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At the Supreme Court
Sitting as the High Court of Justice

HCJ 641/15

In the matter of:

1. _____ **Abu Wadi, ID No. _____**
Resident of the Occupied Palestinian Territories
2. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Bilal Sbihat (Lic. No. 49838)
and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben
Ari (Lic. No. 37566) and/or Anat Gonen (Lic. No. 28359)
and/or Daniel Shenhar (Lic. No. 41065) and/or Noa Diamond
(Lic. No. 54665) and/or Benjamin Agsteribbe (Lic. No.
58088) and/or Abir Jubran-Dakawar (Lic. No. 44346) and/or
Nasser Odeh (Lic. No. 68398)

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.

1. **Israel Prison Service**
2. **Military Commander of the West Bank Area**
3. **Minister of Interior**
4. **Israel Police**

all represented by the State Attorney's Office, Ministry of Justice
29 Salah a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

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 should not refrain from deporting petitioner 1 (hereinafter: the **petitioner**), who is about to be released from prison this coming Thursday, January 29, 2015, to the Gaza Strip, and instead, release him to the West Bank, his home for fifteen years.

Due to the urgency of the matter the petition is already filed at this present time, although the petitioners are still acting to gather documents and additional data. Therefore, the petitioners will request to complete their arguments within a week and to add data and documents to the extent required.

Urgent Request for an Interim Order

A request for an interim order is hereby filed which is directed at the respondents ordering them not to forcibly transfer petitioner 1 (hereinafter: the **petitioner**) who is about to be released from prison on **January 29, 2015**, to the Gaza Strip.

The petitioner, a Palestinian registered in the Palestinian population registry, has been living in Qalqilya in the West Bank since 2000. The petitioner moved with his family to the West Bank in 2000, when he was only ten years old. It should be noted that the family moved to the West Bank lawfully, with respondents' full knowledge and consent.

As aforesaid, the petitioner has been living in the West Bank for about fifteen years, where he moved to under the "safe passage" arrangement. His center of life is in the West Bank. His home is over there and his family is over there – his parents and his siblings. The petitioner, a young bachelor, is supported by his parents and prior to his arrest was living with them in a house owned by them.

It should be emphasized that Qalqilya is petitioner's sole home and that for fifteen years he has not set foot in the Gaza Strip. Due to respondents' policy, which severely limits the passage from the Gaza Strip to the West Bank, it is highly likely that should the petitioner be forcibly transferred to the Gaza Strip – he would never be able to leave it, and would not be able to return to his home and parents, who anxiously look forward for his return.

The balance of convenience in this case clearly favors the issuance of an interim order, due to the fact that petitioner's deportation will cause him irreparable damage. On the other hand, petitioner's stay in the West Bank while his case is pending before the court will not harm any of respondents' interests.

Request for an Urgent Hearing

The honorable court is requested to schedule an urgent hearing in the petition.

The petitioner is about to be released from prison on Thursday, **January 29, 2015**. His parents and siblings are waiting for him in their home in Qalqilya. Notwithstanding the urgency of the matter, the respondents delayed their answers to petitioners' requests, requests which sought to ensure that the petitioner would indeed be sent to his home in the West Bank upon his release.

The Factual Infrastructure

The Parties

1. The petitioner, born in 1990, is a Palestinian who lives in Qalqilya in the West Bank. Currently the petitioner is serving a prison sentence in the Ella prison, for an illegal presence in Israel.

The petitioner will be released from prison on January 29, 2015.

2. Petitioner 2 (hereinafter: **HaMoked**) is a not for profit association which acts to promote human rights in the Occupied Territories.
3. Respondent 1 holds the petitioner in its custody and is in charge of releasing prisoners and accompanying them to the place of their release. Respondent 1 is obligated to protect the rights of the prisoners held in its custody, and according to its own rules and international law, it must release prisoners near their place of residence.
4. Respondent 2 is the military commander of the West Bank area on behalf of the state of Israel, which holds the West Bank under belligerent occupation for more than forty seven years.
5. Respondent 3 has the authority to order that a person be deported from Israel due to lack of status therein, including prisoners and detainees who are neither Israeli citizens nor Israeli residents.
6. Respondent 4 is responsible for the execution of the deportation from Israel of a person who has no status therein.

Factual Background

7. The petitioner was born in the Gaza Strip in 1990. In 2000 petitioner's parents moved, together with their six children, from the Gaza Strip to the West Bank, under the "safe passage" arrangement which was in force at that time between the Gaza Strip and the West Bank. It should be noted that petitioner's parents were not required to obtain any special permit for said passage.
8. The petitioner and his family established their lives in the city of Qalqilya, and even acquired a residential home over there. More children, a boy and girl, were born to petitioner's parent in the West Bank.

A copy of a confirmation issued by the municipality of Qalqilya to the effect that petitioner's father lives in a house owned by him in the city of Qalqilya is attached and marked **P/1**.

9. In 2002 the family members gave notice of a change of their address to Qalqilya, to the Palestinian ministry of interior bureau in Qalqilya. In 2011 the address of petitioner's parents and three of his brothers was updated – but for some unknown reason, petitioner's address in his identity card was not updated, and he is still mistakenly registered as a Gaza Strip resident.

A copy of the identity card of petitioner's father is attached and marked **P/2**.

A copy of the identity card of petitioner's mother is attached and marked **P/3**.

10. It should be noted that the issue concerning the update of the address of West Bank residents who are mistakenly registered as Gaza Strip residents was raised in HCJ 4019/10 **HaMoked: Center for the Defence of the Individual v. Military Commander of the West Bank Area**, which was filed by petitioner 2 and fifteen additional organizations. In said petition HaMoked has already warned that as a result of the failure to change the addresses of residents as aforesaid, they would

suffer many difficulties and hardships in their lives, as petitioner's case clearly demonstrates. The petition was deleted in view of respondents' undertaking to refrain from deporting residents who moved to the West Bank until September 12, 2005 (the ramifications of said undertaking to the case at hand will be specified in detail below).

11. In 2008 petitioner's elder brother, _____ Abu Wadi, was arrested for an illegal presence in Israel. The brother was indicted and sentenced to two years in prison. When he was released from prison, in 2010, the brother was forcibly removed, without prior notice, to the Gaza Strip, rather than to his home in the West Bank. Since then the brother has been living in the Gaza Strip, away from his home and family, and cannot return to his home in Qalqiliya.
12. In December 2014, as a result of an economic distress, the petitioner entered Israel to look for work and was caught for an illegal presence in Israel. Immediately upon his arrest the petitioner was questioned about his registered address in his identity card, and the petitioner explained that he had been residing in the West Bank since he was a young boy, and that due to a mistake which was not under his control his registered address was not updated. The petitioner was indicted and convicted, and was sentenced to two months in prison.
13. The petitioner is about to be released from prison on January 29, 2015, within about two days.
14. It should be noted that it is not the first time that the issue of petitioner's release from prison to his home in the West Bank is brought before this honorable court. In July 2013, a petition was filed concerning petitioner's release from prison to his home, HCJ 4976/13 ___ **Abu Wadi v. Israel Prison Service**. Shortly after the petition was filed, a response on behalf of respondent 2 was received, which notified that it was decided to release the petitioner to his home in the West Bank.

A copy of the response date July 10, 2013, is attached and marked **P/4**.

A copy of the response on behalf respondent 1 is attached and marked **P/5**.

Exhaustion of remedies

15. Towards the completion of his last prison sentence, the petitioner feared that like his brother Maher, he would also be forcibly removed to the Gaza Strip upon his release, due to his registered address.
 16. Therefore, on January 22, 2015, HaMoked wrote to the commander of the Ella prison, on behalf of respondent 1, and requested to ascertain that the petitioner would be released to his home in the West Bank.
- A copy of HaMoked's letter to respondent 1 dated January 22, 2015, is attached and marked **P/6**.
17. On that very same day a telephone conversation was held between the undersigned and the inmates' officer at the Ella prison. The inmates' officer told the undersigned that the petitioner would be released on January 29, 2015, and that usually the prisoners were released according to the registered address which appeared in the copy of the Palestinian population registry held by Israel.

The undersigned notified the inmates' officer that petitioner's registered address which appeared in the copy of the Palestinian population registry held by Israel was not correct, and that since 2000, the petitioner has been living in the West Bank, where he relocated to with his parents in the "safe passage" arrangement, when he was only ten years old.

In addition, the undersigned informed the inmates' officer that **in 2013, the petitioner was released from a previous incarceration to the West Bank rather than to the Gaza Strip**, and even sent her copies of the decisions concerning petitioner's previous release from prison. The inmates' officer notified that she would re-examine petitioner's release and would send a response as soon as possible.

A copy of HaMoked's second letter dated January 22, 2015, is attached and marked **P/7**.

18. Until the date of this petition, no answer has been received from the inmates' officer at the Ella prison, and the undersigned's attempts to contact her were unsuccessful.
19. Due to the upcoming release of the petitioner, and in an attempt to prevent the risk that he would be forcibly removed to the Gaza Strip, on January 25, 2015, HaMoked wrote also to the office of the legal advisor for the West Bank on behalf of respondent 2, and requested to ascertain through it too that the petitioner would be sent, upon his release, to his home in the West Bank. In its letter HaMoked noted that only a year and a half earlier, in July 2013, the respondents decided to send the petitioner to his home in the West Bank, upon his release from prison, notwithstanding his registered address in the Palestinian population registry held by Israel.

A copy of HaMoked's letter to respondent 2 dated January 25, 2015, is attached and marked **P/8**.

20. In the last few days the undersigned had repeatedly turned to the office of the legal advisor for the West Bank in an attempt to receive a response to his request, and the only answer which was given was that the request had not yet been processed.
21. As of the date of this petition, no response has been received from the respondents. In view of the fact that the petitioner is about to be released on January 29, 2015, and in view of the fact that the petitioner is concerned that the respondents may deport him to a place which is not his place of residency; away from his family which is anxiously waiting for him; and from which he will not be able to come back due to respondents' policy, which will be disastrous for the petitioner and his family - the petitioners have no alternative but to turn to the honorable court.

The Legal Argument

22. As is known, on November 29, 2012, the General Assembly of the United Nations decided to give Palestine a non-member observer state status in the United Nations (Resolution No. A/RES/67/19).

It is clear that also after the resolution of the General Assembly the military commander continues to bear all duties and obligations imposed on him by international law, as the occupying power which controls the Area.

A. The obligation to respond expeditiously

23. The respondent is obligated to respond to the request expeditiously, under the law. It is a well known rule that the "obligation to act expeditiously is one of the basic principles of good governance." (I. Zamir, **The Administrative Authority** (Volume B, Nevo, 5756), 717).

And on this issue see:

HCI 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451 (1994);

H CJ 7198/93 **Mitrel Ltd. v. Minister of Industry and Commerce**, IsrSc 48(2) 844, 853 (1994);
H CJ 5931/04 **Mazurski v. The State of Israel – Ministry of Education**, IsrSc 59(3) 769, 782 (2004);
H CJ 4212/06 **Avocats Sans Frontiers v. GOC Southern Commend**, TakSC 2006(2) 4751 (2006).

24. It has already been ruled that when human rights were concerned, the concept of a "reasonable time frame" obtained a special meaning (H CJ 1999/07 **Galon v. The Governmental Commission for the Enquiry of the Events of the Lebanon Campaign 2006**, TakSC 2007(2) 551, 569 (2007)); And that in matters concerning human rights -

A more expeditious regularization of the matter is expected [...] a continued violation of human rights quite often broadens the scope of the injury and may result in the erosion of the right as well as in a severe and continued injury to the individual.

(H CJ 8060/03 **Q'adan v. Israel Land Administration**, TakSC 2006(2) 775, 780 (2006)).

And see also: H CJ 10428/05 **'Aliwa v. Commander of IDF Forces in the West Bank**, TakSC 2006(3) 1743, 1744 (2006); H CJ 4634/04 **Physicians for Human Rights v. Minister of Public Security**, TakSC 2007(1) 1999, 2009 (2007).

25. In the case at hand, an immediate response is required – the petitioner wishes to ensure that the respondents intend to send him to his hole and family, upon his release from prison, and that they do not intend to deport him to the Gaza Strip. However, the respondents have disregarded petitioners' requests until petitioner's upcoming release.

B. Respondents' obligation to release a person near his place of residence

26. Upon the completion of petitioner's arrest, respondent 1, which holds the petitioner in its custody in prison and is responsible for having him released and for bringing him to the place in which he would be released, is liable to release him near his place of residence in the West Bank.
27. It should be noted that in H CJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Commander of IDF Forces in the West Bank**, which concerned the incarceration conditions and the manner by which detainees are released, respondent 2 submitted a notice to the court on April 24, 2002, which stated, in section 27 thereof, as follows: "According to the command's directives, detainees are released to the **extent possible near their place of residence**".

A copy of the state's response dated April 24, 2002, in H CJ 3278/02 is attached and marked **P/9**.

28. Even according to respondent 1's procedures, a detainee should be released in a checkpoint near his place of residence (see Israel Prison Service procedure 7.09 "Release of prisoners residents of the Palestinian Authority in checkpoints").
29. There is no dispute that the petitioner has been residing in Qalqiliya for many years. The petitioner moved to the West Bank lawfully, under the "safe passage" arrangement, together with his family members, when he was ten years old.
30. Therefore, it would be absurd to argue that petitioner's home is in the Gaza Strip, only because he was born there, although he has already notified of a change of his address to respondent 2 in 2002,

and to expel him from his home and family, based on technical or bureaucratic arguments which have nothing to rely on.

C. From the general to the particular: respondents' obligation to release the petitioner to his home in Qalqiliya

31. As described above, the petitioner has been living in Qalqiliya in the West Bank for fifteen years. However, petitioner's address is registered in the copy of the population registry held by the respondents in a town located in the Gaza Strip.
32. As has been held in the past more than once, the data registered in the population registry are *prima facie* evidence of the correctness of their contents, and see for instance: HCJ 143/62 **Funk Schlezinger v. Minister of Interior**, IsrSC 17(1), 225, 243 (1963); HCJ 58/68 **Shalit v. Minister of Interior**, IsrSC 23(2) 477 (1970); HCJ 264/87 **Sepharadi Torah Guardians – Shas Movement v. Director of Population Registration at the Ministry of Interior**, IsrSC 43(2) 723 (1989); HCJ 2888/92 **Goldstein v. Minister of the Interior**, IsrSC 50(5) 89, 93-94 (1994); HCJ 1779/99 **A. v. Minister of Interior**, IsrSC 54(2) 368, 375-376 (2000); HCJ 5070/95 **Na'amat – Movement of Working Women & Volunteers v. Minister of Interior**, IsrSC 56(2) 721 (2002); HCJ 2901/97 **Na'amat v. Minister of Interior**, TakSC 2002(1) 634, 640 (2002); HCJ 3045/05 **Ben Ari v. Director of the Population Registry**, TakSC 2006(4) 1725, 1731 (2006).
33. Parenthetically, the above is also explicitly stated in the military order governing population registry, the Order on Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969. Section 11B of the order provides that "The registration in the registry, any copy or summary thereof and any certificate issued under this Order will be *prima facie* evidence of the correctness of the registration details specified in sub-sections... (13)...". Sub section (13) to section 11 of the order, concerns a person's address.
34. As it was clarified to the respondents that the petitioner was residing in the West Bank, despite the registered data in their possession, and since he has managed to prove it, they must release him to his actual place of residence – rather than to the place which appears in their records as a *prima facie* evidence only.
35. It has also been acknowledged by the court that the Palestinian population registry is only a *prima facie* evidence of its correctness, and it was therefore held under exactly the same circumstances – of a release from prison of a resident of the Area who challenged the correctness of his registered address in the registry and requested to be released to his home in the West Bank rather than to the Gaza Strip – as follows:

It would be appropriate for the respondents to consider the establishment of a procedure according to which a person who is about to be expelled, under adequate circumstances and without an order for the assignment of residence, would be entitled to a hearing in which he would be able to raise his arguments against the registration in the Palestinian population registry.

(HCJ 3519/05 **Ward v. Commander of Military Forces in the West Bank** (not reported; July 26, 2006)).

36. It should be pointed out that **in our case the petitioner did not undergo any hearing** before a decision was made to remove him to the Gaza Strip upon the completion of his arrest. Respondent 1 made a unilateral decision in this matter, of which he has notified the petitioner only shortly before his expected release from prison, without giving him an opportunity to challenge said decision and make his arguments in connection therewith.

D. The prohibition to expel the petitioner to the Gaza Strip and the violation of his rights

37. The petitioner, a protected resident in an occupied territory, who is registered in the Palestinian population registry, has the right to live in his home in Qalqiliya. Petitioner's forcible removal to the Gaza Strip violates the rights afforded to him under both Israeli and international law: his right to free movement in his own country; his human liberty and dignity; his right to family life; etc. and according to international law, a person's right not to be removed from his home and place of residence is a material and central basic right, and it is explicitly prohibited to remove a person from his home.

The fundamental premise is that the displacement of a person from his place of residence and his forcible assignment to another place seriously harms his dignity, his liberty and his property. A person's home is not merely a roof over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships (see M. Stavropoulou, "The Right not to be Displaced", 9 **Am. U. J. Int'l L. & Pol'y**, 687, 717 (1994)). Several basic human rights are harmed as a result of an involuntary displacement of a person from his home and his residence and his assignment to another place, even if this assigned residence does not involve the crossing of an international border (see F. M. Deng, **Internally Displaced Persons: Compilation and Analysis of Legal Norms**, 14 (1998)). These human rights derive in part from the internal law of the various countries, and are in part enshrined in the norms of international law.

(HCJ 7015/02 **Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, paragraph 14 (2002)).

38. And moreover, in a general petition which was filed on the issue of the status of West Bank residents whose registered address is in Gaza (the above referenced HCJ 4019/10) respondent 2 undertook that:

Gaza Strip residents who entered the Judea and Samaria Area before the end of the military administration in the Gaza Strip (the "disengagement from the Gaza Strip") is September 12, 2005, will not be expelled, unless there is a specific security justification for their expulsion.

Respondents' response in HCJ 4019/10 dated October 23, 2012, is attached and marked **P/10**.

39. The court reiterated said undertaking which was made by the respondents and subject to said undertaking the petition was deleted.

A copy of the judgment in HCJ 4019/10 dated April 21, 2013, is attached and marked **P/11**.

40. Hence, also according to respondent's undertaking, the petitioner, who moved to the West Bank in 2000, should not be expelled to the Gaza Strip.
41. With respect to the exclusion which was included in respondents' undertaking – the existence of a "specific security justification for their expulsion" – it should already be noted at this point that the offense committed by the petitioner of an illegal entry into Israel for working purposes without any additional criminal offense ancillary thereto, for which he was sentenced only to two months in prison, can not constitute a "security justification" for his expulsion. In addition, the petitioner has already served his sentence for this offense, and his expulsion from his home for the same offense would constitute a disproportionate and unjust double punishment.

Conclusion

42. The petitioner, a protected resident in an occupied territory, wishes to ensure that upon his release from prison in Israel he would return to his home in his country. The petitioner has been living in Qalqiliya for more than fifteen years, where his home and family are located, after he has lawfully moved from one part of his country to another.
43. Despite the urgency of the requests which were submitted to them and the simple question asked: where they intend to release the petitioner, the respondents do not deign to answer the requests submitted to them and in so doing, leave the petitioners no alternative but to turn to this court.
44. Indeed, there is no justification or legal basis for the transfer of the petitioner to the Gaza Strip, and the respondents did not notify of their intention to do so, but the concern remains and respondents' refusal to respond to the requests submitted to them only reinforces it.
45. Clearly, to the extent the respondent notify that they intend to deport the petitioner to the Gaza Strip, the petitioners will request to complete their arguments against the decision to deport.
46. In view of all of the above, this honorable court is requested to issue an *order nisi* as requested, and after hearing respondent's response, make it absolute. The honorable court is also requested to order the respondents to pay petitioners' costs and legal fees.

January 27, 2015.

Bilal Sbihat, Advocate
Counsel to the petitioners

[File No. 78362]