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At the Supreme Court
Sitting as the High Court of Justice

HCJ 726/08

- In the matter of:
1. _____ **Al-'Adlouni , Identity No.**_____,
resident of the Palestinian Authority
Minor
 2. _____ **Al-'Adlouni , Identity No.**_____,
resident of the Palestinian Authority
Minor
 3. _____ **Al-'Adlouni , Identity No.**_____,
resident of the Palestinian Authority
Minor
 4. _____ **Al-'Adlouni , Identity No.**_____,
resident of the Palestinian Authority
Minor
All of whom are represented by their father
_____ **Al-'Adlouni , Identity No.** _____,
resident of the Palestinian Authority
 5. **HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger (R.A.)**

Represented by attorneys Ido Blum (lic. No. 44538) and/or Abeer Jubran (lic. No. 44346) and/or Yossi Wolfson (Lic. No. 26174) and/or Yotam Ben Hillel (lic. No. 35418) and/or Hava Matras-Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566) and/or Yadin Elam (lic. no 39475) and / or Alon Margalit (lic. no. 35932)

of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger
4 Abu Ovadiah St., Jerusalem 97200
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The Petitioners

- Versus -

1. **Commander of the Army Forces in the West Bank**
2. **General of the Southern Command**
3. **Minister of the Interior**
4. **The State of Israel**

The Respondents

A Petition for Order Nisi

A petition for an Order Nisi is hereby filed which is directed at the respondents ordering them to appear and show cause why they will not issue petitioners 1- 4 entry permits into Israel, for the purpose of their passage from the Gaza Strip to the city of Ramallah, which is in the West Bank, and which is where their parents reside.

The court is requested to allow the petitioners, who are minors, to be escorted in their passage by Mrs. _____ Jawabra (ID. No. _____), who is a friend of the family.

Request for an Urgent Hearing

The court is requested to set an urgent hearing to hear the petition, in light of the fact that **petitioners 1-4, who range in age from three years to sixteen years have for the past four months lived alone in the Gaza Strip,** after their mother, who suffers from a rare inflammatory disease was forced to leave the Gaza Strip and move to Ramallah, where she is undergoing continuous medical treatment.

The parties

1. Petitioners 1-4 (hereinafter the “**petitioners**” or the ‘**children**’) are the children of Mr. _____ Al-'Adlouni (ID No. _____) and Mrs. _____ Al-'Adlouni (ID No. _____), residents of the Palestinian Authority.
 Petitioner 1, _____, is sixteen years old;
 Petitioner 2, _____, is twelve years old
 Petitioner 3, _____, is ten years old
 Petitioner 4, _____, is a three year old toddler.
2. The petitioners’ mother suffers from a rare disease called Behcet Disease. This is a multi systemic inflammatory disease, which normally affects the skin and its mucosity, the eyes, the joints, the digestive system, the kidneys and even the central skeletal system and the large blood vessels.

In an article that was published in the *Medicine* [in Hebrew] journal on the subject of Behcet disease it is noted that:

A Behcet sufferer, similar to those suffering from other chronic illnesses, need to contend with an ongoing disease, many hospitalizations and frequent examinations. All this requires mental and physical endurance which constitutes an additional factor in the morbidity of the patient and in his degree of tolerance.
 (Daniel Albirt, Ilan Asher, Ze’ev Shteger “Behcet Disease – Clinical Symptoms, Diagnosis and a

Treatment Approach”, *Medicine* [in Hebrew] 141, vol. 5 462 (2002))

3. Petitioner 5 (hereinafter: **Center for the Defence of the Individual or HaMoked**) is a human rights organization, which is based in Jerusalem.
4. Respondent 4 occupies the territories of the West Bank and Gaza Strip under belligerent occupation. Respondent 1 is the army commander, who is responsible for the territory of the occupied West Bank.
5. Respondents 2-3 are responsible for issuing entry permits into Israel for the purpose of passage from the Gaza Strip to the West Bank. Respondent 3 is vested with the authority which it delegates to respondent 2.

The factual infrastructure and exhaustion of proceedings

6. The petitioners’ father arrived in Jericho together with Palestinian Authority personnel in 1994 and received the status of resident of the territories. Later on his wife, the petitioners’ mother, joined him, and she also received the status of resident of the territories, within the framework of the family unification procedure.
7. A number of months later the *pater familias*, Mr. Eladlani, received work with the Aviation Ministry of the Palestinian Authority in Gaza, and the family relocated to Gaza City where they lived.
8. In January, 2007 Mr. Eladlani received new work with the Palestinian Aviation Ministry in the West Bank, and he relocated to Ramallah. It bears noting that Mr. Eladlani is a member of the Fatah movement, and therefore ever since the incidents of June 2007 he has been unable to return back to the Gaza Strip, since any entry into the Gaza Strip is fraught with real danger to his life.
9. In February 2007 the petitioners’ mother filed two applications with the Palestinian District Coordination Office (hereinafter the “Palestinian **DCO**”) for an entry permit into Israel for the purpose of her passage in order to visit her husband in the West Bank, together with her children, the petitioners, but her applications were refused by the Israeli side.
10. On 20 March, 2007 the mother and the petitioners through the Center for the Defence of the Individual applied to the Humanitarian Desk of the District Coordination Office for the Gaza Strip (hereinafter: “**Gaza DCO**”) and requested that they be issued with entry permits into Israel for the purpose of their passage to the West Bank, in order to visit the *pater familias* who resided in Ramallah.

A copy of the letter dated 20 March, 2007 is attached and marked **p/1**.

11. On 28 March, 2007 an answer was received from the Gaza DCO in terms of which “entry [of petitioners 1-5] into the West Bank from Gaza shall not be permitted because of noncompliance with the criteria”.

A copy of the letter dated 28 March, 2007 is attached and marked **p/2**.

12. On 22 July, 2007 HaMoked appealed to the legal adviser of the Gaza DCO, Sergeant Haim Sharvit, and requested his intervention in the matter, and the consequent approval of the mothers’ and the petitioners’ passage from the Gaza Strip to Ramallah through Israel.

A copy of the application dated 22 July, 2007 is attached and marked **p/3**.

13. When no response whatsoever was received, the undersigned on 26 August, 2007 applied telephonically to the office of the legal adviser of the Gaza DCO, where he was informed that they were unsuccessful in locating the application. Therefore on that very day the application was resent once again. On the next day Sergeant Sharvit telephonically confirmed receipt of the application.

A copy of the application dated 26 August, 2008 is attached and marked **p/4**.

14. On 8 October, 2007 the undersigned once again applied to the office of the legal adviser of the Gaza DCO in order to clarify the fate of the application. But once again he was informed by the assistant to the legal adviser of the Gaza DCO that they had not unsuccessful in locating the application and they did not have any documentation attesting to its existence. Therefore on that same day an application was sent for a third time, and this time directly to the assistant to the legal adviser of the DCO, Corporal Yarden Zar- Aviv.

In the application a request was made for the speedy handling of the matter and for a receipt of an answer at the earliest possible convenience “in light of the fact that it was the third time that we are sending you the aforesaid applications, and pursuant to our conversation, in which you assured me that the application would be treated immediately as high priority”

A copy of the third application, dated 8 October, 2007 is attached and marked **p/5**.

The application has never received an answer.

15. In the meanwhile, the petitioners’ mother was referred to medical treatment for her disease, in Ramallah. Therefore, at the beginning of September 2007 she applied to the Palestinian health liaison, and requested that they coordinate her passage from the Gaza Strip to Ramallah for the purpose of going there to receive treatment. Her request was approved, and on 11 September, 2007 the mother moved from the Gaza Strip to the West Bank by means of an entry permit into Israel valid for one day.

The petitioners' mother's entry permit into Israel dated 11 September, 2007 is attached and marked **p/6**.

16. In order to receive this important medical treatment the mother was forced to leave her children alone in Gaza, with the hope that her application to the legal adviser of the Gaza DCO would bear fruit and the longed for permit would be given that would allow the children's passage, and also that the treatment would have been completed within a short period of time, when she would be able to return to her children and move with them to the West Bank, in order to join the *pater familias*.
17. However reality vanquished all plans. To her great misfortune, because of her difficult medical condition, the medical treatment turned out to be a long drawn out process, and the mother continues to be under treatment and close medical surveillance and thus cannot return to the Gaza Strip.

Copies of the reports on the mother's medical condition are attached and marked **p/7-p/10**.

18. No answer whatsoever was received from the legal adviser of the Gaza DCO to the application dated 22 July, 2007 or to the repeated applications that succeeded it, and the children were left alone in Gaza, with only a family friend who lived within their vicinity to assist them.
19. The petitioners' mother applied to the Palestinian Civilian Commission in the West Bank and filed with them an application to issue permits for the passage of her children from the Gaza Strip to Ramallah. The application was transferred to the Israeli side on 12 November, 2007, but **this too received no reply**.

A copy of the Palestinian Civilian Commission's confirmation of receipt of the filing of the application and its transfer to the Israeli side is attached and marked **p/11**.

20. Four months have passed since that time. Four months in which the four children – the oldest of whom is only 16 years old – were forced to fend for themselves, and to feed themselves under living conditions which are anyway very difficult in the Gaza Strip, and without being able to rely on anyone else but themselves, and they virtually live like orphans. The firstborn son has been forced to assume the role of the "responsible adult" and to take care of his three younger sisters – the youngest of whom is a toddler, only three years old!

It is difficult to describe in words the children's great distress, the daily hardship with which they must contend, the loneliness, and the serious longings that they experience, and the sense of abandonment and helplessness that have accompanied them these past four months.

The children do not know how to deal with this terrible distress in which they find themselves. They frequently speak on the telephone with their parents

and they bitterly cry out to them begging them to come back to take them. An acquaintance who relocated from the Gaza Strip to Ramallah recently delivered a package to the parents from their children, in which there are dozens of drawings and letters written by their twelve year old daughter _____ (petitioner 2) in which she writes to her parents how much she misses them.

It is also difficult to describe the suffering and distress of the parents – especially the mother, who has been forced to contend with a serious illness and to undergo continuous treatments while her children are left behind to fend for themselves. Obviously the mother's mental condition has clear ramifications for the prospects of the success of the treatments, which she is undergoing.

21. In light of these serious circumstances, and in light of the fact that the previous applications only succeeded in yielding a deafening silence, the Center for the Defence of the Individual on 30 December, 2007 made an urgent application to the Humanitarian Desk of the Gaza DCO, describing the chain of events and the difficult situation in which the petitioners have become entangled, and requested their immediate intervention for the purpose of issuing entry permits into Israel for the children, for their passage from the Gaza Strip to Ramallah.

A copy of the urgent application to the Gaza DCO dated 30 December, 2007 is attached and marked **p/12**.

22. Since then, HaMoked was repeatedly informed through telephone conversations from the Humanitarian Desk of the Gaza DCO that the “request is being processed”, but despite the very harsh circumstances **this urgent application has also received no reply at all.**

The Legal Argumentation

The voice of the heart of the child calls to me and his eyes are suspended in my eyes. His voice is a soft whisper and his eyes are full of supplication and entreaties. He now calmly and silently sleeps on his bed. I shall cover his small body until his chin, I shall turn off the lights of his room, I shall turn around and walk back on the tips of my toes, and I shall close the door behind me ever so quietly.

(Judge Heshin in *A.C.H. The Attorney General v. Jane Doe Takdin Elyon* 1995(3) 2156, 2203).

The right to a family life and the welfare of the child

23. The right to a family life is a recognized and protected right in International Humanitarian Law and in International human Rights Law. The natural family is the basic unit of society.

The most fundamental and earliest social unit in the history of humankind, which was, is and shall be the basis for serving and for ensuring the existence of human society.

(CA 488/77 **John Doe v. The Attorney General Piskei Din** 32(3), 421, 434).

24. It would appear that one cannot overstate the immense importance of the connection and closeness between parents and their children.

It is a natural law that a child will hold on to his parents' hand, will be raised in his parents' home, will love them, and any deficiencies will be repaired by them... the parents have a right to raise their children and the children have a right to expect that their parents love them and provide for all their needs.. Who else is there but the parents to love their children and to be concerned with their needs, and who is like the children who return the love and who hang themselves on the necks of their parents.

(A.C.H. 7015/94 **The Attorney General v. Jane Doe Takdin Elyon** 1995(3) 2156, 2203)

25. The Basic Law: Human Dignity and Liberty and the Geneva Convention on the Rights of the Child (1989), which was ratified by the State of Israel in 1991, strengthened the status of a child as the bearer of independent rights, and as an independent personality under the law. This Convention establishes, *inter alia*, that:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents...

[...]

States Parties shall ensure that a child shall not be separated from his or her parents against their will...

26. In court rulings it has been stressed on more than one occasion that when dealing with the welfare of the child the greatest weight shall be given to this consideration. The principle of the welfare of the child is one of the most supreme considerations which the respondents must take into account in our case, when they deal with the application of children to enter Israel for the purpose of passage to their parents in the West Bank. The words of the honorable Judge Zilberg are most appropriate:

The test of the welfare of the child is an unrivaled principle... it may not be divided, and it cannot be diluted or mixed with any other considerations. Because from the time that the legislator elevated it to its

modern conception – and this modern conception was adopted by the Sages of Israel for centuries – that the child is not an “object” of preservation and custody for the enjoyment and welfare of one of the parents, but he himself is a “subject”, he is the “litigant” in this vital question, one cannot ignore his interests under any configuration of circumstances, and it makes no sense to reject these because of a “right” of someone else, be it his father or mother.

(CA 209/54 **Franz Steiner v. The Attorney General**, *Piskei Din* 9(1), 241, 251-252).

27. The respondents acted in a disproportionate and unreasonable manner when they ignored over a period of six months the petitioners’ applications and requests to realize this most basic right to a family life, and when they ignored the application that was transferred to them from the Palestinian side as well as HaMoked’s urgent application to allow passage of the children.

The respondents act as if time is on their side, while being completely apathetic to the fact that each extra day of delay is an extra day in which the children are being left alone in Gaza, far away from their parents, and under terrible distress.

28. It appears that in a petition of this nature there is no need to overstate the great importance in allowing the children’s free passage to their parents without delay. This is a humanitarian case of the highest degree. Under these circumstances it is difficult to think of any reason not to allow the speediest passage for the children, and thus to enable them to return to the bosom of their parents.

This petition is supported by an affidavit that was signed before an attorney in the West Bank and was sent to the undersigned by fax, after coordinating matters over the telephone. The honorable court is requested to receive the affidavit, and the power of attorney which was also given by fax, considering the objective difficulties in holding a meeting between the petitioners and their counsel.

For all these reasons the honorable court is requested to issue an order nisi as requested at the beginning of this petition, and after receiving the respondent’s response, make it absolute. Likewise the court is requested to order the respondent to pay the petitioners’ costs and attorney fees.

23 January, 2008

T. S. 49421

Adv. Ido Blum
Counsel for the petitioners