¹²¹ Administrative Petition (Jerusalem) 420/02, Deng Lin v. Minister of Interior, 2002(1) TAKDIN-MEHZOI 4930 [in Hebrew]. This judgment was annulled within the framework of an appeal filed by the state in the Supreme Court, and was replaced by an arrangement agreed upon by the parties that
In this same case, the court ordered that the petitioners be released from detention, that the removal orders against them be cancelled, that an attempt be made to place them with employers who have valid work permits, and that they be allowed to remain and work in Israel for a period of no less than six months.

However, these critical attitudes are rare. The number of petitions that have been dismissed and the rhetoric employed by the courts when dismissing them show that deportation has almost become a “law of nature” in judgments by the administrative affairs courts. To a large degree, these courts have neglected their role as prescribed by law to exercise judicial review of the deportation process and, thus, ensure human rights; instead, they have preferred to become just another link in the implementation of the deportation policy. It is agreed, however, that the leeway given to the courts by the legislator to review the deportation process was severely restricted in the 2001 amendment to the Entry into Israel Law, as we have discussed above. Nevertheless, the willingness of the courts to allow deportation even when migrant workers have clearly been exploited and mistreated, or when there have been material flaws in the deportation process, show that the courts have failed to protect the rights of migrant worker even when required to do so by law. The language in many of these decisions, which portrays migrant workers as criminals deserving of punishment, shows that the courts have not reached their decisions because they have “no other choice,” but rather, that they have taken a clear ideological stance, siding with the official deportation policy and ultimately playing a central role in its implementation.\footnote{For a discussion of labor court judgments regarding migrant workers, which, for the most part, do not relate to the deportation policy, see: Ofer Sitbon, \textit{The Role of the Courts in Israel and France in Designing the Policy towards Migrant Workers}, 10(1) MISHPAT U’MIMSHAL 273 (2006) [in Hebrew].}

\footnote{122 For a discussion of labor court judgments regarding migrant workers, which, for the most part, do not relate to the deportation policy, see: Ofer Sitbon, \textit{The Role of the Courts in Israel and France in Designing the Policy towards Migrant Workers}, 10(1) MISHPAT U’MIMSHAL 273 (2006) [in Hebrew].}
B. The Supreme Court sitting as a court of appeals and as a high court of justice

When hearing deportation cases, the Supreme Court wears two hats: one, as a court of appeals for decisions by the administrative affairs courts (in both petitions and appeals heard by those courts);\(^{123}\) and, the other, as a high court of justice, with the power to issue writs of mandamus and restraining orders against public officials. An examination of its rulings as an appellate instance reveals that the Supreme Court has backed up the administrative affairs courts, and seldom interfered with their decisions. It also appears that in Supreme Court judgments in individual cases of arrest and deportation it is possible to discern a broad, systematic adoption of the state’s position, and an almost total dismissal of petitions and appeals. A look at Supreme Court decisions that have been reported in electronic databases shows that in just over forty deportation proceedings initiated between November 2001 and the year 2005, more than thirty were dismissed. And, in this judicial instance as well, if unreported cases are taken into account, we believe that the dismissal of petitions and appeals against deportation is infinitely greater.

The Court has even granted full legitimacy to the rationale for deportation. Justice Rubinstein, for example, held that “phenomena of illegal residence by foreigners have apparently become a quasi-plague on the nation, and boundaries have been crossed; this is what the legislator believed when he amended … the Entry into Israel Law, and ‘upgraded’ the matter of removing illegal aliens, making our situation no worse than the most enlightened of nations.”\(^{124}\) In other cases, the Supreme Court has even expressed an unwillingness to criticize the flaws in the deportation process. For example, in one case it ruled that, even if the delay in bringing those held in custody before the Custody Review Tribunal is a common phenomenon, “the court does not entertain theoretical questions.”\(^{125}\)

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\(^{123}\) Administrative Affairs Courts Law, §§ 11, 12.

\(^{124}\) Administrative Petition Appeal 1644/05, Frida v. Minister of Interior, 2005(2) TAKDIN-ELYON 4269 [in Hebrew].

\(^{125}\) Leave for Administrative Appeal 9595/02, Hong v. Minister of Interior, 2002(3) TAKDIN-ELYON 11 [in Hebrew]. It should be noted that, in a different case, the Supreme Court did not
As a high court of justice, the Supreme Court has been called on to hear several petitions, on issues of principle, challenging the policy towards migrant workers, in general, and deportation policy, in particular. In July 2002, the Hotline for Migrant Workers and the Association for Civil Rights in Israel filed a petition in the High Court of Justice against the 2001 amendment to the Entry into Israel Law. The petitioners’ central argument was that the detention and review procedure adopted in this amendment deviates from the normal detention procedure of Israeli law: the authorities have 14 days to bring a migrant worker before the Custody Review Tribunal (as opposed to 24 hours in all other cases); the judges of the Tribunal are subject to the decisions of a government ministry (in violation of the principle of judicial independence); and evidence law does not apply in cases heard by the Tribunal. In its response, the state argued that the new arrangement met the requirements of the Basic Law: Human Dignity and Liberty from both the perspective of its purpose (to cope with a sharp rise in the number of illegal aliens in Israel by establishing a removal procedure in primary legislation) as well as the perspective of its means (according to the state, the gap between normal detention law and that applying to migrant workers does not violate human rights to an extent greater than necessary).

Notwithstanding its constitutional nature, over the course of three years the hearing on this petition centered on the concrete problems arising at the custody facilities, without truly addressing questions of principle. In effect, the main subject discussed within the framework of the Court’s deliberations was the role of the Custody Review Tribunal. Repeated attempts by the petitioners to move the discussion in the direction of issues of principle were unsuccessful. During hearings hesitate to go beyond the specific facts of the case brought before it in order to give its opinion that the Entry into Israel Law should in fact be made stricter. This was just prior to the amendment of the law in 2001. See Leave for Administrative Appeal 6581/02, Minister of Interior v. Diuk, 56(6) P.D. 582 (2002) [in Hebrew].

126 H.C.J. Entry into Israel Law, supra note 93.
127 According to the petitioners, “although holding a person in custody for the purpose of removal is no different in its severity and in its restriction of a detainee’s personal liberty from detention in a criminal context or other civil proceedings … the arrangement that has been established in the amendment does grave harm to the personal liberty, right to equality, and right to dignity of foreign citizens and violates the provisions of the Basic Law.…”, id.
on the petition, the panel of judges refused to issue an order nisi instructing the authorities to give reasons for their actions or omissions.\textsuperscript{128} This, despite the fact that, in order to place the basic onus on the state to explain its actions, such orders are frequently issued in petitions that raise questions of principle, thus enabling an exhaustive legal discussion of the matter.\textsuperscript{129}

In June 2005, during one of the hearings conducted in this petition, the state argued that many changes had occurred in the “field” since the petition was originally submitted and, therefore, that it should be dismissed or that an amended petition should be filed that related to the new factual basis. The main change referred to by the state was the Attorney General’s aforesaid directive whereby migrant workers who are detained should be brought before the Custody Review Tribunal within four days.\textsuperscript{130} Despite attempts by the petitioners to reemphasize the constitutional aspects of the petition, which demanded a hearing and a decision and was totally unrelated to the changed facts, the Court accepted the state’s argument and ordered that a new, “amended” petition be submitted. This was indeed done, however, the High Court of Justice dismissed the petition in January 2006. In a five-paragraph decision, Justice Rivlin held that “most of the petitioners’ arguments have been given an exhaustive hearing and the state has taken satisfactory steps to improve the treatment of illegal aliens.”\textsuperscript{131} The constitutional questions, the Court held, were not the focus of the present hearing and were therefore the subject of a separate petition.

Another petition was submitted to the High Court in November 2002 against a government decision to deport 50,000 migrant workers and to establish a temporary authority for this purpose.\textsuperscript{132} The petitioners argued that the government decision was

\textsuperscript{128} Rules of Procedure in the High Court of Justice, 5744-1984, K.T. 4685 [in Hebrew].

\textsuperscript{129} Thus, for example, in another matter brought before the High Court of Justice during the same period, and which also raised questions of principle in the field of labor migration, an order nisi was immediately issued at the conclusion of the petition’s first hearing. This was in the petition of several employers’ associations against the government decision requiring them to pay migrant workers a minimum wage higher than that prescribed by the Minimum Wage Law. See H.C.J. 9722/04, \textit{Polgat Jeans Ltd. v. Government of Israel}, 2004(4) TAKDIN-ELYON 1511 [in Hebrew].

\textsuperscript{130} \textit{Supra} note 93 and accompanying text.

\textsuperscript{131} H.C.J. Entry into Israel Law, \textit{supra} note 93.

flawed, and that its implementation prior to the establishment of sufficient custody facilities was ultra vires. Moreover, it was argued that the deportation campaign and its implementation entailed grave violations of human rights, such as the wrongful arrest of migrant workers with permits, violence on the part of police officers, and the separation of families. In its response, the state argued that the custody and removal policy was reasonable and even proper given the need to cope with the tens of thousands of illegal aliens found in Israel, and given the negative influence that this has on unemployment and on the state’s control over incoming migration. Moreover, in its pronouncements, the state described its logistical preparations for the deportation campaign, including the creation of detention facilities and the allocation of personnel.

However, once again, the hearing on the petition neglected the issues of principle raised, and the discussion focused on the state’s physical preparedness to administer the detention and deportation process. After several months, in February 2003, the High Court of Justice dismissed the petition. Justices Beinish, Rivlin, and Procaccia accepted the state’s pronouncement regarding the establishment of an additional detention facility “in about a month” and the allocation of an additional Custody Review Tribunal that would be staffed “shortly.” The state even announced in court that, under the present circumstances, no migrant workers were being arrested for the purpose of deportation beyond the capacity of existing detention facilities. The justices held that, based on the state’s declarations, there was no reason to grant a remedy, since “the remaining arguments that were raised … do not reveal grounds for the intervention of this Court.”

Furthermore, the justices rejected the petitioners’ request that they be allowed to amend their petition in light of the state’s response, ruling that the petition was too general and that the government had authority in this matter.

The third case on an issue of principle that reached the High Court of Justice concerned the constitutionality of the binding arrangement. This petition against the binding policy, submitted in May 2002 by human rights organizations, was accepted.

133 Id.
134 Yitzhak Danon & Shmuel Dekalo, The High Court of Justice dismissed the Kav LaOved petition against the deportation of 50 thousand foreign workers due to its generality, GLOBES, Feb. 23, 2003, at 19 [in Hebrew].
in a comprehensive judgment handed down in March 2006. In this case, the petitioners argued that the binding arrangement was extremely unreasonable in that it was tantamount to modern slavery, treating the worker as nothing more than the property of the employer. They also argued that this arrangement further widens the imbalance of power between the parties to the employment contract, and thus increases the worker’s dependency on the employer. This dependency was made even greater, given phenomena such as the collection of brokerage fees from migrant workers, confiscation of their passports, failure to pay their wages, their confinement, and their denial of health insurance. Under the binding arrangement, it was argued, the worker does not even have control over his own legal status, since it allows him to be “mobilized” to another employer who does not have a permit to hire foreign workers, which automatically renders the worker illegal.

The state, in its response, chose to defend the necessity of the binding arrangement: the “negative and harmful” repercussions of employing migrant workers, the state argued, highlights the need to limit and monitor such employment by binding the worker to a specific employer. The state further argued that according to the “Procedure for Transition Between Employers,” migrant workers are allowed to leave their employer under certain circumstances, provided that they notify the Ministry of Interior, which would then grant them a tourist visa for a period of one month in order to find another employer. Therefore, the state argued, this procedure reflected a proper balance, and also took into account the legitimate interest of employers – such as private individuals employing caregivers, who are a particularly vulnerable sector of the population – to prevent their workers from “arbitrarily leaving them.”

The petitioners argued that the Procedure for Transition Between Employers did not negate the binding arrangement, since, it essentially prevented the migrant worker from making a living with a new employer for the thirty days after he had left his previous employer. It was further argued that, at the most, the Procedure enables


Id. at ¶¶ 2-5.

Id. at ¶¶ 6-8.
the worker to be transferred from indenture with one employer to indenture with another employer. Moreover, Ministry of Interior officials tend to ignore the Procedure or add further requirements in order to thwart the transition between employers. One such requirement, for example, is a “letter of discharge” from the previous employer, which basically preserves the worker’s total dependence on his employer. The Procedure does not even make arrangements for workers whose permits have expired without their knowledge.  

In 2004, during the course of the litigation over the binding arrangement, the state announced a change in the method of employment in the construction sector. According to the new method, workers in this sector would be employed through several manpower corporations, which would receive a concession from the state in exchange for a payment and the deposit of guarantees. These corporations would supply workers to construction companies and building contractors, upon demand, and the latter would be allowed to change the corporation with which they were listed once every quarter. However, the petitioners argued that this method did not herald the end of the binding arrangement, but only substituted the identity of the entity to which the worker was bound: from the employer using his services to the manpower corporation. The petitioners also pointed out that some of the manpower corporations were merely subsidiaries of construction companies already employing tens of thousands of migrant workers, sometimes even to the extent of a complete overlap in the identity of the companies. Moreover, in most employment sectors, especially the agriculture and caregiving sectors, the binding arrangement continued in its old format. The petitioners further argued that approximately 4,000 migrant workers in the construction sector who had requested to avail themselves of the new method and be listed as workers of the manpower corporations were denied this possibility. The official reason for rejecting many of them was “professional incompatibility,” but, in fact, this frequently stemmed from the interest of the corporations to recruit new workers.

138 Amended petition in H.C.J. Entry into Israel Law, supra note 93.

workers from abroad in exchange for brokerage fees, as they were indeed permitted to do.\footnote{140}{Several corporations refused to put certain workers on their lists, with arguments such as “we don’t take Chinese.” \textit{Id.}}

In his opinion accepting the petition, Justice Edmond Levy held that the harsh repercussions of the binding arrangement “are entirely alien to the basic principles underlying our legal system.”\footnote{141}{Anat Georgi, \textit{The Ministry of Industry, Trade and Labor has approved the replacement of 4,000 foreign workers in the construction sector}, \textit{HAARETZ-THE MARKER}, July 28, 2005, at 6 [in Hebrew].} The High Court ruled that the arrangement was unreasonable and disproportional since it infringes basic rights to dignity and liberty. It was further held that the Procedure for Transition Between Employers fails to counteract this infringement, because it changes the identity of the employer but preserves the principle of binding the worker to a specific employer and maintains the imbalance of power in the employment contract, and this imbalance continues to deprive the worker of the freedom to terminate the employment relationship.\footnote{142}{H.C.J. Binding Arrangement, \textit{supra} note 135, at ¶ 39.} Even with regard to the caregiving sector, the High Court held that “binding a person to his employer, while forcing him, in practice, to provide a coerced personal service … does not meet the constitutional test, since it does not fulfill the principle of proportionality. Nor does it meet the moral test, since human beings are always an end and a value in their own right. They cannot be deemed a mere means or product in which to trade – be the cause as noble as it may be.”\footnote{143}{\textit{Id.} at ¶¶ 42-43.} The Court also criticized the corporation arrangement and hinted that the transition from binding a worker to a particular employer to a similar arrangement with a manpower corporation entails many problems that might be reviewed again in the future.\footnote{144}{\textit{Id.} at ¶ 60.} And, indeed, with respect to the employment of migrant workers in the construction sector through manpower corporations, it appears that “the same ‘binding arrangement’ that was invalidated by the Supreme Court has not died out due to the adoption of a new method of employment … fulfillment of the basic rights of the employer still entails the sanction of losing a residence permit in Israel. Isn’t this system, which allows the actual replacement of a corporation or employer, just a ‘refinement’ of the previous ‘Procedure for
Justice Cheshin was unsparing in his language when he compared the binding arrangement to the ancient institution of slavery:

A review of the binding arrangement … raises puzzlement mixed with anger, at how persons of authority in this country deem to treat men and women whose sole desire is to feed their families … there is no avoiding the conclusion – a painful and shameful conclusion – that the foreign worker had become a serf of his employer; that the binding arrangement, including all the extensions thereof, has closed the foreign worker in; that the binding arrangement has created a modern version of quasi-slavery. In the binding arrangement that the state itself established and imposed, it has pierced the ears of foreign workers and tied them to the mezuzah on the doorpost of their employers’ homes, and has cuffed and shackled them to the employer who “imported” them to Israel. No less than that … What has become of us that this is how we treat foreign workers, these same human beings who have traveled far from their home and parted from their loved ones in order to sustain themselves and their families? We are shamed-faced at seeing all of this, and how can we be silent?\textsuperscript{146}

In our opinion, it is hard to exaggerate the significance of the acceptance of this petition against the binding arrangement. The annulment of the arrangement by the High Court of Justice, and the unequivocal language of the judgment, constituted an unprecedented development in the judicial review of Israeli labor migration policy. For the first time, the highest judicial instance in Israel chose to invalidate a central layer of this policy, directly confronting the weighty political and economic interests of the state and the employers. The case law on the subject of binding presumably marks a new, progressive era in the attitude of the Supreme Court – and, as a result, also in the attitudes of the lower courts – towards migrant workers in Israel.

\textsuperscript{146} Transition Between Employers’?”: Hotline for Migrant Workers & Kav LaOved, \textit{Binding Migrant Workers to Corporations – Interim Report Regarding the Employment of Migrant Workers in the Construction Sector by Manpower “Corporations”}, Mar. 2007, at 34 [in Hebrew].

146 H.C.J. Binding Arrangement, \textit{supra} note 135, at ¶ 4 of Justice Cheshin’s opinion.
Nevertheless, it is the decisive and unequivocal nature of the High Court’s ruling against the binding arrangement that makes us wonder why it saw fit to delay its judgment in this matter for close to four years. If the Court found the binding arrangement to be tantamount to “modern slavery,” then why did it take four years to declare it invalid? Why did it repeatedly postpone hearings and decisions, and why did it repeatedly ask the parties to address various proposals raised during the hearings? What is even more puzzling is the Court’s instruction that the binding arrangement would only expire a half year after the date of the judgment, in order to allow the state to formulate an alternative arrangement. Past experience shows that such instructions have frequently led to repeated delays in executing judgments, leaving illegitimate arrangements in place for a considerable length of time. In our opinion, the dynamic of the litigation surrounding the binding arrangement and the timing of this decision should therefore be viewed as factors that are no less important than its content. They demonstrate that the High Court of Justice was willing to accept the petition only after the “big wave” of deportation had subsided and tens of thousands of migrant workers had already been deported by virtue of the binding arrangement. Only under these circumstances could the High Court’s decision be received with relative indifference by both the state and the employers, since its effect on the far-reaching changes made by these parties since 2002 was destined to be very limited. Therefore, the acceptance of this petition is not necessarily inconsistent with the High Court’s thunderous silence during the significant years of deportation, and perhaps it even highlights its refusal to intervene in the binding policy as long as the cannons of deportation were still roaring. This analysis could indicate that, in the future as well, the High Court of Justice might be willing to exercise significant judicial review, but it might choose to do this at a later date, which means that this would have a very limited effect on policy.

A clear example of this is the litigation over the declaration of a state of emergency in Israel. The Association for Civil Rights in Israel submitted the first petition on this issue in 1999, and after several years of litigation an amended petition was filed in 2003. Within the framework of the hearing in this petition, the High Court justices sharply criticized the government for failing to come up with an alternative to a state of emergency, but repeatedly granted extensions allowing it to formulate such an alternative without canceling the state of emergency. See H.C.J. 3091/99, Association for Civil Rights in Israel v. The Knesset, 2006(3) TAKDIN-ELYON 1233 [in Hebrew].
And, indeed, more than two years after the High Court’s ruling on the binding arrangement, one gets the impression that the Ministry of Interior, the Immigration Police, the State Attorney’s Office, the administrative affairs courts and, to a large extent, the Supreme Court itself, have ignored the ruling invalidating the binding arrangement.\textsuperscript{148} The administrative affairs courts and the Supreme Court continue to permit the deportation of migrant workers who have left their employers, and do not view this as “legitimate” behavior designed to realize “a basic right granted to all workers,” as it was held in the High Court’s decision on the binding arrangement. Despite this judgment, Ministry of Interior procedures that allow migrant workers to be bound to employers still serve as the legal basis for determining the fate of such workers.\textsuperscript{149}

The limitations of this decision are further demonstrated by the ruling in the Yilmazlar case.\textsuperscript{150} Within the framework of an agreement signed between the Israeli defense industry and the Turkish Ministry of Defense, it was stipulated that in consideration for a contract to upgrade Turkish tanks valued at 700 million dollars, the State of Israel undertook to make a reciprocal purchase of 200 million dollars. The solution of reciprocal purchasing was reflected, inter alia, in the agreement by the State of Israel to bring in Turkish workers who would be employed by the Israeli-registered Yilmazlar company. According to the agreement, the workers were bound to Yilmazlar, and were not given the possibility to work for another company. The Hotline for Migrant Workers and Kav LaOved filed a petition against this arrangement, pointing out that, apart from the fact that the workers are bound to this

\footnotesize{
\begin{itemize}
  \item \textsuperscript{148} Thus, for example, the Ministry of Interior makes the grant of a work permit to a migrant worker who wants to switch employers conditional on the signing of a document stipulating that this employer will be his last employer and that if, for any reason whatsoever, the employment relationship between the worker and this employer should terminate, then the migrant must leave Israel. See Anat Kidron, \textit{She did not do what she was supposed to}, Lassiez Passer blog: \texttt{http://www.mehagrim.com/2008/02/blog-post_13.html} \[in Hebrew\]. In this matter, see also Administrative Petition 1030/08, \textit{Ginfig Woo v. Minister of Interior} (not yet reported) \[in Hebrew\].
  \item \textsuperscript{149} In this matter, see Oded Feller, \textit{Pursuant to law and according to its obligations}, Lassiez Passer blog: \texttt{http://www.mehagrim.com/2008/04/blog-post_12.html} \[in Hebrew\].
  \item \textsuperscript{150} H.C.J. 10843/04 \textit{Hotline for Migrant Workers and Kav LaOved v. Government of Israel et al.}, (not yet reported) \[in Hebrew\]. A summary of this case may be found at the Kav LaOved website: \texttt{http://www.kavlaoved.org.il/media-view_eng.asp?id=1141}.
\end{itemize}
}
company, Yilmazlar callously infringes their rights, inter alia, by failing to pay them their wages on time, by paying them less than minimum wage, by confiscating their passports, and by making them sign an open-ended promissory note held by the company, which enables it to confiscate the workers’ money and property. The High Court dismissed the petition and held that although, in principle, it is forbidden to bind the workers to the company, under the particular circumstances of the agreement, there was no reason to invalidate the arrangement, due to the Turkish government’s oversight of the terms of employment of Yilmazlar workers and due to the fact that brokerage fees had not been collected from the workers as a condition for bringing them to Israel. It seems that, despite its sharp language of its previous judgment criticizing the binding arrangement, in this case the Court ignored its prior ruling and favored Israel’s security and economic interests at the expense of the rights of the migrant workers.\textsuperscript{151}

V. Conclusion

No single theory in research literature can fully explain the deportation of tens of thousands of migrant workers from Israel since 1995. The arrangements adopted in this field by the legislator, the government, and the courts can only be explained by a combination of several approaches:

\textbf{Deportation as a mechanism of capitalism} – Deportation is designed to lower the cost of labor by tightening the binds that tie migrant workers to specific employers, making them unable to quit their jobs. Workers who have asked to be released from this arrangement have immediately lost their legal status and been

\textsuperscript{151} For a similar critique of this judgment, see the dissenting opinion of Justice Edmond Levy: “Anyone who looks squarely at the facts of the case before us cannot, in my view, fail to be enraged by the use made of these same workers as a tool and a means for advancing the interests of the Israeli government and commercial companies. After all, what does the Turkish worker care about international relations? What does he care about the success of the Israeli defense industry? What does he care about the upgrading of tanks for the army of his own country? What is the source of the debt owed by this same worker that must pay off with his liberty, dignity, earning ability, and hopes of a better future for his family, all in order to advance these interests? What would justify imposing upon him the coercive force of bondage?”, \textit{Id.} at \S 27.
“sentenced” to detention and deportation. The Immigration Administration has imposed this sanction and the courts have enforced it, describing workers who cast off their shackles as persons who have caused economic damage. These arrangements are therefore consistent with an approach that espouses a tight control over migration designed to ensure the availability of a cheap workforce and to serve the interests of capital. Given the centrality of the binding arrangement to Israeli labor migration policy, it seems that this theoretical model is very relevant to the matter in question.

Deportation as a national practice – Depriving migrant workers of civic status and deporting them from Israel after years of residence in the country reflects the tension under which the nation-state finds itself in the global age: on the one hand, the power of the state is weakened and universal human rights discourse is reinforced, and, on the other hand, the state wishes to preserve its sovereignty and the sense of its collective “we.” In Israel, the pendulum is clearly swinging to the other side of the equation, and the influence of global pressures on the state are indeed considerable, but in a very limited way, and do not alter its basic ethno-national outlook. According to this outlook, the presence of non-Jews in the country is perceived as a demographic threat, and deportation constitutes an effective response to this problem. Nevertheless, the High Court of Justice’s ruling against the binding arrangement, and the protection granted by the administrative affairs courts to the rights of migrant workers in several cases, reflect a certain movement on the part of the judicial system in the direction of a model of supranational citizenship.

Deportation as social control – In its focus on illegal migrants, through its enforcement and propaganda mechanisms, the state has portrayed these migrants as a threat to the rule of law. Illegal residence in Israel, whatever the reason may be, has mostly been described by the state as a crime endangering public safety and welfare. In this way, deportation has become a part of the new penology, which views disadvantaged sectors, including migrant workers, as a potential threat to the existing social structure, and seeks to replace rehabilitative approaches of inclusion and treatment with aggressive approaches of isolation, confinement, and removal. The central role played by the legal system in the deportation process – especially the administrative affairs courts, in their refusal to exercise effective judicial review of this process, as our empirical study makes clear – not only reflects capitalist and nationalist approaches, but also this new penology. Namely, migrant workers who are
eligible for deportation are deemed “criminals,” and the law is enlisted in order to impose sanctions on them and banish them from society.

**Deportation as part of the decision-making process in liberal democracies**

The deportation policy reflects liberal-democratic patterns in accordance with two main variables: fluctuations in public opinion (from xenophobia in times of economic crisis to greater openness and tolerance in times of economic growth) and client politics, whereby pressure groups succeed to divert policy in favor of their own interests. To a large extent, the gradual increase in deportation throughout the 1990s and early 2000s, its climax between 2002 and 2005, and its apparently recent moderation, derive from changing public attitudes – which are influenced by economic and political circumstances – and the balance of power between various pressure groups in light of social processes that have occurred.

At present, it appears that the Israeli deportation policy is in a period of abeyance. The “big wave” of deportation subsided following the expulsion of tens of thousands of migrant workers, who constituted the lion’s share of illegal aliens in Israel. Recently, the Knesset and the government have even initiated a public discussion regarding Israeli migration policy in the coming years, while addressing arguments for granting civic status to the children of migrant workers. On the other hand, the state is preparing for another wave of deportation, which is supposed to be directed against those same migrant families who fail to obtain civic status. Moreover, an increasing tension is discernible between the Knesset and government, on the one hand, and the Supreme Court, on the other, regarding issues of migration and citizenship (as recently observed with regard to the binding arrangement and the Naturalization Law). These trends indicate that the nature of Israeli migration policy is not headed in the direction of a relaxation in deportation policy. Therefore, this policy is expected to continue to be a complex issue on the public and academic agenda, inviting a multi-layered analysis that integrates various theoretical approaches.