

At the Supreme Court
Sitting as the High Court of Justice

HCI 475 /21

1. _____ **Kabha**
2. _____ **Kabha**
3. _____ **'Amar**
4. _____ **Sabah**
5. _____ **Yassin**
6. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

Represented by counsel, Adv. Tehila Meir, Daniel Shenhar, Benjamin Agsteribbe, Nadia Daqqa, Aaron Miles Kurman, Maisa Abu Saleh-Abu Akar 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.

Military Commander for the West Bank Area

Represented by the State Attorney's Office, Ministry of Justice,
29 Salah-a-Din Street, Jerusalem
Tel: 073-3925686; Fax: 02-6467011

The Respondent

Respondent's Preliminary Response

1. According to the decision of Honorable Justice Barak-Erez dated January 21, 2021, and the extensions granted, the Respondent hereby respectfully submits his preliminary response to the petition.
2. This petition concerns Petitioners' request that the Honorable Court direct the Respondent "to appear and show cause why he would not allow Petitioners 1-5 in particular, and Palestinian men over the age of 55 and Palestinian women over the age of 50, in general, to enter the Seam Zone without individual permits, as they are allowed to enter Israel without individual permits".
3. Respondent's position is that the petition should be dismissed *in limine* since the factual basis on which it relies has changed and no longer reflects the entry procedures into the Seam Zone, which have been significantly changed by the military authorities shortly after the petition was filed and without connection thereto.
4. Briefly explained – at this time, according to the Seam Zone entry procedures, Palestinians who may enter Israel without an application due to their age may also access the Seam Zone by virtue of said permit – as requested by the Petitioners.

We explain in detail below.

The Seam Zone: General

5. Following acts of terror and attacks committed by Palestinians inside the State of Israel and in the Israeli settlements located in the Judea and Samaria Area after the outbreak of violent incidents in September 2000, in early 2002, the Government of Israel decided to build a security fence along the seam line between Israel and the Judea and Samaria Area to prevent the free passage of Judea and Samaria residents to Israeli territories located west of the fence.
6. The route of the security fence was determined based on a collection of considerations, primarily security. Given the above, the route of the security fence and the Judea and Samaria Area borderline do not completely overlap, and in several areas, the security fence was built inside the Judea and Samaria Area in a manner that created an expanse within the Judea and Samaria Area that remains west of the fence, between the security fence and the Judea and Samaria Area borderline. These areas are referred to as the "Seam Zone."
7. Since there is no physical barrier preventing entry into Israel from the Judea and Samaria Area located in the "Seam Zone," and in view of the security risk posed by the passage of terrorists from the Seam Zone into the territory of the State of Israel, the Respondent exercised the power vested in him according to the Order regarding Closed Zones (Judea and Samaria Area)(No. 34), 5727-1967, and declared the Seam Zone areas a closed military zone. Entry into and exit from this area are prohibited without a permit.
8. The assumption underlying the declaration of the Seam Zone as a closed military zone is that allowing free entry and exit from the Judea and Samaria Area into the Seam Zone and from there to Israel, **with no further security checks**, poses a security threat. Passage without a permit may be used to carry out activities against the security of the State of Israel and its citizens or enable the entry of individuals denied entry for criminal reasons.
9. According to security legislation, the closed zone declarations do not apply to permanent residents in the area [the Seam Zone]. Hence, section 90(d) of the Order regarding Security Provisions (Judea and Samaria) (No. 378), 5730-1970, stipulates that the presence of a permanent resident in a closed zone does not constitute a violation of the order.
10. Several other permits are issued in addition to permanent Seam Zone resident cards: "Seam Zone farmer permit," "Seam Zone agricultural worker permit," "Seam Zone merchant permit," "personal needs permit," and the like. These permits enable Judea and Samaria Area residents to access the Seam Zone for different purposes, according to their connection to the Seam Zone. The conditions established for issuance of the various additional permits balance between the security considerations which led to the closure of the area, and Respondent's obligation to maintain reasonable access to areas located on the west side of the security fence and preserve, to the maximum extent possible, the proper fabric of life of the individuals residing in the Seam Zone and in the area adjacent thereto.
11. The lawfulness and reasonableness of the Seam Zone declaration and the provisions established as specified above were examined by this Honorable Court in public interest petitions filed in that regard. See, for instance, HCJ 9961/03 **HaMoked: Center for the Defence of the Individual v. Government of Israel** (reported in the Judicial Authority Website, April 5, 2011). One of the petitioners therein – HaMoked:

Center for the Defence of the Individual – is Petitioner 6 in the petition at hand. In paragraph 13 of her judgment, Honorable President D. Beinisch stated as follows:

All of the above clearly indicates that over the years a real connection was created in our judgments between the security fence issue (and the judgments rendered in that regard) and the Seam Zone issue. This connection clearly stems from said judgments, but it is also mandated by the logic of things and the main purpose of the security fence, which obligates the establishment of a legal framework which would apply to the territories of the Seam Zone and would enable the military commander to effectively control and supervise the individuals who enter these territories, the passage from which into the territory of Israel is free and open. In the absence of such framework, there is a concern that the objective of the security fence would not be realized.

12. As aforesaid, the security need requires, at this time, to prevent the uncontrolled entry of Palestinian residents into the Seam Zone in order to protect the security of the Area and the security of the State of Israel and its residents and the lives of Israeli citizens in settlements located within the Seam Zone. Therefore, the decision whether to issue to an individual a permit to access the Seam Zone is a decision that is based on established criteria, as well as on the specific factual data pertaining to said individual.

Entry into the Seam Zone

13. At the outset, before we proceed to directly address the issue of entry into the Seam Zone, it is important to note that **procedures for entry into Israel** are set forth in the "Unclassified Status of Authorizations for Entry of Palestinians into Israel, for their Passage from Judea and Samaria to the Gaza Strip and for their Departure Abroad" as amended from time to time (hereinafter: the **Status of Authorizations**). These procedures define, inter alia, the grounds for receiving an individual permit to enter Israel and the populations whose entry into Israel does not require the submission of a specific application.
14. In this context, the Status of Authorizations stipulates, inter alia, that older Palestinians, namely men over the age of 55 and women over the age of 50, may enter Israel according to an automatic permit fed into the system without the need to file an application (hereinafter: **old age permit**), with the exception of Palestinians in this age groups individually barred entry for criminal, security or other reasons.

A photocopy of the relevant section of the Status of Authorizations document is attached hereto and marked **RS/1**.

15. According to the Status of Authorizations and Announcement regarding the Designation of Crossing Points (Judea and Samaria), 5766-2006, 13 crossing points have been designated (hereinafter: **Regulated Crossing Points**) for use by Palestinians holding Israeli entry permits, through which they may enter Israel. This includes Palestinians holding mature age permits who, upon arrival at said crossing points, may enter the State of Israel, subject to security checks, ID card inspection and a digital search to ascertain there is no personal preclusion in their matter.

To clarify: the demand to travel through a Regulated Crossing Point rather than any other derives from distinct security reasons. Said crossings are staffed with personnel and equipped with devices appropriate for conducting security checks, scanning

passengers, managing significant passenger volumes and ensuring passengers do, in fact, have a permit and that there is no preclusion preventing their entry.

A photocopy of the Announcement regarding designation of Crossing Points is attached hereto and marked **RS/2**.

16. We now turn to the permits relevant to the Seam Zone.
17. Seam Zone permits are governed by the General Permit for Access to the Seam Zone (Judea and Samaria), 5764-2003 (hereinafter: the **General Permit**). The General Permit lists several groups determined as entitled to access the Seam Zone without having to submit an application for a personal permit. In this context, the General Permit stipulates, *inter alia*, that a resident of the Area holding a valid permit to enter Israel from the Area may access the Seam Zone for the purpose of travel from the Area to Israel.

A photocopy of the General Permit is attached hereto and marked **RS/3**.

18. Consequently, according to the General Permit, a resident of the Area holding an Israeli entry permit, including a resident of the Area holding an old age Permit, may enter the Seam Zone for the purpose of traveling from the Area to Israel. Accordingly, in the past, a resident of the Area in possession of an old age Permit was not permitted to enter the Seam Zone for other purposes, including agricultural purposes, without a specific permit.
19. In addition to the General Permit, access to the Seam Zone is also governed by the "Procedures and Instructions regarding Entry into the Seam Zone," which is updated periodically (hereinafter: **Entry Procedures**). In the framework of the periodic amendments of these procedures, and following Petitioners' application, in the second half of 2020, comprehensive administrative work was undertaken by the Respondent, at the conclusion of which, in January 2021, the Entry Procedures were amended to provide that entry into the Seam Zone without a specific permit shall be permitted to "**a resident holding an Israeli entry permit – according to the terms of the permit in their possession,**" regardless of the reason for accessing the Seam Zone.

A photocopy of the relevant part from the updated Entry Procedures is attached hereto and marked **RS/4**.

20. **Hence, according to the updated Seam Zone Entry Procedures, which were revised in the framework of administrative work which commenced following Petitioners' application and prior to the petition, holders of a general permit, men over the age of 55 and women over the age of 50 (namely, holders of an old age permit), who were not personally precluded from entering Israel for security, criminal or other reasons, are entitled to access the Seam Zone without a specific permit.**
21. Entry into the Seam Zone by mature age permit holders, like entry into the State of Israel – must be made through **said 13 Regulated Crossing Points** for the same security reasons specified above.
22. Beyond necessity, and to complete the factual picture, it should be noted that in addition to the Regulated Crossing Points, and to facilitate access to the Seam Zone by Palestinian residents who have a connection to lands located therein, the Respondent has designated – in addition to the recognized crossing points, approximately 80 Seam Zone gates (seasonal and year-round), including agricultural gates. Passage from the

Area to the Seam Zone is permitted via these gates, provided that the person seeking passage has a **personal permit for passage through a specific gate**, stemming from their connection to land located near the gate, for instance, a connection a farmer has to land they own and cultivate. It should be emphasized that passage through these gates is permitted only to persons who have a connection to the area located near the specific gate or gates relevant to the connection to the land, according to the specific need and according to the personal permit issued to the resident. **Large-scale passage of residents through the special purpose Seam Zone gates cannot be accommodated since they are intended solely for the purpose of preserving the fabric of life of residents who have a connection to specific lands and possess a personal permit to enter the Seam Zone exclusively.** General permit holders are not permitted passage through these gates in the absence of a specific permit permitting it.

23. By way of explanation: Large scale passage of residents through Seam Zone gates which are not Regulated Crossing Points cannot be accommodated. These gates differ from the Regulated Crossing Points in purpose and manner of operation. Seam Zone gates are designed to serve between five and up to a maximum of 150 personal permit holders per day, depending on the particular features of each gate. Seam Zone gates are not open continuously. They open each day according to a specific arrangement that determines when the gate opens and for how long. The personnel staffing these gates, the devices with which they are equipped, and the identification and security screening standards employed in them differ from those of the Regulated Crossing Points. Allowing mature age permit holders, namely **a population of more than 200,000 residents**, passage through these gates could create **exceptional overloads** that would undermine **security screening capacity** (which does not equal that of Regulated Crossing Points) as well as quick passage by persons with connections to lands who have a personal permit. In other words, opening the Seam Zone gates to mature age permit holders rather than reserving them for the exclusive use of personal Seam Zone entry permit holders may cause substantial harm to the latter, who enter the Seam Zone in order to preserve their fabric of life, with all associated needs.
24. Therefore, based on the above rule, according to the new procedures, mature age permit holders may enter Israel and may also enter the Seam Zone for the purpose of remaining there rather than solely for transit. They may do so through the Regulated Crossing Points, after undergoing identification and security screening, without the need to present a personal permit and according to the Crossing Points Order.

The chain of events relevant to the petition

25. On May 19, 2020, the Petitioners contacted the Civil Administration and presented their request to allow residents eligible for a mature age permit to enter the Seam Zone without an additional permit. It should be recalled that at the time the request was made, and at the time the petition was filed, the standing orders provided that mature age permit holders could enter the Seam Zone without an additional permit, **solely for the purpose of transit to Israel.**

A copy of the request dated May 19, 2020, was attached to the petition and marked P/51.

26. Petitioners' request, which was first raised as part of the aforesaid correspondence, was forwarded to the relevant officials for further review and comments. Subsequently, administrative work was undertaken to examine possible changes and amendments to the procedure. By the nature of things, the administrative work consisted of many

aspects and required input from many officials, both operational and professional, who were required to assess the implications of the proposed amendment and to formulate a position in the matter.

27. On July 2, 2020, the Petitioners sent another letter regarding the matter. On July 13, 2020, the Civil Administration advised the Petitioners that the arguments presented in their request were under review. In this context, the Petitioners were informed that the Civil Administration was in the last stages of formulating a response in the matter and that it would be provided to them shortly. The above is due partly to the multiple officials whose comments were required.

A copy of the application dated July 2, 2020, was attached to the petition and marked P/52.

A copy of the response dated July 13, 2020, was attached to the petition and marked P/53.

28. Thereafter, the Petitioners sent several "reminders" with respect to the matter to the Civil Administration. On November 9, 2020, the Petitioners were informed that their application was still the subject of discussions between Civil Administrative officials and other officials and that the delay in responding resulted from the fact that the matter involved numerous parties. The Petitioners were also advised that to the extent that any decisions were made, they would be transferred to the Petitioners promptly.

A copy of the response dated November 9, 2020, was attached to the petition and marked P/57.

29. On **January 31, 2021**, the administrative work concerning the proposed amendment was concluded, and a decision was made, as described above, to amend the entry procedures such that persons holding entry permits into Israel will also be permitted to enter the Seam Zone without an additional permit. This applied to mature age permit holders as well, who would be permitted entry as aforesaid. Before the amendment was published, on **January 21, 2020**, the petition was filed by the Petitioners. And it should be emphasized: the entry procedures were revised following administrative work undertaken before the petition was filed rather than as a result of the petition.

Respondent's Position

30. As aforesaid, the Respondent maintains that the petition should be dismissed.
31. As aforesaid, following Petitioners' communication, shortly after the petition was filed, and regardless thereof, the administrative work which led to the amendment of the Seam Zone Entry Procedures was concluded. Currently, a Palestinian in possession of an Israeli entry permit may enter the Seam Zone, not only for transit purposes. Said arrangement also applies, *inter alia*, to mature age permit holders.
32. The remedy sought in the petition has therefore been made redundant, and the factual infrastructure underlying the petition has changed. Petitioners' request that mature age permit holders be permitted to enter the Seam Zone without a personal permit was addressed in the last amendment of the Seam Zone Entry Procedures. As aforesaid, during correspondence with the Petitioners, they were advised that the issue at hand involved numerous officials and was under examination, and indeed, eventually, and regardless of the petition, the provisions of the entry procedures were changed.

33. Inasmuch as the Petitioners have **specific arguments or specific requests** relating to a resident and pertaining to receipt of a personal Seam Zone entry permit, they are free to exhaust their remedies vis-à-vis the Respondent and petition, to the extent necessary, the Court for Administrative Affairs, pursuant to Section 5A(a)(1) of the Court for Administrative Affairs Law, 5760-2000 and Item 3(e) of the Fourth Addendum to said law.

In this context, it should be noted that in March 2021, Petitioner 2 and Petitioner 6 filed an individual administrative petition regarding a personal Seam Zone entry permit (an agricultural permit or a permit for personal needs) – AP 44687-03-21. According to the judgment, said petition was dismissed without prejudice with Petitioners' consent following the hearing held therein on April 28, 2021, and after the petition was found to be based on various arguments raised by the Petitioners against Respondent's demand to register inheritances in the land registry as a condition for an agricultural permit, and that a public interest petition concerning this matter was pending before the Honorable Court (HCJ 3066/20), and therefore, there was no room for filing the administrative petition when it was filed.

A photocopy of the judgment in AP 44687-03-21 is attached hereto and marked **RS/5**.

34. Given all of the above, the petition should be dismissed.
35. The content of the above response is supported by the affidavit of Colonel Ofer Hindi, Head of "Rainbow of Colors" Administration at the Central Command.

Today, Sivan 1, 5781
May 12, 2021

(Signed)
Yonatan Kramer, Adv.
Senior Deputy A, HCJ Department
State Attorney's Office

(Signed)
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