

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **Hamoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

**At the Supreme Court Sitting as
the High Court of Justice**

H CJ 5429/07

Before: The Honorable Justice E. E. Levy
The Honorable Justice E. Rubinstein
The Honorable Justice Y. Elon

The Petitioners: 1. Physicians for Human Rights
2. Gisha-Legal Center for Freedom of Movement

V e r s u s

The Respondents: 1. The Minister of Defense
2. The Minister for Interior Affairs

Related Parties: 1. Shurat HaDin-Israel Law Center
2. Professors for a Strong Israel

Petition for the issue of an order nisi

Date of the hearing: 11 Tamuz 5767 (27 June, 2007)

For the Petitioners: Adv. N. Peleg, Adv. S. Bashi, Adv. Y. Lerman

For the Respondents: Adv. A. Hellman, Adv. S. Rotshenkar

For the Related Parties: Adv. R. Kochavi

Judgment

Justice E. Rubinstein:

- a. On 20 June 2007, we issued an interim decision in this case. Pursuant thereto, according to the statements therein, update notices were filed on behalf of the parties, on 24 June 2007, by the respondents, and on June 25 2007, by the petitioners and also on 25 June 2007, two non-profit organizations, Shurat HaDin and Professors for a Strong Israel, filed a motion to join the petition as additional respondents. Following the aforesaid we held a complementary hearing on June 27 2007. This judgment complements our decision of 20 June 2007.

- b. First, pertaining to the motion to join. This motion concerns fundamental issues pertaining to the link between the State of Israel and the Gaza Strip at this time, due to which the applicants believe that the petition should be denied. Indeed, the issues of the status of the Gaza Strip and the legal obligation - or lack thereof - of Israel to what occurs therein, arise also in the petition and in the respondents' notice. However, as we announced in the hearing on 27 June, 2007, we do not intend, in the context of this petition, especially in view of the urgency, to address such weighty issues, and we decided to limit ourselves to the operative common denominator, namely, the humanitarian aspects, by virtue of which also the State is prepared to treat those who are in need of urgent life saving medical treatment. Therefore, there is no pertinent reason for the joining of the applicants, and we do not grant the same.
- c. As for the issue on the merits thereof: The respondents' updating notice states that the mechanism which was deliberated in the previous hearing, through a Palestinian coordinating person for issues of the urgent medical treatment, operates continuously; The respondents illustrated in figures the approval of a significant portion of Palestinian applications which were transferred through such person, who enjoys the respondents' trust, and in which context also the cases of most of those who are included in the lists which were filed by the petitioners, were handled in a substantive manner. The respondents further distinguish between life saving (entry of people whose lives are in immediate danger, and there is no possibility of providing medical treatment within the territory of the Gaza Strip) and danger to the quality of life. It was also stated that each opening of the Erez Crossing endangers the lives of the soldiers and the citizens there, a consideration which should be given standing. In conclusion, we were moved to deny the petition.
- d. The petitioners answered, whilst contesting the procedure - the mechanism - which was set forth by the respondents, and according thereto, exclusive reliance on one coordinating Palestinian person, who also stopped functioning for varying periods of time, is insufficient. All the more so since difficulties are encountered in transferring the applications through that person. It was argued that specific patients, who need to be treated urgently, did not cross to Israel pursuant thereto; Hence, there is no room, according to the petitioners, for the respondents' demand to leave a single person to treat the applications of patients. Another argument is that the distinction between "life saving" and "quality of life" with respect to - for example - the amputation of a person's leg or legs, should not be accepted.
- e. With regard to two specific cases, in which the respondents asserted a security impediment argument, the petitioners' counsel agreed that we inspect the confidential material pertaining thereto *ex partes*.
- f. (1) In the hearing before us the dispute came down to the following two: First, the identity of the person who transfers the applications to the respondents, namely, should we make do for such purposes with the Palestinian mechanism (see below) or should the petitioners also participate in this; and second, the question of which medical needs should be treated, and whether they concern "life saving" or also "quality of life".

(2) On this matter, the respondents updated in the hearing that there has been an improvement connected with the Palestinian mechanism; As relayed, the coordinating person who was mentioned in our decision of 20 June 2007, indeed works from his home vis-à-vis the Israeli District Coordination Office, but he also arrives at the office, where the employees of the Palestinian Ministry of Health of which he is one, are situated, and there is personnel that examines what is required. This mechanism is acceptable to the Palestinian Authority (under the presidency of Mahmud Abbas) who deems the employees thereof as continuing in their jobs. The respondents insist that all in all this mechanism operates properly, and evidence for this is that many tens of patients have already crossed to Israel through it. Pertaining to the distinction between "life saving" and "quality of life", according to the respondents it should be recalled that - as aforesaid - each opening of the Erez Crossing entails a risk to the lives of the Israeli civilians and soldiers and recently an event occurred - for example - in which pregnant Palestinian women who were supposed to cross on a humanitarian basis, were in fact suicide terrorists. Therefore the opening of the gate should be narrowed down to the barely essential to avoid a situation in which a certain sick person takes "let me die with..." action.

(3) Conversely, the petitioners claimed that there is no magic in one Palestinian coordinator and there is room, on the humanitarian level, that when material requirements are fulfilled pertaining to the illness and the need of treatment, Israeli authorities will not be punctilious with regard to the person transferring the application. It was further stated that saving the legs or the sight of a person should not be deemed as "quality of life", and the distinction is wrong.

(4) We inspected, *ex partes*, the confidential material with regard to two of the people on the petitioners' list, and we held a dialogue with the respondents' attorneys; We rest assured that there is room for the security impediment in their regard under the circumstances, with all due regret for their medical condition.

(5) (a) With regard to the coordinating mechanism: we got the impression that there is an improvement in the mechanism of transferring the applications, also according to the declarations of the respondents and the numbers which they presented. It seems to us, as we wrote in the decision of 20 June, 2007, that there is logic in the solution of determining the coordinating person, and that this is a reasonable path. We shall add that considering the aforesaid we believe that it would be correct, using common sense and life experience, that in the context of the office of the senior Palestinian coordinating person, in which the respondents have faith, which is good, there will be - as part of the same body - an additional address for communication, (such as one of his employees), for applications in events where an emergency situation is created, and the coordinating person is not personally available. This address will be known (as an alternative, only in the absence of the senior person) also to the petitioners. It is understood that this matter is entrusted to the Palestinian Authority. At the end of the day we assume that the comprehensive mechanism will meet the needs.

(b) With regard to the type of cases – "life saving" and "quality of life", there is no dispute between the parties pertaining to the cases at bar, in the humanitarian context, on life saving. With regard to "quality of life" cases - we find it hard to address this definition per se, since, for example a person who, heaven forbid, loses his eyesight or limbs, and stays alive, the injury is so severe that if his eyesight or limbs can be saved, doing so is of great significance. Some of these people are also neutralized, by their medical condition, from performing direct terrorist damage. However, conversely, it is neither we nor the petitioners - who stand at the Erez Crossing, and are exposed to the risks of terrorism upon every opening thereof, and therefore it would be unfair and disproportionate of us to expose, by a stroke of the pen, the I.D.F. soldiers and the civilians at the crossing to the opening thereof over and above what is necessary, and this is the argument in this context (subject to a specific security impediment in specific cases). However we assume that the approach of the respondents will be humane, such that very grave cases in which the essence of life entirely changes in the absence of treatment, will be considered, but we do not believe that we are required to individually address these cases, but should rather leave them for examination and decision on a case-by-case basis.

(6) Subject to the aforesaid, we are not granting the petition. We are not issuing an order for costs.

Issued today, 12 Tamuz 5767 (28 June 2007).

Judge

Judge

Judge