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At the Supreme Court in Jerusalem

HCJ 7832/12

Before:

Honorable Registrar Liat Benmelech

The Petitioners:

1. **S _____ T _____**
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

v.

The Respondents:

1. **Military Commander of the West Bank**
2. **Coordinator of Government Activities in the Territories**

Application for costs

Decision

The petitioners request to impose their costs on the respondents, after their petition was deleted at their request without a judicial decision in the matter.

I have reviewed the material in the file and the parties' arguments and decided to accept the request.

The parties disagree on the question of whether the remedy which was requested by the petitioners in this proceeding – the grant of a permit to petitioner 1 to travel from the West Bank to the Gaza Strip to take care of her sick daughter – was eventually given to them as a result of the filing of the petition, as the petitioners claim, or rather, regardless thereof, as the respondents claim. The respondents also claim that said remedy was not given to the petitioner earlier due to the fact that initially she failed to present a sufficiently updated medical record, and then she failed to transfer the medical record as required, through the representatives of the Palestinian liaison office, but delivered it to the public liaison officer, and that the document which she claims to have been eventually submitted by her to the liaison office has never been received by them.

However, I am of the opinion that the respondents did not meet the burden imposed on them to refute the presumption that - whenever the petitioner received the remedy he has petitioned for and the petition was not found to be defective by laches or failure to exhaust remedies - the petition which was

filed by him was justified (see HCJ 2908/06 **Ivanov v. Minister of Interior**, paragraph 5 (April 21, 2010)). It should be noted in this context that the causal connection test is not an exclusive test which serves as the sole basis for making a decision in a request for costs, and one should also examine in this regard whether the petition was required and justified from a reasonable and objective perspective when it was filed. Accordingly, sometimes, the failure to receive a pertinent response despite the submission of repeated requests to the competent authority, will justify, in and of itself, the filing of the petition and the imposition of costs on the respondents (see HCJ 10239/03 **Seltzer v. Minister of Interior** (May 30, 2004)).

In this case the respondents claim that the medical record which was attached to the original application and which was dated September 11, 2012, was not sufficiently updated already when received by them, on September 20, 2012, since it was not clear whether on said date petitioner 1's daughter has already undergone the operation and what was her condition. Without making a decision on this issue, even according to the respondents, only on October 10, 2012 – 20 days after the application was submitted – petitioner 1 was notified that she should deliver an updated medical record. Respondents' claim that only six working days are concerned due to the holiday season, cannot "rectify" this delay, which in view of the crux of the matter, does not seem reasonable to me. I am also of the opinion, based on the information presented, that respondents' later conduct also justified the filing of the petition "from a reasonable and objective perspective" since in the reminder letter dated October 24, 2012, the petitioners noted that they submitted the updated document through the Palestinian liaison office on October 18, 2012 (in accordance with respondents' instructions), and if indeed it was not transferred to the respondents, as they claim, under the circumstances of the matter they should have notified the petitioners that they did not receive the document and should not have left them without an answer. It seems to me that under these circumstances, it was not proved that the filing of the petition, on the date on which it was filed, was not necessary and justified as far as the petitioners were concerned.

Nevertheless, with respect to the amount of the costs, weight should be given to the fact that the remedy was given to the petitioners shortly after the petition was filed and that there was no need to hold a hearing before a panel of justices and to resolve the matter on its merits, as well as to the fact that the petition at hand is not very complex. In addition, the petitioners did not specify the amount of their actual costs, and did not establish an evidentiary infrastructure to substantiate a claim in this regard. In view of all of the above, and after having reviewed the documents in the file, I decided that the respondents should be obligated to pay petitioners' legal fees in the sum of 3,500 ILS and costs of trial in the sum of 500 ILS (and it should be noted that the court's fees were repaid to the petitioners minus the sum specified in detail 33 of the addendum to the Court Regulations (Fees), 5767-2007). The above amounts will bear linkage differentials and interest as prescribed by law from the date of my decision and until the date of actual payment.

Given today, 21 Av 5773 (July 28, 2013).

Liat Benmelech

Registrar