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

**HCJ 5269/15**

In the Matter of: **1. Dr. \_\_\_\_\_ Kraish, ID \_\_\_\_\_**  
Resident of the Occupied Palestinian Territories  
**2. HaMoked: Center for the Defence of the Individual, founded by**  
**Dr. Lotte Salzberger – RA**

Represented by Ido Blum, Adv.  
1 Shefa Tal Street, Tel Aviv  
Tel.: 03-7444070, Fax: 03-7444170

**The Petitioners**

v.

**1. The Military Commander of the West Bank**  
Represented by the State Attorney's Office, Ministry of Justice  
29 Salah-a-din Street, Jerusalem  
Tel: 02-6466590; Fax: 02-6467011

**The Respondent**

### **Petition for Order Nisi**

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause why he does not immediately permit Petitioner 1- a trained physician - to travel from the West Bank to Jordan to accompany his brother who suffers from severe congestive heart failure to an urgent heart transplant operation at the Georges Pompidou hospital in Paris, France.

### **Request to Schedule an Urgent Hearing**

The Court is requested to schedule an urgent hearing of the petition.

The Petitioner's brother, Mr. \_\_\_\_\_Kraish, is a heart patient who suffers from End Stage Congestive Heart failure. The brother was treated at the Hadassah, Ein Kerem hospital, and referred by the hospital for an urgent heart transplant operation at the Georges Pompidou hospital in France.

Due to the brother's medical condition he needed to be accompanied by a member of the family, both during the trip and his stay in the hospital and, naturally, while recovering from the serious operation.

The family believes it is highly important that the Petitioner will be the one to accompany his brother both because he is a professional physician and has in-depth knowledge of his brother's medical history, and because, by virtue of his education, he is fluent in English (unlike the rest of the members of the family).

When it became apparent that the Petitioner is "banned from traveling abroad" by order of the Respondent, the Petitioners submitted an urgent request asking that the Petitioner be allowed to travel to accompany his brother to the critical transplant surgery yet, despite the obvious urgency of the matter, the Respondent had delayed processing the request.

### **The Factual Infrastructure**

#### **The Parties**

1. Petitioner 1 (hereinafter: **the Petitioner**) is a resident of the Occupied Palestinian Territories (OPT), born in 1987, a physician by profession.

Copies of the medical diploma and the certification of the Palestinian Ministry of Health are attached hereto and marked **E/1**.

2. The Petitioner's brother, Mr. \_\_\_\_\_Kraish, is a heart patient who suffers from severe End Stage Heart Congestive Failure. The brother was treated at the Hadassah, Ein Kerem hospital, and **referred by the hospital for an urgent heart transplant operation** at the Georges Pompidou hospital in France.

A copy of the Hadassah, Ein Kerem hospital medical report is attached hereto and marked **E/2**.

3. Due to the brother's medical condition, he needs to be accompanied by a member of the family both during the trip and his stay in the hospital and, naturally, while recovering from the serious operation.
4. The family believes it is highly important that the Petitioner will be the one who accompanies his brother, both because he is a professional physician, and because, by virtue of his education, he is fluent in English (unlike the rest of the members of the family).
5. It must be noted that in 2012, the Petitioner filed a petition requesting that he be allowed to leave the Occupied Palestinian Territories (OPT) in order to complete his medical studies (HCJ 3091/12, **Kraish v. the Military Commander of the West Bank**). In wake of the petition, the parties agreed that the Respondent will allow the Petitioner to travel, under certain conditions, in order to complete his studies.

6. Petitioner 2 (hereinafter: **HaMoked: Center for the Defence of the Individual** or **HaMoked**) is a registered association based in Jerusalem that works to promote the human rights of Palestinians in the OPT.
7. The Respondent is the military commander responsible for the area of the West Bank on behalf of the State of Israel which has held the West Bank under military occupation for forty seven years.

### **Exhaustion of Remedies**

8. On July 8, 2015, the Petitioner contacted the Israeli District Coordination Office (DCO) in Hebron in order to verify that he will be able to leave the West Bank in order to accompany his brother to the transplant surgery. A soldier at the DCO informed him in a laconic manner that there is a “ban” against his travel abroad. Due to the urgency of the matter, the Petitioners requested to immediately file an objection to this – however despite the exceptional circumstances, the soldier categorically refused to receive the objection claiming that they are “busy” and can only receive requests after the end of the month of Ramadan.
9. Therefore, on July 12, 2015, HaMoked: Center for the Defence of the Individual urgently appealed to the Head of the Hebron DCO and submitted an objection against the decision preventing the Petitioner’s exit from the West Bank. The appeal emphasized the urgency of receiving a prompt reply in order to allow the Petitioner to accompany his brother at this critical time.

A copy of the objection of July 12, 2015 is attached hereto and marked **E/3**

10. On July 14, 2015, a representative of HaMoked called the Hebron DCO in order to verify that the matter is being handled with the necessary urgency. However, the deputy Civil Coordination Officer named Bar stated that the matter is not being processed at all and that he does not intend to handle it, as his commander is “on vacation” and will only return in another week!

The attempts of HaMoked’s representative to explain the exceptional urgency of the appeal and the obvious human aspect were of no avail.

11. On July 20, 2015, following HaMoked’s appeals to the Head of the DCO concerning similar cases which the deputy officer stated that he would not handle, a short letter written by the Public Appeals Officer of the Civil Administration was received stating that the objection “has been in treatment since July 19, 2015” – in other words, despite the urgency of the matter, the DCO did not begin to process the matter at all for many days.

A copy of the Public Appeals Officer’s letter of July 20, 2015 is attached hereto and marked **E/4**.

12. On July 21, 2015, HaMoked again appealed to the head of the Hebron DCO, and described the infuriating replies of the Deputy DCO Officer stressing that “ten days have passed since our referenced appeal, yet despite the urgency, no reply has been received apart from your referenced letter in which you stated that the appeal has been processed since July 19, 2015, one week after our appeal to you was made”. Due to the circumstances, a prompt reply from the DCO was requested by July 28, 2015, as otherwise the Petitioners will be forced to consider approaching the courts.

A copy of letter sent by HaMoked: Center for the Defence of the Individual is attached hereto and marked **E/5**.

13. Despite the urgency, no reply has been given to date to the Petitioners' request. Under these circumstances, the petitioners had no recourse but to appeal to the Court.

### **The Legal Argument**

#### **The Right of the Petitioner to Accompany his Brother and the right of his Brother to Choose the Petitioner as his Attendant during Medical Treatment**

14. Failure to respond to the Petitioner's request, and failure to allow the Petitioner to travel and accompany his brother on his way to heart transplant surgery and during medical treatment also infringes on the right to receive medical treatment.
15. An individual's right to choose a close relative to accompany him for medical treatment constitutes a part of the right to receive medical treatment.
16. In 2014, the Knesset legislated an amendment to the Patient's Rights law 5756 -1996 (the Patient's Rights Law (Amendment No. 8), 5775 – 2014), which anchors in law the principle that "every patient is entitled to be accompanied by a person of his choice....who will be present when receiving medical treatment".
17. The explanatory notes to the law state:

It is proposed to add to the said chapter a provision whereby a patient will be entitled to choose a person who will accompany him during medical treatment, provided that the attendant does not interfere in the provision of treatment, and thus to anchor this right, which is practiced in in hospitals and clinics at this time, in legislation. The purpose of the directive is to assist patients who receive medical treatment, and particularly patients who have difficulty understanding the language, elderly patients and disabled patients.

(Patient's Rights Bill (Amendment 8 ) (the right to the presence of an attendant during medical treatment), 5775-2014 ; Law Proposals 578).

18. A large number of medical research studies identify the enormous importance of allowing a patient to choose the relative who will accompany him, support him, assist him during medical treatment, and help in communicating with the medical staff – particularly in situations of differences in language.

See also:

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19. In our case, it is exceedingly important that the Petitioner be able to accompany his brother on his way to vital life - saving, medical treatment, during it, and following it.

20. From the point of view of the Petitioner's brother, no one is better suited for this task than the Petitioner, who is a physician himself, has thorough knowledge of his brother's medical condition, and speaks fluent English.
21. Murad - the Petitioner's brother - believes that it is critical that his brother, a physician, will accompany him and be at his side during the heart transplant surgery. He cannot imagine another option.

### **The Right to Freedom of Movement**

22. The right to freedom of movement is the motor that sets the web of human rights in motion, the motor that enables a person to realize his autonomy and his choices. When one restricts the right to movement that "motor" is harmed and as a result thereof some of a person's possibilities and rights cease to exist. His dignity as a person is violated. Thus we see the high level of importance attributed to the right of freedom of movement.
23. The right to freedom of movement is among the norms of customary international law and is deeply entrenched in Israeli law.

Regarding this see:

Articles 12 of the International Covenant on Civil and Political Rights 1966;

Article 2 of the 4th Protocol of the European Convention on Human Rights 1950;

Article 13 of the Universal Declaration of Human Rights, 1948;

HCI 6358/05 **Vanunu v. The General of the Home Front Command**, IsrSc 2006(1) 320, paragraph 10 (2006);

HCI 1890/03 **Bethlehem Municipality et al v. The State of Israel**, IsrSc 2005(1) 1114, paragraph 15 (2005);

HCI 5016/96 **Horev v. the Minister of Transportation**, IsrSc 51(4) 1 (1997);

24. A principal part of the right to freedom of movement is the **right of an individual to leave his country:**

A person's right to leave his country of residence and to return to it is a "natural right". It is one of the fundamental human rights. Restricting the right gravely infringes on his rights. (HCI 4706/02 **Saleh v. the Minister of the Interior**, IsrSC 56(5) 695, 704 (2002))

25. This right also exists in times of war as established in Article 35 of the Fourth Geneva Convention 1949.

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The scholar Picket's interpretation clarifies that:

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26. The right to leave a country of residence has also been recognized as a fundamental right in a considerable number of international treaties and declarations. Article 13 of the Universal Declaration of Human Rights (1948) and Article 12 (2) of the International Covenant on Civil and Political Rights (1966) determine that a person has a right to leave his country.

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**Summary**

27. The Petitioner requests to leave his country in order to accompany his brother to a complex and life threatening medical procedure, an urgent heart transplant.

28. The Respondent's delay in processing the matter - including the refusal of the Hebron DCO to handle the matter at all for days for reasons of mere convenience – may cause serious harm to the Petitioner and his brother who is waiting to leave with his brother for the hospital in Paris.

In light of the aforesaid, the Court is requested to issue an *order nisi* as sought and after hearing the Respondent, render it absolute. The Court is also requested to rule that the Respondent bear the Petitioners' expenses and legal fees.

This petition is supported by an affidavit signed before an attorney in the West Bank and sent by fax to the undersigned as agreed by phone. The Honorable Court is requested to accept this affidavit and the power of attorney which was also sent by fax in consideration of the objective difficulties involved in holding a meeting between the Petitioner and his representatives.

July 30, 2015

[handwritten signature]

Ido Blum, Adv.

Counsel for the Petitioners