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At the Supreme Court
Sitting as the High Court of Justice

HCI 6475/07

In the matter of:

Ms. _____ Abu a-Laban et al.
represented by counsel, Adv. Abeer Jubran et al.
of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

OC Southern Command et al.

The Respondents

Response of the Petitioners to the Response of the Respondents

The Petitioners' response to the response of the Respondents is hereby filed. The Court is moved to accept the response and schedule an urgent hearing of the petition, before August 1, 2007 if possible, in view of the Respondents' response and in order to enable the Petitioner to arrive in Egypt via Erez Crossing and Jordan in time for the exam which is to be held on August 3, 2007.

1. The petition herein concerns the Petitioner's request to leave the Gaza Strip via Allenby Bridge to Jordan and from there to Egypt in order to be able to continue her studies for a Master's degree in obstetrics and gynecology at Ain Shams University in Egypt and to take the exam for membership in the British Royal College of Obstetricians and Gynaecologists, which will be held on August 3, 2007.
2. The Respondents refuse the Petitioner's request based on three main arguments:
 - a. The first argument: The Petitioner's travel via Israel to Allenby Bridge requires opening the Erez crossing. The Respondents argue that Hamas controls the Palestinian side of the crossing and that they cannot identify that the Palestinians arriving at the crossing are indeed "individuals who have received a permit" (see paragraphs 6, 21-22 of the Response on behalf of the Respondents).

- b. The second argument: Palestinians do not have a right to enter Israel. The Respondents rely on case law concerning requests to work and reside in Israel, as opposed to requests for short, time-limited transit through Israel.
- c. The third argument: If the Respondents allow the Petitioner to travel through Allenby Bridge, they would be compelled, owing to the "principle of equality", to allow other Palestinians to transit as well.

Opening Erez Crossing

- 3. The Respondents' response contains obvious internal contradictions. On the one hand, the Respondents claim that Hamas controls the Palestinian side of Erez Crossing and that the absence of a Palestinian side with whom entry of Palestinians into the crossing can be coordinated prevents them from identifying the Palestinians for whom a permit had been prepared.

The Respondents even refer to attacks on the crossings - **but the most recent of these incidents occurred about six weeks ago**, long before the situation in the Gaza Strip stabilized. Considering recent changes, this information is entirely irrelevant.

Indeed, on the other hand, the Respondents write that the Erez crossing is currently open for women from divided families (residents of Jerusalem and citizens of Israel married to Gaza residents), who arrive at the Israeli side of the crossing and return to the Gaza Strip after their permits are renewed; for businessmen who enter Israel from Gaza and for foreign staff members of international organizations and foreign journalists.

It is stressed: **since the beginning of July, the Respondents have demanded that women from divided families arrive at the crossing and cross to the Israeli side in order to have their permits extended and return home. The authorities obviously would not make this demand if it involved real danger to the lives of these women or to the lives of the soldiers.**

The Respondents also write - and this has been made publicly known: **Israel will allow hundreds of Palestinians currently stranded in Egypt to enter the Gaza Strip via Erez Crossing.**

Indeed, HaMoked's recent experience shows that **the situation at Erez has changed dramatically since the early days of the conflict between Hamas and Fatah in the Gaza Strip. Passage through the crossing is possible in both directions and is sometimes carried out without prior coordination. Describing a situation wherein the crossing is opened only from time to time, in an improvised manner, under fire and at risk to life is a misrepresentation which may have been correct in the early days of the incidents.**

According to press reports, arrival at the crossing from the Palestinian side is carried out with mediation provided by members of the International Committee of the Red Cross and individuals who are subordinate to the Palestinian-Israel coordination mechanism in the West Bank.

Just today, an Israeli resident entered the Gaza Strip to attend his sister-in-law's wedding (following H CJ 6480/07) and a Palestinian who lives in the West Bank and whose wife is in Gaza was permitted to enter the Gaza Strip via Israel. These are just two random cases handled by HaMoked.

Indeed: the Respondents speak of various groups traveling through the crossing and of an intention to let hundreds of Palestinians enter through it!

Travel to Allenby Bridge via Israel

4. The Respondents claim that the Petitioner, being Palestinian, i.e., a foreign national, has no right to enter the territory of the State of Israel. They support their claim with judgments that address the right to enter Israel in order to work and remain in the country for an extended period of time.
5. There is a great difference between a right to enter Israel in order to live and work in the country, i.e. remain in Israel for an extended period of time, and the right to transit for a short, predetermined duration (see paragraph 35 in the petition and thereafter, and the paper by Lauterpracht, Exhibit P/11).

The principle of equality: earlier cases in which the Respondents allowed the passage of Palestinian residents of Gaza to Jordan via Allenby Bridge

6. The Respondents cite the principle of equality as justification for harming the Petitioner. They claim that if they grant her passage, they would be compelled to increase the number of cases in which passage through the bridge is permitted!!
7. In paragraph 27, the Respondents admit that **indeed, passage by Palestinians from Gaza via Allenby Bridge and vice versa has been made possible, but these were Palestinian residents who had an additional foreign citizenship!**
8. **The difference between a Palestinian with an additional foreign citizenship and a Palestinian without one is quite unclear.** One would not presume that the Respondents take the principle of equality to mean that they discriminate only in favor of those who have "backing" from a foreign consul.
9. The Respondents have already allowed Palestinians to travel through Allenby Bridge. *Ergo*, they have an obligation to consider the Petitioner's case as well, and allow her to travel through Allenby Bridge to Jordan.
10. Finally, the Petitioners contradict themselves in their response.

On the one hand, they claim that they are unable to open Erez Crossing for the Petitioner. On the other hand, they say that women from divided families and Palestinian businessmen can use the crossing on a daily basis.

Travel through Israel and abroad is made possible for Palestinians who have a second foreign nationality, but is not made possible for the Petitioner, who is a Palestinian. This is so despite the fact that according to the Respondents' approach, both cases concern foreign nationals who have no right to enter Israel.

11. Counsel for the Respondents, Adv. Marx, consents to the submission of this response and leaves the motion for an urgent hearing at the discretion of the Court.

July 30, 2007

Abeer Jubran, Adv.
Counsel for the Petitioners

[Moked file 51308]