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At the Supreme Court
Sitting as the High Court of Justice

HCJ 3544/13
Scheduled for November 9, 2014

In the matter of:

___ **Qweidar et al.,**

represented by counsel, Adv. Abir Jubran-Dakawar (Lic. No. 44346) and/or Sigi Ben Ari (Lic. No. 37566) et al., of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
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Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

Coordinator of Government Activities in the Territories et al.

represented by the State Attorney's Office

The Respondents

Updating Notice on behalf of the Petitioners

The petitioners hereby respectfully submit an updating notice on their behalf in preparation for the hearing in the petition, which is scheduled for November 9, 2014.

The long failure to respond to petitioner's application

1. This petition concerns the request of petitioner 1, resident of the Occupied Palestinian Territories (OPT), that the respondents review and make a decision in his application to receive a license to drive an Israeli car within the territory of the state of Israel, for special reasons, in view of the medical condition of his wife, an Israeli resident. The petition also requested a general remedy, namely, to establish a committee which would be authorized to examine such applications, establish working procedures for the processing of such applications and publish them to the public.

2. Petitioner 1 is a Palestinian, resident of the OPT who has been living in Israel for nine years under renewable stay permits. Petitioner's residency is regulated by a family unification procedure in Israel with his wife and children who are Israeli residents.
3. Petitioner 2 is the wife of petitioner 1. Her daily functioning faculties are limited. She was born with a congenital heart defect and suffers from back problems. Petitioner 2's medical condition severely limits her mobility and ability to drive a car. Petitioner 2 hardly leaves her home. She goes out only for urgent needs or medical treatments with the assistance of her spouse. Therefore petitioner 1 needs a driver's license in Israel to drive his wife to medical treatments and to accommodate the mobility needs of his children.
4. It should be noted, that on October 9, 2012, the humanitarian committee notified that petitioner's application to receive a temporary residency visa in Israel was denied. The grounds given for the denial of the application were that "the need to receive a driver's license in Israel [...] did not constitute a special humanitarian reason for the purpose of granting a temporary residency visa." In its decision, the committee assumed that a driver's license may be received in Israel for special humanitarian reasons in accordance with a procedure of the Ministry of Transport: procedure No. 3/2011 entitled: Procedure for the processing of applications for the issue/renewal of an Israeli driver's license to residents of the Area (hereinafter: the **Ministry of Transport procedure**). The humanitarian committee has also noted that "the Minister of the Interior, with the recommendation of the committee, is of the opinion that the [petitioner's] application to receive a driver's license has special humanitarian grounds, and it will transfer the application to COGAT to be processed by them." Since then the petitioner has been trying to receive from the respondents a pertinent response to his application for a driver's license in Israel.

See a copy of the humanitarian committee's response dated October 9, 2012 which was attached to the petition as Exhibit **P/2**.

5. The general issue concerning the grant of driver's licenses in Israel to OPT residents who reside in Israel within the framework of family unification procedures, was discussed six years ago by this honorable court (HCJ 1439/07 **Shtiyeh v. The Minister of Transport**). On January 3, 2008 the general petitions which were filed against the general prohibition imposed on the issue of driver's licenses in Israel to Palestinians, who took part in family unification procedures, were denied. However, the respondents should have established a procedure which could enable to examine the specific applications of Palestinians, who resided in Israel by virtue of family unification procedures, to drive in Israel for special reasons.
6. Only on July 12, 2011, three years after the judgment in HCJ 1439/07 **Shtiyeh** was given, had the Ministry of Transport procedure, procedure 3/2011, been established. However, said procedure did not provide a solution for applications of Palestinians from the West Bank under family unification procedures for a driver's license in Israel for special reasons! in view of the fact that according to the procedure, the authority to make decisions in their applications is vested with the military commander of the West Bank (see section 578b(1) of the Transport Regulations, 5721-1961. However, at that time the military commander has not yet established procedures in this matter and did not take any action to establish a committee which would discuss the issue.
7. As aforesaid, in this petition the honorable court was requested to direct the military commander to establish a procedure which would enable to hear and decide in applications of Palestinians who resided in Israel under family unification procedures, to drive in Israel.
8. From respondents' response to another petition, HCJ 2119/13 **A. v. Minister of the Interior et al.**, of which petitioners' counsel became aware haphazardly, it turned out that on May 11, 2014

the Ministry of Transport procedure was canceled. The response further indicated that already on October 20, 2013, a procedure which should have regulated the processing of applications for the issue of driver's licenses in Israel to Palestinians under family unification procedures, was established by the Coordinator of Government Activities in the Territories (hereinafter: the **new procedure**). According to the new procedure, the military commander of the West Bank empowered the head of the economics division in the Civil Administration to review applications of Palestinians for driver's licenses in Israel for special reasons.

It is unclear if and when the new procedure entered into effect! and why it was not publicly published!

A copy of respondents' response in H CJ 2119/13 **A. v. Minister of the Interior et al.**, dated July 20, 2014, including its exhibits: notice of the Ministry of Transport concerning the revocation of procedure 3/2011 and the new procedure of the Coordinator of Government Activities in the Territories, is attached and marked **P/10**.

9. Ostensibly, following the formulation of the new procedure by the Coordinator of Government Activities in the Territories, applications of Palestinians for licenses to drive Israeli cars within state limits for special reasons, should have currently been reviewed, and pertinent responses should have been received. Unfortunately, this is not the case!
10. In the beginning of April this year, respondents' counsel directed the petitioners to submit a new application in petitioner's matter to the head of the economics division in the Civil Administration. The petitioners, who were not aware of the existence of the new procedure, acted according to the directives of respondents' counsel, and submitted on May 27, 2014 a new application to Lieutenant Colonel Moshe Bracha, head of the economics division in the Civil Administration. Namely, the application has ostensibly been submitted after the new procedure entered into effect.

A copy of the petitioners' new application, together with petitioner 2's medical documents, which was submitted to the head of the economics division in the Civil Administration in petitioner's matter dated May 27, 2014 is attached and marked **P/11**.

11. **Since then, reminders were sent on July 9, 2014 and September 8, 2014. Almost five months passed from the date on which the new application in petitioner's matter was submitted, from the revocation of the Ministry of Transport procedure and, ostensibly, from the date on which the new procedure entered into effect. Yet, despite the long time which passed since then, no pertinent response to the application has been received.**

A copy of the reminders to the head of the economics division in the Civil Administration dated July 9, 2014 and September 8, 2014 are attached and marked **P/12-P/13**.

A copy of the response letter of Second Lieutenant Dana Bekstein, commander of the general desk at the Civil Administration, dated October 1, 2014, is attached and marked **P/14**.

12. It should be noted that the undersigned is not aware of any application which was approved according to the new procedure. An inquiry with Adv. Lustigman, petitioners' counsel in H CJ 2119/13, indicates that within the framework of the petition, her client submitted a new application for a driver's license according to the new procedure, but no pertinent response has yet been received.

The deficiencies in the procedure of the Coordinator of Government Activities in the Territories which was established on December 20, 2013

13. The purpose of the new procedure is, first and foremost, to enable, in special cases, Palestinians who lawfully reside in Israel under a family unification procedure, to drive in Israel, regardless of the sweeping prohibition imposed on West Bank and Gaza Strip Palestinians, preventing them from driving an Israeli car within state limits (see: sections 3 and 5 of the Provisions regarding Transport and Traffic (Judea and Samaria), 5729-1968, and regulation 578b of the Transport Regulations, 5721-1961).

The purpose of the procedure is "to establish criteria and methods for the processing of applications for the issue of permits to drive an Israeli car to residents of the Area." (Section 3 of the new procedure).

14. **Firstly it should be emphasized that the procedure was not publicly published. Worse than that, the undersigned became aware of the existence of the new procedure haphazardly, through Adv. Lustigman, counsel to the petitioners in HCJ 2119/13 A.** The procedure was attached as an exhibit to respondents' response to the petition dated July 24, 2014.
15. **Secondly, the procedure does not establish a time frame for the processing of the applications.** The new procedure does not establish binding schedules within the framework of which the head of the economics division in the Civil Administration (when West Bank residents are concerned) or the head of Gaza DCO (when Gaza Strip residents are concerned) must give a decision in the applications of Palestinians for driver's licenses in Israel. Thus, for instance, petitioner's application has been pending before the head of the economics division in the Civil Administration for about five months, and no decision therein has been made yet! The undersigned is aware of two additional cases in which applications were submitted under the new procedure a few months ago and in which no pertinent answers have been yet received.

Restricting the processing time of the applications is of great importance, *inter alia*, to prevent a situation in which no response is given for a long time, which forces many applicants to turn to this honorable court for relief.

16. Thirdly, the cumulative threshold conditions for submitting an application according to the procedure are very narrow and do not provide a solution for other cases in which a justified need arises to apply for a driver's license. According to section 4.d. of the procedure:

It was decided that only a resident of the Area who complies with the following cumulative conditions would be entitled to submit an application for the receipt of a driver's license for an Israeli car:

- 1. The applicant has a valid residency permit in Israel by virtue of family unification procedure.**
- 2. The applicant has been living in Israel lawfully for three consecutive years.**
- 3. A first degree relative of the applicant who permanently resides in Israel (who is a permanent resident or a citizen), suffers from a medical condition which requires frequent medical treatments, which require urgent arrivals to a medical institution, and the Israeli spouse of the applicant cannot drive an Israeli car, and**

there is no other solution for bringing the applicant's relative to the institution in which the treatment is given.

17. The cumulative criteria for submitting an application under the procedure are very limited, to say the least. Life is not only about matters of life and death, or urgent medical needs and trips to the hospital only.
18. The cumulative criteria, and particularly section 4.d.3 will not allow, for instance, a Palestinian whose Israeli spouse is recognized by the National Insurance Institute as a disabled person with a degree of incapacity of 100% and who cannot drive a car, to drive his spouse for the purpose of receiving regular, non-urgent treatments, or drive his children to after school activities, school or medical treatments. In such cases said Palestinian would not even have the right to submit an application for a driver's permit or license under the new procedure, not to mention a review or acceptance thereof!

Another example is that of an Israeli mother who has cancer and receives chemotherapy treatments once every few weeks. She does not need to be driven to the medical institution frequently or urgently, but she cannot drive due to general weakness as a result of the treatments. According to section 4.d.3. of the procedure, her Palestinian spouse will not be able to submit an application for a driver's permit or license according to the new procedure!!

The same applies to a Palestinian widow, a mother of children, who resides in Israel under renewable stay permits, who will not be able to drive her disabled son to school, treatments or any other place because she does not comply with the provisions of section 4.d.3 of the new procedure.

19. In addition, the condition which requires three years of consecutive residency in Israel under stay permits, is inconceivable. Surely, there are exceptional cases in which the head of the economics division or the head of the Gaza DCO should examine and consider the issue of a driver's license to a Palestinian even if he has not been residing in Israel for three consecutive years!
20. Such is, for instance, the case of an Israeli spouse who underwent a labor accident or a car accident as a result of which he suffers from a very severe physical disability which prevents him from driving. Is it reasonable that in such a case the Palestinian spouse will not be able to at least have his application for a driver's permit or license considered? Since, in such a case, who will be responsible for driving the children and for maintaining their daily routine and who will be responsible for driving the disabled spouse to paramedical and medical treatments!
21. Not less importantly, is the accessibility of public transportation in the neighborhood or village in which the family lives, which should be taken into account in the examination of the application for a driver's license. There are Arab communities in which public transportation is neither accessible nor available and the need to have a car is essential. The failure to issue to a Palestinian, whose Israeli spouse cannot drive, a driver's license, results in the imprisonment of the family in its home.

Conclusion

22. Petitioner's application to drive an Israeli car within state limits **has been pending before the respondents for almost two years.** Petitioner's petition has been pending before this honorable court for about **one year and four months.** His new application which was submitted according to the new procedure has been pending before the head of the economics division in the Civil

Administration **for five months**, and regardless of all of the above, the petitioner has not yet received a pertinent response to his application.

23. **The new procedure is problematic. Firstly, the procedure has not been publicly published. Secondly, it does not consist of binding decision making schedules. Thirdly, and worst of all, the narrow criteria for submitting an application according to the new procedure will not enable the submission of an application under the procedure in cases in which the grant of a driver's permit or license to the Palestinian relative is fully justified.**

October 23, 2014

Abir Jubran-Dakawar, Advocate
Counsel to the petitioners

[file No. 75547]